PRIVACY 13.0 PHOTOGRAPHS, VIDEOTAPES AND OTHER RECORDINGS OF PATIENTS

Scope: All workforce members (employees and non-employees), including employed medical staff, management, and others who have direct or indirect access to patient protected health information (PHI) created, held or maintained by any subsidiaries of Universal Health Services, Inc., including facilities and UHS of Delaware Inc. (collectively, “UHS”), including UHS covered entities (“Facilities”).

Purpose: Describes when photographs, videotapes and other recordings are allowed to be taken of patients and the purposes and manner in which these may be used or disclosed.

Definitions:
Terms not defined in this Policy or the HIPAA Terms and Definitions maintained by the UHS Compliance Office (available through hyperlinks in the HIPAA policies, online, and from the UHS Compliance Office) will have the meaning as defined in any related State or Federal privacy law including the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“HHS”) at 45 CFR Part 160 and 164, Subparts A and E (“Privacy Regulations” or “Privacy Rule”) and Subparts A and C (“Security Regulations” or “Security Rule”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”) privacy and security provisions of the American Recovery and Reinvestment Act (Stimulus Act) for Long Term Care, Public Law 111-5, the American Recovery and Reinvestment Act of 2009 (“ARRA”), Title XIII and related regulations.

Policy:
Photographs, videotapes and other recordings of a patient can contain PHI, and any use or disclosure must comply with the Privacy Rule and this Policy, as well as applicable state laws. Photographs, videotapes and other recordings of a patient, when they include full face images and/or voices or other identifying information, are considered PHI, and any use or disclosure must comply with UHS and Facility policies, the Privacy Rule and applicable state laws.

State law may impose additional requirements – Facilities will contact the UHS Legal Department if they have any questions regarding the state laws applicable to them.

Procedure:
Photographs, videotapes and other recordings may be used and disclosed as follows and if in compliance with applicable state laws:

• **Treatment** – Facilities may photograph, videotape or make other recordings of a patient for treatment purposes. When used for treatment purposes, they will be considered part of the patient’s medical record and stored in accordance with the Facility’s medical records policies. A photograph, videotape or other recording of a patient taken for treatment purposes may not be used or disclosed for any other purpose unless such disclosure is pursuant to this Policy and consistent with applicable state laws. For disclosures for treatment purposes please refer to UHS Privacy 5.0 *Use and Disclosure for Treatment, Payment and Health Care Operations*.

  o Storage and Retention – Facilities will maintain photographs, videotapes and other recordings of patients taken for treatment purposes in accordance with their policies on maintaining medical records and state law.

  o Documentation of Abuse and Neglect – Facilities may photograph, videotape or make other similar visual images of a patient for purposes of documenting abuse and/or neglect. The images will be considered to be used for treatment purposes. The photograph or other images will not be disclosed to law enforcement unless such disclosure conforms with UHS Privacy 16.0 *Disclosures for Law Enforcement Purposes*.

• **Health Care Operations** - Facilities may photograph, videotape or make other similar visual images of a patient for purposes of health care operations. The Facility must use and disclose only the minimum amount necessary for health care operations purposes in accordance with UHS Privacy 6.0 *Minimum Necessary Policy* and UHS Privacy 5.0 *Use and Disclosure for Treatment, Payment and Health Care Operations*.

  o Security Cameras – Facilities may use security cameras on their premises. The images of patients from such cameras will be considered part of health care operations. Use and disclosure of patient-related security camera photography or video will be restricted to the minimum necessary to accomplish the purpose and be consistent with UHS Privacy 5.0 *Use and Disclosure for Treatment, Payment and Healthcare Operations* and UHS Privacy 6.0 *Minimum Necessary Policy*.

• **Disclosures to Law Enforcement** – Facilities may disclose photographs, videotapes or other recordings to law enforcement officials if and to the extent the disclosures are made in accordance with UHS Privacy 16.0 *Disclosures for Law Enforcement Purposes*. 
• **Authorization** – In addition to the other situations described in this Policy, **Facilities** may take, **use** and **disclose** photographs, videotapes or other recordings of a patient pursuant to a valid authorization that explicitly permits the taking, use and disclosure. **Using** and **disclosing** on this basis will be limited to those **uses** and **disclosures** specified in the authorization. The authorization will comply with UHS Privacy 3.0 *Use and Disclosure Requiring Authorization.*

  o **Marketing** – **Facilities** will *not* use a photograph, videotape or other image of a patient for **marketing** efforts without express authorization from the patient.

• **Research** – If an **Institutional Review Board (IRB)** overseeing a **research** protocol approves taking photographs, videotapes or other recordings of the patient for **use** in a **research** protocol, the photographs or videotapes and other recordings will be stored and maintained in the **research** record (not in the patient’s medical record, unless the images have the dual purpose of being taken for treatment purposes of the subject while he or she is a patient of the Facility, in which case a copy would be maintained in accordance with the Facility’s medical records policies). **Uses** and **disclosures** are limited to the purpose explicitly stated in the IRB-approved **research** protocol and an executed **research** consent form.

• **Images made by Others** – **Facilities** will not be responsible for obtaining authorization from the patient for photographs, videotapes or other recordings taken of the patient by the patient, the patient’s family and others visiting the patient who are not members of the Facility’s **workforce**. **Facilities** will attempt to limit taking of photographs, videotapes or other recordings by a patient, a patient’s family or others visiting the patient if they become aware that these images or recordings would include another patient.

• **Unauthorized Photography, Videotapes or Other Recordings** – If the Facility becomes aware of any photograph, videotape or other recording that does not comply with this Policy, the Facility Privacy Officer will be notified. The Facility Privacy Officer will take steps to mitigate and prevent further unauthorized **uses** or **disclosures**, which may involve confiscating the unauthorized material. The Facility Privacy Officer may initiate an investigation into the **use** and **disclosure** of the unauthorized material and determine whether notification is required pursuant to UHS Privacy 2.0 *Breach Notification.*

**References:**

45 C.F.R. §164.514

**Related UHS Policies:**