



## BEST PRACTICES FOR CAMERA AND VIDEO USE WITHIN AN MHS COVERED ENTITY

HIPAA Privacy ♦ July 2011

### *I. Supporting Policies for this Information Paper*

- A. The Health Insurance Portability and Accountability Act (HIPAA) of 1996 Privacy Rule (45 CFR Parts 160 and 164) establish the requirements for the uses and disclosures of protected health information (PHI).
- B. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R, C7.3) implements the above parts of the Privacy Rule relating to uses and disclosures of PHI within the Military Health System.
- C. It should be noted that while neither the HIPAA Privacy Rule nor the DoD 6025.18-R specifically addresses camera use within covered entities, privacy safeguards should be in place.

### *II. Definitions Associated with Camera and Video Use within an MHS Covered Entity*

- A. Covered Entity: A health plan or a healthcare provider within the MHS that transmits any health information in electronic form to carry out financial or administrative activities related to healthcare.
- B. Disclosure: The release, transfer, provision of access to, or divulging in any other manner of PHI outside the entity holding the information.
- C. Military Health System (MHS): All DoD health plans and all DoD healthcare providers that are, in the case of institutional providers, organized under the management authority of, or in the case of covered individual providers, assigned to or employed by TMA, the Army, the Navy, or the Air Force.
- D. Protected Health Information (PHI): Information that is created or received by a covered entity and relates to the past, present, or future physical or mental health of an individual; providing payment for healthcare to an individual; and can be used to identify the individual. It excludes health information in employment records held by a covered entity in its role as employer.
- E. Use: With respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

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### *III. Guidance Regarding Camera and Video Use within an MHS Covered Entity*

- A. Phones with camera capabilities and other photographic or videographic devices should be regarded the same as cameras.
- B. Under DoD 6025.18-R, Chapter 8.1, full face photographic images and any comparable images are considered elements of PHI.
  - 1. This includes those images of the individual or of relatives, employers, or household members of the individual.
  - 2. Patient photographs and other comparable images must also be excluded from limited data sets (See DoD 6025.18-R, Chapter 8.3).
- C. While DoD 6025.18-R and the HIPAA Privacy Rule do not specifically address the use of cameras, MHS covered entities are encouraged to establish appropriate policies and procedures for their workforce. In addition to being consistent with other service regulations regarding media activities, these policies should:
  - 1. State that the release of PHI to anyone other than the individual is prohibited without prior authorization.
  - 2. Identify areas, if any, where camera or video usage is prohibited.
  - 3. State that, when feasible, authorization should be obtained before capturing patients or personnel on tape, film or other media.
- D. Covered entities cannot regulate the use of cameras beyond the MHS workforce and therefore should not be held responsible for disclosure of photographs by visitors who are not part of the covered entity's workforce or not otherwise authorized by the covered entity.
  - 1. Although patient consent is not required for personal photos taken by the patient's authorized visitors, certain parameters should be stated within the covered entity's policies.
    - a. Camera usage may be allowed to the extent that is medically consistent with the patient's best interests.
    - b. Camera usage should not be disruptive to overall patient care.
  - 2. The policy should note that an individual can be asked to discontinue taping or photographing if deemed necessary.

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