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SECTION: HIPAA

AREA: HIPAA PRIVACY/SECURITY POLICIES

SUBJECT: PATIENT PHOTOGRAPHY, AUDIO RECORDINGS, VIDEOGRAPHY, AND OTHER IMAGING

PURPOSE

This policy is established to set the guidelines for taking pictures of UAMS patients, use of patient photographs, and safeguards to be enacted to protect the privacy and security of patient photographs.

SCOPE

UAMS Workforce.

DEFINITIONS

Disclosure means the release, transfer, provision of access to, or divulging of information in any manner, verbally, electronically, or in writing, by UAMS to anyone outside of the covered components of the UAMS hybrid entity.

Legal Representative means the person authorized by law to act on behalf of the patient, such as the parent of a minor, a court-appointed guardian or a person appointed by the patient in a Power of Attorney document.

Protected Health Information (PHI) means information that is part of an individual's health information that identifies the individual or there is a reasonable basis to believe the information could be used to identify the individual, including demographic information, and that (i) relates to the past, present or future physical or mental health or condition of the individual; (ii) relates to the provision of health care services to the individual; or (iii) relates to the past, present, or future payment for the provision of health care services to an individual. This includes PHI which is recorded or transmitted in any form or medium (verbally, or in writing, or electronically). PHI excludes health information maintained in educational records covered by the federal Family Educational Rights Privacy Act and health information about UAMS employees maintained by UAMS in its role as an employer and health information regarding a person who has been deceased for more than 50 years.

Photography means, for purposes of this policy, a recording of a patient's likeness, even if the patient's face is not included, by a number of visual means, including but not limited to, still photography, audio media, videography, including but not limited to, videography captured and viewable in real time and videography accessible and viewable from remote locations different than where the videography takes place, digital imaging, and scans. Photography does not mean radiological images such as X-rays and MRI.

Use means the sharing, employment, application, utilization, examination, or analysis *within* UAMS.

UAMS Workforce means for purposes of this Policy, physicians, employees, volunteers, trainees, and other persons whose conduct, in the performance of work for UAMS, is under the direct control of UAMS, whether or not they are paid by UAMS.

For additional definitions:

<http://hipaa.uams.edu/DEFINITIONS%20-%20HIPAA.pdf>

POLICY

UAMS utilizes a variety of media to collect protected health information on patients and will hold all such information to the same standard of confidentiality and security as required for all protected health information according to UAMS policies. Patient consent will be obtained as outlined in this policy.

PROCEDURE

A. Patient Consent

- 1. For Treatment Purposes Only** – The patient, or the patient’s legal representative, should be asked to provide consent for UAMS to photograph, record video and audio, or create other images of the patient for treatment purposes. Verbal or written consent for treatment purposes should be obtained at the time of initial treatment at the facility of care or when photography begins. A consent form that is signed by the patient may be used to obtain the patient’s written consent. This consent form can be combined with other consent forms, such as a general consent to treat form, or can be a separate form, such as the Consent for Photography form ([Appendix A](#)). The patient’s written consent to take and use photography for treatment purposes may also address additional purposes as long as such consent form for additional purposes complies with the requirements of this policy. For treatment purposes only, verbal consent may be obtained in place of the written consent of the patient or the patient’s legal representative.
- 2. Patient Written Consent Required for Payment or Healthcare Operations** – To take and use photography for payment purposes or healthcare operations, such as education, training and quality improvement purposes, the patient, or the patient’s legal representative, will be asked to provide written consent for UAMS to photograph, record video and/or audio, or create other images of the patient for payment or healthcare operations via a consent form that is signed by the patient at the time of initial treatment at the facility of care or when photography begins. This consent form can be combined in other consent forms or can be a separate form, such as the Consent for Photography form ([Appendix A](#)). This consent form limits the use of such photography to purposes related to payment, and

healthcare operations, such as quality improvement purposes **within** UAMS, educational purposes **within** UAMS, and to educate faculty, residents, and students involved in a UAMS educational program. Refer to UAMS Administrative Guide Policy 2.1.13, Use and Disclosure of PHI and Medical Records Policy, for a definition of Healthcare Operations.

3. **For All Other Purposes - Written Consent with valid HIPAA Authorization for Release of Information required** - UAMS will obtain additional patient consent to take photographs of the patient to use for any purpose outside of treatment, payment, and healthcare operations as described above. For use and/or disclosure of photographs for these additional purposes not related to treatment, payment or healthcare operations, this consent to photograph must include the elements of a valid HIPAA Authorization (see sample [Appendix B](#)) or UAMS may obtain separate written authorization from the patient using the [Release of Information from UAMS form \(Med Rec 99 FR\)](#). Uses and disclosures of this nature may include photographs, videotapes, audio recordings, digital video disks, or other images for Internet use or publication.

4. Exceptions

- a. **Photographs Taken for Identification Purposes** – Patient photographs taken for identification purposes only during the registration process or for the electronic patient record do not require written consent. However, verbal consent should be obtained, and the patient may decline to have their photograph made.
- b. **Documentation of Abuse and Neglect** - UAMS is not required to obtain patient consent or the consent of the patient’s legal representative when using photography to document reportable cases of actual or suspected abuse and neglect. These images may be disclosed to investigating agencies as required by law and outlined in UAMS Administrative Guide Policy 2.1.13, Use and Disclosure of PHI and Medical Records Policy.
- c. **Patient Unable to Consent** – If the photography is for payment or health care operation purposes, such as education, training, and quality improvement purposes, the patient’s written consent (or the patient’s legal representative) is not required if the patient is unable to consent.
- d. **De-identified Images** - UAMS may determine that images are not individually identifiable health information if identifiers of the individual or of relatives, household members of the individual, or employer are removed. If UAMS believes the image cannot be used to identify the patient, the images may be used outside of UAMS for official UAMS Business Purposes without patient authorization in accordance with UAMS Administrative Guide Policy 2.1.16, De-

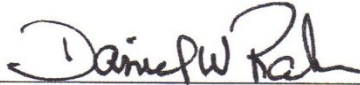
Identification of Protected Health Information and Limited Data Set Information.

- e. **Family/Personal Use** – When a patient or the friends and family involved in a patient’s care request UAMS staff to make photographs solely for personal use (such as for family photo albums or a baby book), UAMS is not required to obtain written patient consent prior to taking the photograph.
- f. **General recording or filming of premises for security purposes** - In order to provide for the safety and security of patients, employees and visitors, UAMS facilities may utilize cameras to monitor the premises, and patient consent is not is not required for these recording.

B. Documentation – The photography/media should be date and time stamped when possible. The use of photography as part of the patient’s treatment process should be documented in the patient’s health record. Still photographs may be included in the health record. Copies of the consent forms for photography shall be retained in the patient’s health record with other consent and authorization forms.

C. Security and Storage - All patient photographs, videotapes, digital video disks and other images will be stored in a secure manner that protects the patient’s privacy. These images will be stored for the retention period required by law or as defined by UAMS policy, generally for the same time period as the patient’s health record. The images, if not stored with the patient’s paper or electronic health record, must be stored in a secure manner, in accordance with UAMS policies, that allows timely retrieval. Images may not be retained on digital cameras, cellular telephones, or other recording devices or storage cards. These images may be part of the patient’s legal medical record. The decision to make such images part of the medical record is left to the clinical judgment of the provider. UAMS departments using photography, video, or audio records may have departmental procedures that comply with this policy and other relevant UAMS policies defining when such images are to be considered part of the patient’s medical record. In order to be considered part of the patient’s medical record, such images must be stored in the EHR or the UAMS electronic image repository. Certain clinical photography, necessary for safe and effective clinical care and treatment, may be sensitive in nature. In such circumstances, a brief reference to the photography should be included in clinical documentation and the photography should be stored in a separate portion of the EHR. For example, a procedure note could include the reference “see photographs of operative site” along with an explanation included in the procedure note as to where in the medical record the photographs are stored. Photography sensitive in nature should not be directly imbedded, pasted, or otherwise visible within the body of documentation related to clinical care, such as a progress note, a procedure note, and a history and physical. Images should be retained, released, disclosed and destroyed according to the policies governing other patient protected health information.

- D. Patient Copies** - The patient is entitled to copies of photographs in accordance with UAMS Administrative Guide Policy 2.1.13, Use and Disclosure of PHI and Medical Records Policy. UAMS may charge a reasonable fee to cover the cost of duplication of the photographs.
- E. Research** - Photography taken as part of a research protocol must be approved by the Institutional Review Board. Consent for such images must be incorporated into the patient consent for participation in the research protocol.
- F. Presentations and Publications** - Written authorization must be obtained from the patient prior to using photographs, if identifiable to a patient, in manuscripts and presentations at conferences and professional organizations external to UAMS or in any other public forum.
- G. General recording or filming of premises for security purposes** - In order to provide for the safety and security of patients, employees and visitors, UAMS facilities may utilize cameras to monitor the premises, and patient consent is not required for these recording.
- H. Marketing** - Written authorization must be obtained from the patient prior to photographing of the patient for marketing or publicity purposes, as outlined in UAMS Administrative Guide Policy 2.1.21, Use of PHI for Marketing.
- I. Non-UAMS Photographers** – any non-UAMS Workforce member who is taking patient photographs for UAMS must sign a Confidentiality Agreement prior to photographing patients or otherwise have in place a Business Associate Agreement as may be required under HIPAA.
- J. Sanctions** - Violation of this Policy will result in disciplinary action, in accordance with UAMS Administrative Guide Policy 4.4.02, Employee Discipline, UAMS Administrative Guide Policy 2.1.42, HIPAA Sanctions Policy, and other applicable UAMS policies or procedures.

Signature: 

Date: December 5, 2016

APPENDIX A



Place Patient Label Here or
Print Patient Name
Patient MR #

CONSENT to Take PHOTOGRAPHY

I, _____ hereby consent to the taking of photography, audio/visual recordings
Print patient name
or other images of me by UAMS. I understand that my photographs, videotapes, digital or other images
may be used to assist with my identification, diagnosis and treatment and the payment of my bill. These images may also be
used for UAMS Health Care Operations such as performance improvement and educational purposes within UAMS. Other
than for treatment, payment and health care operations, images that identify me will be released outside UAMS only upon
written authorization from me or my legal representative.

NOTE: If use is other than for identification, diagnosis, treatment, payment or healthcare operations including teaching within
UAMS, then the Authorization to Take and Release Patient Photographs or Video/Audio Recordings form must be used.

Withdrawal of Consent – I understand that I am not required to sign this Consent. I may revoke/withdraw the Consent at any
time by giving written notice to UAMS [Dept/Clinic below] Slot # [below], 4301 W. Markham, Little Rock, AR 72205. A
withdrawal of this consent will not apply to photographs, audio/visual recordings or other images used or disclosed prior to the
written notice of withdrawal. **During the recording or filming, I have the right to stop the recording/filming at any time.**

Expiration Date – This consent to take my photograph or other image expires 30 days from the date I sign the consent or after
the photographs and recordings are no longer needed by UAMS for the use that I am consenting to, whichever is later.

Release of Liability – I agree that UAMS, including its governing Board, physicians, agents and employees, are hereby
released from legal responsibility or liability for the access and release of my photographs or other images to the extent
indicated and authorized herein.

Signature of Patient or Legal Representative _____ Date/Time: _____

Patient Date of Birth and/or Medical Record Number for Identification Purposes: _____

If Legal Representative has signed on behalf of Patient, state the authority of Legal Representative to do so:

(such as parent of a minor, court-appointed guardian, appointed in a Power of Attorney)

For Staff use only - this section must be completed

FOR STAFF TO COMPLETE:

Dept/Clinic Name _____ **and Slot #** _____

Person Making Photo/Recording _____ **Date Taken/Time:** _____

(for initial photo/recording)

(check all that apply) _____ **Photographs** _____ **Video Recordings** _____ **Audio Recordings** _____

Other: _____

Description: _____

Location where image will be stored: _____

APPENDIX B



Place Patient Label Here or
Print Patient Name
Patient MR #

AUTHORIZATION to TAKE and RELEASE
PATIENT PHOTOGRAPHS or VIDEO/AUDIO RECORDINGS

FOR STAFF TO COMPLETE BEFORE PATIENT SIGNS: Dept/Clinic Name and Slot #
Person Making Photo/Recording Date Taken (for initial photo/recording)
(check all that apply) Photographs Video Recordings Audio Recordings
Description:
Location where image will be stored:

I, hereby consent to the taking of photography, audio/visual recordings or other images of
me by UAMS. I understand that my photographs, videotapes, digital or other images may be used to assist with my
identification, diagnosis and treatment and the payment of my bill. These images may also be used for UAMS Health Care
Operations such as performance improvement and educational purposes within UAMS. I also give my permission and
authorize UAMS** to make and DISCLOSE photographs or recordings described above to the public for educational,
commercial, or other purposes as follows:
(PATIENT: Please strike through and initial any of the disclosures you are not authorizing, if any).

- 1. UAMS internet website(s);
2. UAMS Posters, UAMS Publications, UAMS Photograph Books (by, on behalf of, or about UAMS);
3. Media, Internet Websites, Publications (TV, newspaper, magazine, any other media or websites outside UAMS); and
4. Healthcare-Related Presentations, Publications, Seminars, Conferences and Meetings (within and outside UAMS).
5. Other disclosures authorized, if any

Additional Health Information Disclosed. I understand and agree that any photographs/recordings authorized by me
also disclose my Protected Health Information related to my treatment, condition, procedure, surgery or other Protected
Health Information associated with the photographs or video/audio recordings, and I authorize this disclosure.

UAMS is not receiving direct or indirect compensation for use/disclosure of the photograph/recordings described in this Authorization.
Expiration Date - This Authorization expires two years from the date I sign the Authorization, or after the photographs and recordings are
no longer needed by UAMS for the use and disclosure that I have authorized, whichever date is later.
Withdrawal of Authorization - I understand that I am not required to sign this Authorization. If I sign this Authorization, I may
revoke/withdraw the Authorization at any time by giving written notice to UAMS [Dept/Clinic Above] Slot # [above], 4301 W. Markham,
Little Rock, AR 72205. A withdrawal of this Authorization will not apply to records, information, photographs, audio/visual recordings or
other information already used/released in reliance upon the Authorization. A photocopy or faxed copy of this signed Authorization shall
constitute a valid authorization. During the recording/filming, I have the right to stop recording/ filming at any time.
Release of Liability - I agree that UAMS, including its governing Board, physicians, agents and employees, are hereby released from legal
responsibility or liability for the access and release of my information to the extent indicated and authorized herein.
Re-Disclosure - I understand that once the above information is disclosed, it may no longer be protected by privacy laws.
UAMS will not condition treatment, payment, enrollment or eligibility for benefits on your signing of this Authorization.
**If patient is a patient of Arkansas Children's Hospital (ACH), the terms of this Authorization also include and extend to ACH.

Signature of Patient or Legal Representative Date
Patient Date of Birth and/or Medical Record Number For Identification Purposes:
If Legal Representative has signed on behalf of Patient, state the authority of Legal Representative to do so:

(such as parent of a minor, court-appointed guardian, appointed in a Power of Attorney)

Office Staff: Provide Copy of Signed Authorization to Patient/Legal Representative