

# HARRISHEALTH SYSTEM

## POLICY AND REGULATIONS MANUAL

Policy No: 3.11.310  
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Effective Date: 10/22/2008  
Board Motion No: N/A  
Last Review Date: 07/14/2020  
Due for Review: 07/14/2023

**TITLE:** MAKING AND DISCLOSING PHOTOGRAPHIC, VIDEO, ELECTRONIC, DIGITAL, OR AUDIO RECORDINGS OF PATIENTS

**PURPOSE:** To specify when Harris Health System may make a photographic, video, digital, or audio recording of a patient and how and when the Harris Health System may disclose the photographic, video, digital, or audio recording of the patient.

### POLICY STATEMENT:

Harris Health System (Harris Health) may make and disclose photographic, video, digital, or audio recordings of its patients in accordance with state and federal privacy laws and regulations, including obtaining an authorization to make and disclose the recording when required by state or federal privacy laws and regulations.

### POLICY ELABORATIONS:

#### I. DEFINITIONS:

- A. **AUTHORIZATION:** A signed written document that allows the use and disclosure of protected health information for purposes other than treatment, payment, or health care operations, or as otherwise required by law.
- B. **DE-IDENTIFIED INFORMATION:** Protected health information (PHI) that does not identify a patient and for which there is no reasonable basis to believe that the information can be used to identify the patient. Please see Harris Health System Policy and Procedures 3.11.309 De-Identification of Protected Health Information for guidance on how to de-identifying PHI.
- C. **DESIGNATED RECORD SET:** A group of records maintained by or for Harris Health that is:
1. The medical and billing records about patients;
  2. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or

3. Used in whole, or in part, and by or for Harris Health to make decisions about patients.

For purposes of this definition, the term “Record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for the facility; the term “Record” includes: (a) patient information originated by another healthcare provider and used by Harris Health to make decisions about the patient; and (b) tracings, photographs, videotapes, digital, and other images that may be recorded to document the care of the patient.

D. **DISCLOSURE:** The release, transfer, provision of, access to, or divulging in any manner protected health information outside of Harris Health.

E. **EMERGENT CIRCUMSTANCES:** When a patient is unconscious or is unable to communicate, and in medical judgment, there appears to be a life-threatening injury or illness, and it is impossible to notify the patient of Harris Health’s intent to make a Recording of that patient.

F. **HEALTHCARE OPERATIONS:** Any of the following activities of the Covered Entity to the extent the activities are related to covered functions:

1. Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purport of any studies resulting from such activities; patient safety activities (as defined in 42 C.F.R. §3.20); population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;
2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;

3. Except as prohibited under 45 C.F.R. §164.502(a)(5)(i), underwriting, enrollment, premium rating, and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of 45 C.F.R. §164.514(g) are met, if applicable;
4. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;
5. Business planning and development such as conducting cost-management and planning related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and
6. Business management and general administrative activities of the entity, including, but not limited to:
  - a. Management activities relating to implementation of and compliance with the requirements of this subchapter;
  - b. Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that PHI is not disclosed to such policy holder, plan sponsor, or customer;
  - c. The sale, transfer, merger, or consolidation of all or part of the Covered Entity with another Covered Entity, or an entity that following such activity will become a Covered Entity and due diligence related to such activity; and
  - d. Consistent with applicable requirements of 45 C.F.R. §164.514, creating de-identified health information or a limited data set, and fundraising for the benefit of the covered entity.

**G. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (IIHI):** Information that is a subset of health information, including demographic information, collected from an individual, and:

1. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
2. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past,

present, of future payment for the provision of health care to an individual;  
and:

- a. Identifies the individual; or
- b. There is a reasonable basis to believe the information can be used to identify the individual.

H. **MINIMUM NECESSARY:** The minimum necessary PHI required to accomplish the intended purpose of the requested use or Disclosure of PHI when:

1. A workforce member uses PHI for a specific job function;
2. Harris Health discloses PHI to an outside person or entity; or
3. Harris Health requests PHI from an outside person or entity.

I. **PAYMENT:** The activities undertaken by:

1. A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and the provision of benefits under a health plan, except as prohibited under 45 C.F.R. §164.402(a)(5)(i); or
2. A Healthcare Provider or health plan to obtain or provide reimbursement for the provision of healthcare; and
3. The activities set forth above, include but are not limited to:
  - a. Determinations of eligibility of coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication of subrogation of a health benefit claim;
  - b. Risk adjusting amounts due based on enrollee health status and demographic characteristics;
  - c. Billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance), and related healthcare data processing;
  - d. Review of healthcare services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;
  - e. Utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services; and

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- f. Disclosure to consumer reporting agencies of any of the following PHI relating to collection of premiums or reimbursement:
- i. Name and address;
  - ii. Date of birth;
  - iii. Social Security number;
  - iv. Payment history;
  - v. Account number; and
  - vi. Name and address of the Healthcare Provider and/or health plan.
- J. **PERSONAL REPRESENTATIVE:** A person with authority under the law to act on behalf of the patient.
- K. **PROTECTED HEALTH INFORMATION (PHI):** Individually Identifiable Health Information that is created, received, transmitted, or maintained by Harris Health in any form or medium, that relates to the patient's healthcare condition, provision of healthcare, or payment for the provision of healthcare, as further defined in the HIPAA regulations. PHI includes, but is not limited to, the following identifiers:
1. Name;
  2. All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census:
    - a. The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and
    - b. The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.
  3. All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over eighty-nine (89) and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age ninety (90) or older;
  4. Telephone numbers;

5. Fax numbers;
6. Electronic mail addresses;
7. Social Security numbers;
8. Medical record numbers;
9. Health plan beneficiary numbers;
10. Account numbers;
11. Certificate/license numbers;
12. Vehicle identifiers and serial numbers, including license plate numbers;
13. Device identifiers and serial numbers;
14. Web Universal Resource Locators (URLs);
15. Internet Protocol (IP) address numbers;
16. Biometric identifiers, including finger and voice prints;
17. Full face photographic images and any comparable images; and
18. Any other unique identifying number, characteristic, or code, except as permitted for re-identification purposes.

- L. **RECORDING:** Photographic, video, electronic, digital, or audio media of the patient, including live feeds; but does not include instances in which the patient is not individually identifiable.
- M. **USE:** Regarding PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.
- N. **WORKFORCE:** Harris Health System Board of Trustees, employees, Medical Staff, trainees, contractors, volunteers, and vendors. Employees (permanent or temporary), volunteers, trainees and other persons whose conduct, in the performance of work for Harris Health, is under the direct control of Harris Health, whether or not they are paid by Harris Health.<sup>1</sup>

## II. IN GENERAL:

- A. Unless a Recording of a patient is being made for treatment purposes or being used for Healthcare Operations purposes, Workforce members are prohibited

<sup>1</sup>Medical Staff members are not part of Harris Health's workforce as the term "Workforce" is defined under HIPAA, and Harris Health does not directly control members of the Medical Staff. However, Harris Health expects all members of the Medical Staff to follow and abide by Harris Health's policies and procedures.



from making, Using, or Disclosing a Recording of a patient without obtaining that patient's written Authorization.

- B. Harris Health respects the privacy of its patients. To honor the privacy of Harris Health's patients, any Recording that is made of a patient will be De-Identified, when possible.

### III. MAKING RECORDINGS:

- A. Harris Health may make Recordings of patients without first obtaining the patient's Authorization for treatment purposes only. However, if the Recording is not integral to the treatment of a patient, Workforce members are strictly prohibited from making a Recording of the patient without first obtaining the patient's written Authorization.
- B. Any Recording that is made for treatment purposes must be immediately uploaded into the patient's electronic medical record.
- C. Except in Emergent Circumstances and when feasible, Harris Health Workforce members must notify the patient of the Workforce member's intent to make a Recording of the patient prior to making the Recording.

### IV. USING RECORDINGS:

- A. Treatment:

Harris Health may Use Recordings of patients without first obtaining the patient's written Authorization for treatment purposes.

- B. Healthcare Operations:

Harris Health may Use Recordings of patients without first obtaining the patient's written Authorization for Healthcare Operations purposes, including internal education purposes.

### V. DISCLOSURES OF RECORDINGS TO THIRD OR EXTERNAL PARTIES OR FOR EXTERNAL PURPOSES:

- A. Harris Health must obtain an Authorization from the patient or from the patient's Personal Representative prior to disclosing a Recording to a third party or a party external to Harris Health, unless the Disclosure is for Treatment, Payment or Healthcare Operations.
- B. Harris Health must explain the purpose of the proposed Use and/or Disclosure of the Recording to the patient or the patient's Personal Representative prior to obtaining the Authorization.
- C. External Purposes include, but are not limited to, the following:
  - 1. External education and training;
  - 2. Commercial filming;
  - 3. Television programs or other media;
  - 4. Marketing or publicity; or
  - 5. Law enforcement activities.
- D. When possible, Harris Health must still de-identify a Recording of a patient prior to making and disclosing that Recording for an external purpose or to an external or third party. Please review Harris Health System Policy and Procedures 3.11.309 De-identification of Protected Health Information for requirements related to de-identifying PHI.
- E. If the Recording is for external education or training, the Recording will not become a part of the patient's Designated Record Set.
- F. If the media wishes to interview, film, or record a patient, in addition to obtaining an Authorization from the patient or the patient's Personal Representative, a representative from Harris Health's Corporate Communications department must be notified and must accompany the media representative(s).



### VI. SPECIAL CONSIDERATIONS:

#### A. Documentation of Abuse or Neglect:

Harris Health is not required to obtain an Authorization from a patient or the patient's Personal Representative to make and disclose a Recording of a patient for the purpose of documentation of reportable cases of abuse and neglect, and any such Recording may be submitted to the appropriate investigating agency.

#### B. Security:

Harris Health is not required to obtain an Authorization from the patient or the patient's Personal Representative to make or disclose a Recording of a patient for security purposes, such as utilizing cameras to monitor Harris Health's premises. Harris Health's Department of Public Safety will maintain possession of all Recordings pursuant to its retention schedule, and will only disclose Recordings after consultation with Harris Health's Office of Corporate Compliance and the Harris County Attorney's Office.

#### C. Patient in Custody:

Harris Health is not required to obtain an Authorization from a patient or the patient's Personal Representative to make and disclose a Recording of a patient if the patient is in custody and the Recording is being made by a law enforcement official.

#### D. National Security and Intelligence Activities:

Harris Health is not required to obtain an Authorization from a patient or from the patient's Personal Representative to Disclose Recordings of a patient to, or at the request of, an authorized federal official for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act and its implementing authority.<sup>2</sup>

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<sup>2</sup> 45 C.F.R. 164.512(k).

E. Research:

Recordings of patients taken as part of a research protocol must be approved by Harris Health's Research Office. The Authorization for such Recordings must be incorporate into the patient consent for participation in the research protocol.

F. Publications/Conferences:

Harris Health must obtain the patient's Authorization or an Authorization from the patient's Personal Representative prior to Harris Health using Recordings of the patient, if identifiable as the patient, in publications and presentations at conferences and professional organizations external to Harris Health or in any public forum where they may be viewed by unauthorized individuals.

G. Patients:

A patient may make Recordings of themselves while he or she is receiving treatment at Harris Health. However, the agreement of all parties involved in the treatment of the patient must be obtained prior to making the Recording. In addition, the individual making the Recording must ensure that the Recording does not include other patients or Workforce members who have not agreed to be included in the Recording. If a Workforce member discovers that a patient made a Recording or is making a Recording without obtaining agreement of all the parties involved, the Workforce member must request the patient to stop making the Recording (if actively Recording), and request that the patient permanently delete the Recording.

If the patient refuses to stop recording or refuses to delete the Recording, please follow the requirements outlined in Harris Health Policy and Procedures 4201 Management of Disruptive Patients and Visitors Behavior.

H. Visitors:

A patient's family and friends may make Recordings of the patient while the patient is receiving treatment at Harris Health; however, the agreement of all parties involved in the treatment of the patient must be obtained prior to making the Recording. In addition, the individual making the Recording must ensure that

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the Recording does not include other patients or Workforce members who have not agreed to be included in the Recording. If a Workforce member discovers that a visitor made a Recording or is making a Recording without obtaining agreement of all the parties involved, the Workforce member must request the visitor to stop making the Recording (if actively Recording), and request that the visitor permanently delete the Recording. If the visitor refuses to stop recording or refuses to delete the Recording, please follow the requirements outlined in Harris Health Policy and Procedures 4201 (Management of Disruptive Patients and Visitors Behavior).

### VII. REVOCATION:

A patient's Authorization to make, Use and/or Disclose Recordings may be revoked in writing at any time by the patient or by the patient's Personal Representative. Such written revocation must be sent to Harris Health's Office of Corporate Compliance. The Office of Corporate Compliance will facilitate discontinuing all Disclosures of the Recording(s) of the patient who has revoked his or her Authorization; however, the revocation will not apply to actions taken by Harris Health in reliance on the patient's initial Authorization.



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**REFERENCES/BIBLIOGRAPHY:**

45 C.F.R. §160.103 (Definition of Health Information and Protected Health Information)

45 C.F.R. 164.514 (b)(2).

**OFFICE OF PRIMARY RESPONSIBILITY:**

Harris Health System Privacy Officer

**REVIEW/REVISION HISTORY:**

Effective Date	Version # (If Applicable)	Review/ Revision Date (Indicate Reviewed or Revised)	Approved by:
	1.0	Reviewed. 03/25/2008 Approved. 04/01/2008	Privacy Officer HCHD Policy Review Committee
10/22/2008		Approved. 10/22/2008	President/CEO
	2.0	Revised and Approved. 03/14/2017	Structure and Organizational Standards Committee
	3.0	Revised and Approved 07/14/2020	Structure and Organizational Standards Committee