Vail Valley Medical Center
Policy

TITLE: HIPAA - Photographing, Video Recording, Audio Recording, and Other Imaging of Patients, Visitors and Workforce Members

Effective Date: November 13, 2012

Status: Final

Replaced: New Policy

Purpose:

1. To facilitate compliance with the Health Insurance Portability and Accountability Act (HIPAA) Standards for Privacy of Individually Identifiable Health Information (Privacy Standards), 45 CFR Parts 160 and 164, and any and all other Federal regulations and interpretive guidelines.

2. To establish guidelines for situations where patients and/or workforce members may or may not be photographed, video or audio recorded or otherwise imaged within Vail Valley Medical Center (VVMC).

Definitions:

1. **Audio Recording**: recording an individual’s voice using video recording (e.g., video cameras, cellular telephones), tape recorders, or other technologies capable of capturing audio.

2. **Authorization**: a written form executed by the patient or the patient’s legal representative that meets the requirements in the Authorization for Uses and Disclosures of Protected Health Information policy.

3. **Consent**: the patient’s or patient’s legal representative’s written acknowledgment and/or agreement of the use and/or disclosure of protected health information for treatment, payment, or health operations purposes or other reasons permitted by the HIPAA Privacy Rule.

4. **Photography**: recording an individual’s likeness (e.g., image, picture) using photography (e.g., cameras, cellular telephones), video recording (e.g., video cameras, cellular telephones), digital imaging (e.g., digital cameras, web cameras), or other technologies capable of capturing an image (e.g., Skype).
Policy Statement:

1. VVMC shall take reasonable steps to protect patients, visitors, and workforce members from unauthorized photography, video or audio recordings, or other images.

2. Sanctions shall be applied in accordance with VVMC’s Sanctions for Privacy and Information Security Violations policy.

3. VVMC shall post the photography policy or signs/posters addressing photography in various locations in VVMC.

Procedures:

1. The following limited circumstances may be used to capture or record a patient’s likeness or voice using photography and/or audio recording.
   a. Only designated company-owned devices to photograph or audio record a patient may be used by VVMC workforce.
   b. VVMC’s procedures address how VVMC-owned devices are securely stored, how photographs or recordings will be saved, stored, and disposed, and designate appropriate personnel with access to the devices.
   c. Photographs should not be stored on the device (e.g., camera) or on unencrypted memory cards and must be timely deleted (e.g., within 2 business days) from the device.
   d. Personal cellular telephones, cameras, etc. may not be used.

2. Photographing/Audio Recording Patients and Workforce Members by Patients, Family Members, and/or by the Patient’s Visitors:
   a. VVMC is not required to obtain consent from the patient when the patient is the subject of the photography/audio recording and such recording is performed by the patient or the patient’s family members or the patient’s visitors.
b. Patients, family members, and/or visitors are not permitted to take photographs of or audio record other patients or workforce members without consent.

c. To the extent the workforce member is aware of any inappropriate attempt to photograph a patient and/or workforce member, the workforce member must take reasonable steps to ensure that patients and/or workforce members are not photographed within VVMC by a patient or the patient’s family members or visitors.

3. **Photographing/Audio Recording Patients by Workforce Members for Treatment Purposes:**
   a. **Written patient informed consent** is required before workforce members may photograph or audio record a patient for patient care purposes.

4. **Photographing Patients by Workforce Members for Security or Health Care Operations Purposes:**
   a. The Conditions of Admission or Consent for Treatment form advises patients that photographs or video recordings may be taken for security or health care operations purposes (e.g., quality assurance).

   b. This does not apply to general security surveillance of public areas.

5. **Photographing Patients by Workforce Members to Document Abuse or Neglect:**
   a. Patient consent is not required; however, the photographs may not be used for any other purpose beyond submission to the investigating agency unless otherwise permitted by federal or state law (e.g., for treatment purposes).

6. **Photographing/Audio Recording Patients by Workforce Members for Research:**
   a. Any use and/or disclosure of photographs or audio recording for research purposes will be in compliance with state and federal regulations concerning privacy and research.

   b. If a photograph or audio recording is determined to be identifiable, the VVMC Institutional Review Board overseeing the specific research project will determine if additional authorizations are required based on the criteria set forth in the privacy laws.

7. **Photographing/Audio Recording Patients by Workforce Members for Publicity Purposes:**
   a. VVMC **must obtain written authorization** from the patient prior to photographing/audio recording the patient for publicity purposes.
i. The authorization is only good for the type of photographs/recordings indicated and the timeframe listed in the authorization. Otherwise, a new authorization form must be obtained.

ii. When the photography/audio recording is for publicity purposes, VVMC must obtain an “Authorization for Use and Disclosure of PHI for Marketing and/or Promotional Purposes” and a the “Consent for Use and Disclosure of Image, Voice, and/or Written Testimonials.”

8. Photographing/Audio Recording Patients by the Media or Law Enforcement:
   a. VVMC may permit news media or law enforcement agencies to photograph or audio record a patient if the patient’s responsible (e.g., attending) physician agrees the patient is medically stable and the patient consents.
   b. VVMC may also disclose photographs and/or audio recordings to law enforcement when required by state law, such as child abuse and neglect, domestic violence, elder abuse, rape, and similar disclosures required by law.

9. Photographing for Gifts or Commemorative Purposes:
   a. Obtain written consent prior to photographing a patient when the photograph will be given as a gift or sold to the patient or patient’s family.
   b. When a vendor is used to provide these services, obtain a written authorization from the patient or have the patient initiate contact with the vendor.
      i. For example, VVMC may leave a brochure about the services in the patient’s room in order for the patient to contact the vendor directly.

10. Photographing/Audio Recording Patients for Telemedicine or the Internet (i.e., official uses only):
    a. Written patient consent is required prior to transmitting or using patient photographs/audio recordings for telemedicine or on the internet.
    b. Information Security policies and procedures for encryption and other company requirements must be followed.

11. Photography/Audio Recording of Patients or the Patient’s Visitors within VVMC by Workforce Members for Personal Use:
    a. Workforce members are prohibited from photographing or audio recording patients or the patient’s visitors within VVMC for personal use, including, but is not limited to,
i. taking pictures to share with friends and/or co-workers,
ii. to post on the internet using social media (e.g., Facebook, MySpace, Twitter), etc.

12. **Storage:**
   a. Refer to VVMC sample Designated Record Set Policy to determine which photographs and/or audio recordings must be stored in the medical record.
   b. VVMC will designate a secure area(s) to store photographs and recordings that contain protected health information and will not be housed in the patient’s record.
   c. Photographs and recordings will be clearly identified and securely stored and readily accessible for retrieval.

13. **Disclosure:**
   a. Do not release photographs and audio recordings without specific written authorization from the patient, unless the disclosure is for treatment, payment or health care operations purposes or is otherwise permitted or required by law.
   b. Unless prohibited by law, photographs and audio recordings may be released to the patient in accordance with Patients’ Right to Access.
   c. VVMC will retain the originals.

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**Reviewed By:** Vicki Dwyer, Compliance Officer 10/12; Michael Holton, Director of Marketing 11/12; Stephanie Palmer, Director of Safety and Security 11/12; Patient Safety Council 11/12.

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**References:**

1. Health Insurance Portability and Accountability Act (HIPAA), Standards for Privacy of Individually Identifiable Health Information 45 CFR Part 164.

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