

Texas Tech University Health Sciences Center  
HIPAA Privacy Policies

<b>Administration</b>	<b>Policy 1.4</b>
<b>Patient Photography, Videotaping and Other Imaging, Audio Recording and Information</b>	<b>Effective Date: May 18, 2010</b>
<b>References:</b> 45 CFR Part 164, <a href="http://www.hhs.gov/ocr/hipaa">http://www.hhs.gov/ocr/hipaa</a>	

### **Policy Statement**

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In general, written consent **shall** be obtained to use a patient's information and likeness or image (Image) if a patient's identity can be determined or patient information is not de-identified. Exceptions to obtaining consent are as set forth in this policy.

### **Scope and Distribution**

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This policy applies to all health care clinics, research or educational activities or areas owned, operated and/or provided by TTUHSC. It does not apply to uses of information or Images for treatment or payment purposes (as defined under HIPAA), or to inmates seen or treated by TTUHSC providers.

### **Definitions**

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1. "Consent" means a written document signed by a patient (or authorized legal representative) agreeing to allow the patient's information, or Images to be taken and/or used as set forth in Attachment A, "Consent and Release to Use Images." This form shall be maintained in the patient's medical and/or research record.
2. "De-identified" means removal of all those identifiers listed in HIPAA regulation 45 CFR 164.514(b)(2), and not assigning a code or other means of record identification that could allow for re-identification of the patient.
3. "Images" means likeness or Image including, but not limited to, photographs, videotaped images, audio recordings, digital or other images of any kind or nature.

### **Procedure**

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#### 1. Consent Process

##### a. *Types of Consent Documents.*

- **"Consent and Release to Use Images:** As required under this Policy, **before** taking Images of a patient, written Consent shall be obtained from the patient (or authorized legal representative), using Attachment A. This Consent only allows TTUHSC to take and/or use patient information or Images for the purposes approved on the Consent form.

**Texas Tech University Health Sciences Center  
HIPAA Privacy Policies**

- **“HIPAA Authorization for Release of Patient Information.”** This form is required for uses or disclosures of information or Images that require an authorization by law. The forms for each campus are found at HIPAA Approved Forms on the web page <http://www.ttuhscc.edu/hipaa/>
- **“Consent to Treatment/Health Care Agreement.”** This is the standard consent for treatment, release of information and financial responsibility, found in the School of Medicine Ambulatory Clinic Policy and Procedure, [6.21 B, Consent to Treatment/Health Care Agreement.](#)

b. *Obtaining Consent.* A health care provider, or appropriately delegated person, is responsible to explain to the patient (or authorized legal representative) why a consent document and/or HIPAA Authorization is required by describing:

- the purpose of taking Images or information, and
- proposed use(s) of the information or Images (examples are for commercial, marketing, educational, or promotional purposes).

c. *Revocation of Consent or HIPAA Authorization.* A patient may revoke a Consent as set forth in the forms. No further use or disclosure shall be made of the information and/or Images after a written revocation is received from the patient or authorized legal representative.

2. Activities Where Consent Required.

Information or Images are obtained for various purposes, and the intended use will determine which forms are required.

a. *Treatment and Payment.* All information or Images used solely for treatment or payment purposes are part of the patient’s medical record and are identified using the medical record number, patient’s name, date of birth, and the date the information or Images were obtained. Use or disclosure for treatment or payment is subject to the same laws and policies governing release or disclosure of patient protected health information (PHI). For all patient care, the following form is required:

- “Consent to Treatment/Health Care Agreement”

b. *TTUHSC Internal Educational Purposes.* If the patient can be identified through the information or Images, for internal educational purposes (without the presence of the public or non-TTUHSC physicians), obtain the following form:

- “Consent and Release to Use Images”, Attachment A

**Texas Tech University Health Sciences Center  
HIPAA Privacy Policies**

c. **External Educational Purposes.** To use patient information or Images at an educational activity outside of and not affiliated with TTUHSC, obtain the following form and also see the following section:

- “Consent and Release to Use Images”, Attachment A  
and
- “HIPAA Authorization for Release of Patient Information”

No Consent is required for educational purposes (external or internal) if a patient cannot be identified from the information or Images.

- For example, a photograph of the oral cavity without unique identifiers would not require Consent. However, a photograph of an abdomen with a tattoo would require Consent.

d. **Manuscripts/Conferences.** If a patient will be identifiable, **before** taking or using the patient’s information or Images for use at conferences, professional organizations, or in any public forum including, but not limited to, events held by or at TTUHSC, obtain the following forms:

- “Consent and Release to Use Likeness/Information”, Attachment A  
and
- “HIPAA Authorization for Release of Patient Information”

If the information or Images are de-identified, no Consent or authorization is needed.

e. **Research.** An Institutional Review Board (IRB) overseeing the research protocol must approve taking information and/or Images to be used in a research protocol, and the information and/or Images shall be stored and maintained in the research record (**not** in the patient’s medical record). Uses are limited to the purpose explicitly stated in the IRB approved “Consent to Take Part in a Research Study,” and also obtain the following forms:

- “Consent and Release to Use Likeness/Information”, Attachment A  
and
- “HIPAA Authorization for Release of Patient Information”

f. **Marketing/Fundraising/Publicity/Media.** If a patient will be identifiable, **before** taking or using the patient’s information or Images for marketing, fundraising or other publicity materials or purposes, obtain the following forms:

- “Consent and Release to Use Images”, Attachment A  
and
- “HIPAA Authorization for Release of Patient Information”

**Texas Tech University Health Sciences Center  
HIPAA Privacy Policies**

If the information or Images are de-identified, no Consent or authorization is needed.

3. Documentation of Abuse and Neglect. Reportable cases of actual or suspected abuse and neglect do not require written Consent from a patient (or authorized legal representative before taking information and/or Images of the patient for required reporting purposes. The information and/or Images must be treated as sensitive in nature and secured in accordance with paragraph 5.d. below, and may be submitted to an investigating agency pursuant to an appropriate authorization or court order.
4. Family and Friends. Written Consent is not required for a patient's family and friends to take Images of a patient who is receiving treatment at TTUHSC. The patient's provider may halt taking Images at any time.
5. Security and Storage.
  - a. *Security.* All patient information and/or Images that are not de-identified shall be stored in a secure manner that protects the patient's privacy in accordance with state and federal laws.
  - b. *Electronic Transmission.* Electronic transmission of information and/or Images that are not de-identified shall meet the secure transmission standards outlined in HSC OP 52.05.
  - c. *Treatment and Payment.* Information and/or Images used for treatment and/or payment purposes shall be retained for the period of time required by law or TTUHSC policy for medical records.
  - d. *Sensitive Nature.* Information and/or Images of a sensitive nature shall be stored in a secure location within the medical record or elsewhere. Secure locations include, but are not limited to secured envelope, locked file, or restricted access file within an electronic medical record.
6. Equipment Used to Obtain Information or Images. Only equipment owned, leased, or controlled by TTUHSC or its affiliated hospitals shall be used to obtain information and/or Images pursuant to this policy. TTUHSC personnel and agents, including Business Associates, shall not use personal recording devices including, but not limited to, cell phones, cameras, flash drives, video recorders, etc. to take or store information and/or Images for or on behalf of TTUHSC.
7. Release. Information and/or Images shall not be released to the patient or other individuals without a signed HIPAA Authorization from the patient, except when required by law or when the information and/or Images are de-identified. The patient is entitled to request copies of information and/or Images as allowed by law. A reasonable fee may be charged to cover the cost of copying.

**Texas Tech University Health Sciences Center  
HIPAA Privacy Policies**

**Approval Authority**

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Questions regarding this policy may be addressed to the Regional Privacy Officer ([Amarillo](#), [El Paso](#), [Permian Basin](#)), the [Institutional Privacy Officer](#), or the [Institutional Compliance Officer](#).

**Responsibility and Revisions**

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This policy may be amended or terminated at any time through the Institutional Compliance Office.