



**Type of Policy:** System-Wide (aka Corporate)

**POLICY TITLE:** C3300.1 Photographic/Video/Audio Recordings of Patients and CHKDHS Workforce for Treatment Purposes

**Effective Date:** October 11, 2022 (Previous Version Date: February 23, 2022)

**PURPOSE:** To protect patients' and Children's Hospital of The King's Daughters Health System (CHKDHS) workforces' right to privacy and confidentiality, to ensure that recordings do not interfere with patient care, and to prohibit the improper use and disclosure of recordings.

**POLICY:** Recordings by CHKDHS workforce are made only in compliance with this policy for **diagnostic/treatment purposes and/or internal educational use.**

No individual (to include the patient/parent/legal guardian, family and visitors) other than CHKDHS workforce, shall make any recordings during the provision of health care services. Limited exceptions in extraordinary circumstances must be approved by administration. Questions regarding exceptions shall be directed to the Director of Enterprise Risk Management & Regulatory Services.

**PROCEDURE: Recordings of CHKDHS patients and CHKDHS workforce by CHKDHS workforce:**

Recordings by CHKDHS workforce of patients, families, visitors, CHKDHS workforce or any protected health information (PHI) is strictly prohibited unless specifically permitted under this policy. **Such recordings by CHKDHS workforce for personal use are strictly forbidden.**

- A. Recording of patients by CHKDHS workforce shall only be made on secured Health System owned devices, except where expressly stated in this policy.
  - a. All devices must be confirmed by the CHKDHS Information Security (IS) Department as secured/encrypted before recording. If unsecured, contact the IS Department for assistance.
- B. Exception: recordings taken while a patient is under anesthesia or sedation require consent. Consent for photography while under anesthesia or sedation is covered under the operative/procedure consent form. Should the patient/parent/legal guardian strike through that portion of the consent, no photography is allowed while under anesthesia or sedation.
- C. For internal diagnostic, treatment, and/or quality improvement not requiring consent/authorization from patient/parent/legal guardian:
  - a. The following approved recordings are permitted without authorization or consent:
    - i. All images needed in support of diagnosis or treatment including but not limited to radiographic images and scans, endoscopic images, etc.
    - ii. Recordings taken by a Health System health care provider participating in the care of the patient that are not recognizable: face and other identifying features are not recorded.
    - iii. Recordings of burn patients, to include burns on the face, may be taken for

- patient care purposes only. The attending physician must be notified of any photos/videos taken by a member of the care team
- iv. The recordings **must be maintained in the medical record.**
  - v. Abuse or Neglect: Written consent is not required for recordings or interviews of patients by physicians or law enforcement officials for purposes of the investigation or proof of suspected cases of child abuse or neglect.
  - vi. Recordings made for internal quality assurance/performance improvement purposes (e.g., trauma and resuscitation):
    1. Recordings taken for these purposes must be recorded on secured Health System devices and stored in a secure fashion for review by the Performance Improvement Team assigned to the program in question. These activities are protected from discovery in accordance with the Code of Virginia Section 8.01-581.17 and federal law. In addition, they are collected within CHKD's Patient Safety Evaluation System and specifically designated as a Patient Safety Work Product, and as such are privileged and confidential pursuant to the Patient Safety Quality Improvement Act. Dissemination of such quality assurance/performance improvement information as may be required by agencies such as federal review agencies, regulatory bodies or accreditation organizations shall not be intended to create any waiver of the privilege created under Virginia law. Disposal will occur sixty (60) days following recording.
    2. Trauma and Resuscitation video recordings are to be used for the purpose of performance improvement opportunities only; the recordings are to be reviewed as part of the trauma and resuscitation program performance improvement initiatives.
    3. The video recording system is virtual and is maintained within the health system's data-centers. The video recording system shall record 24 hours per day.
    4. The recordings are used for a limited purpose, viewed only by persons involved in performance improvement matters relating to the event.
    5. The CHKDHS Trauma Program Manager can save recordings for second review by the CHKDHS Trauma Program Medical Director, CHKDHS Chair of Resuscitation Outcomes Committee, CHKDHS Trauma Education Specialist or assigned team members as needed but no longer than sixty (60) days after the date of the trauma event.
- b. Identifiable recordings must be taken and maintained on secured Health System devices when available.
  - c. In the rare instances where the recording cannot be de-identified and must be transmitted for diagnostic and treatment purposes on an unsecured device, consent form #2577, Authorization To Use Or Disclose Radiology & Photography Images (PHI) Via UNSECURED Electronic Messaging for Provision of Medical Treatment, **must be completed.**
  - d. When a secured Health System device is not available for use, de-identified recordings and photographs can be taken by clinicians on personal devices (e.g.,

smartphones and cameras) to electronically send images or records but **must be deleted from the device immediately**. By taking said recordings:

- i. The workforce member takes personal responsibility for the security of recording;
  - ii. The recording is not uploaded to another personal device nor to any personal social media site(s); and
  - iii. The recording is deleted as soon as its purpose has been completed and before the personal device leaves the Health System grounds.
- e. Personal devices, such as smartphones and cameras must have the location services feature turned off before taking the image or recording (contact the IS Department for assistance if necessary).
- f. Recordings and images may be transported or uploaded to secured thumb drives and other portable storage devices as long as the device is encrypted, and the images are deleted immediately after use (NOTE: use of thumb drives is discouraged).
- g. Images and recordings taken of patients for clinical purposes should be of a quality that is effective and easily reviewed by others. The following are required for taking de-identified images and recordings:
- i. Ensure camera focus is limited to the area of diagnostic interest, i.e.; close up for skin diseases, broader views for larger areas, etc.;
  - ii. Use a rigid ruler or tape measure next to the area of interest if size perspective is desired;
  - iii. Limit patient facial identification if at all possible:
    1. Avoid taking images of the patient's face/eyes. Block out eyes on image afterwards if necessary.
    2. If area of interest is around the eyes, take a close up view to avoid showing the rest of the face.
    3. Utilize a drape to cover unnecessary patient identifiers such as facial features unnecessary to the photo and any tattoos that may appear in the photo.

**D. Disposition of Images upon separation from the Health System:**

- a. CHKDHS retains ownership of images or recordings made with personal cameras, film, equipment or other supplies if those images or recordings are obtained as a result of a professional relationship established related to hospital affiliation.
- b. Clinicians who leave employment or affiliation with the Health System, who need to take copies of patient photos or case information, **must**:
  - i. Obtain approval from the Compliance, Privacy and/or IT Security Officers; and
    1. Ensure that patient identifiers are removed making them de-identified; or
    2. Have a signed authorization from the patient/parent/ legal guardian allowing the specific individual to retain the image and information. A copy of the authorization must be sent to the CHKD Health Information Management (HIM) Department) for filing in the medical record; and
    3. Be stored in a secure manner.

- ii. Agree to indemnify and hold harmless Children’s Health System, Inc. and its subsidiaries from and against any and all claims, losses, obligations penalties and liabilities of any nature whatsoever arising from or in connection with the clinician’s negligent acts or omissions, willful misconduct or failure to comply with then current CHKDHS policies and procedures related to clinician’s use of proprietary CHKDHS data or information or CHKDHS protected health information (PHI), as such term is defined in the Health Insurance Portability and Accountability Act and the regulations adopted thereunder (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”), including, without limitation, copies of patient photos or case information requested by or retained by clinician.

**Definitions:** Recording: any type of photograph, video, audio or any other type of reproduction of a patient’s image or voice.

Workforce: Employees of or other persons affiliated with Children's Hospital of The King's Daughters Health System (CHKDHS).

**Related Documents:**

Consent Form 2577, Authorization to Use or Disclose Radiology and Photography Images (PHI) Via UNSECURED Electronic Messaging for Provision of Medical Treatment

**INDIVIDUALS REVIEWING:**

Joseph S. Black, Director, Enterprise Risk Management and Regulatory Services  
Tina Allen, Director, Compliance+ and Internal Audit, Corporate Compliance and Privacy Officer  
Joe Hooks, Director, Information Services, Chief Technology Officer  
Lisa Pinks, Compliance Manager, HIPAA Privacy  
**Karen K. Mitchell, MSN, RN, VP, Patient Care Services, CNO**

This policy is in effect for Children’s Hospital of The King’s Daughters Health System (CHKDHS) to include the following subsidiaries: Children’s Hospital of The King’s Daughters, Incorporated (CHKD), Children’s Medical Group, Inc., and CMG of North Carolina, Inc. (CMG), and Children’s Surgical Specialty Group, Inc. (CSSG).