

Virginia Mason Medical Center Information Privacy & Security Manual

Policy: Observers



PURPOSE	<p>Education, training, quality assessment and accreditation are legally permissible reasons to allow persons to observe patient care activities. Additionally, a patient has the option to request friends and family members to be present and share health-related information.</p> <p>If there is no legally permitted reason for the observation (e.g., curiosity), we must <u>not</u> provide the access unless the patient gives consent or written authorization permitting such person, or class of persons, to observe.</p>
RATIONALE	<p>Virginia Mason has both ethical and legal obligations to respect the rights of patients and accepts responsibility for all patient information that has been entrusted to the organization for our use and safekeeping. Patients undergoing treatment exams and procedures are vulnerable and deserve safe, respectful, and secure settings.</p> <p>Providers frequently seek guidance on how to manage observers and question the privacy implications of observer presence. We must ensure that staff interact with observers in a manner that meets ethical principles and current law, including the following:</p> <ul style="list-style-type: none"> • Federal laws and regulations related to patient rights to privacy and security, including, but not limited to HIPAA. • Washington State privacy laws and licensure requirements • Laws and procedures protecting public health • Health care professional ethics
SCOPE	<p>This Policy applies to all staff with patient, student, or observer interaction.</p>
POLICY	<ol style="list-style-type: none"> 1) All observers must sign a confidentiality statement. 2) Training and Educational Observation <ol style="list-style-type: none"> a) <u>Enrolled Students</u>: The federal rule limits permitted educational experiences without formal oral consent or written authorization from the patient to the following: 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. The federal rule also permits students of health-related fields (like health administration) to observe where it meets an educational objective. b) <u>Continuing Education</u>: Continuing education for providers and persons in health-related fields is permitted without written patient authorization c) <u>Observers Not Enrolled in Health Care Programs</u>: Those who are interested in medicine as a possible career or persons who are not currently enrolled in programs for which this is a legitimate educational experience should not be permitted to observe without oral consent from the patient and the provider. 3) Observer Visits to Operating Rooms (“OR”):

	<p>a) <u>Minors</u>: Observers under age 18 are not permitted to observe surgery without:</p> <ul style="list-style-type: none"> • Written parental consent, and • Written patient authorization. <p>b) <u>Host Required</u>: A non-employee visitor shall not be placed in the OR for observation without a host -- someone who can remain with the visitor at all times, ensure that this person is not about to contaminate a sterile field, make sure the visitor isn't ready to faint, and answer questions.</p> <p>c) <u>Surgeon/Anesthesiologist Discretion</u>: The surgeon and/or the anesthesiologist shall retain the discretion to further limit who will be allowed in the operating room, even if patient consent or authorization is obtained.</p> <p>4) Health Care Operations: The following patient observation activities are permitted under the definition of health care operations, among others, and do not require patient consent or authorization:</p> <p>a) <u>Quality Assessment</u> activities.</p> <p>b) <u>Accreditation and Auditing</u> by outside entities when approved by the Director of Regulatory Compliance.</p> <p>c) <u>Vendors</u> may observe patient care if related to product support and training activities. Vendors must be screened and authorized in accordance with the VM Vendor Practice Policy.</p> <p>5) Observation by Patient Family Members/Friends: The role of observing family members and friends of the patient is to provide support and comfort while not obstructing the exam/procedure or interrupting the work, and must be in accordance with the following:</p> <p>a) <u>Oral Consent</u>: Patients must orally consent to having friends and family members, or others, observe a treatment activity.</p> <p>b) <u>Provider Discretion</u>: The direct provider shall determine whether family members shall be permitted to be present during exams or procedures, even if the patient consents.</p> <p>c) <u>Patient Requests Generally Not Denied</u>: Patient requests for an adult to accompany a child or spouse/significant other will generally only be denied where the needs of the provider to perform the exam/procedure according to protocol are in any way compromised, where patient safety may be an issue, or where law or VM policy requires enhanced privacy consideration (e.g., minor children with the right to seek private care).</p> <p>d) <u>No Relatives or Observers Allowed Where Safety Is An Issue</u>: There may be areas that require no relatives or observers present to protect the safety of the relative/observer and/or patient and/or provider. Enhanced caution must be observed to ensure appropriate restriction in areas where patients are experiencing deep sedation, general anesthesia, surgery or invasive procedures.</p>
DEFINITIONS	<p>Authorization: The mechanism for obtaining from patients or their designees specific rights for the non-routine use and disclosure of protected health information. Does not apply to use and disclosure for purposes of treatment, payment, or health care operations. Typically time limited and more focused with regard to its content than consent agreements. HIPAA and state regulation provide mandatory authorization content.</p>

	<p>Consent (Oral): Consent, for purposes of this policy shall mean oral permission at the time of the encounter.</p> <p>Health Care Operations: Encompasses operational and administrative tasks of health care entities. It is defined to include quality assessment and improvement activities, reviews and evaluations of health care professionals and health plan performance, training activities, and accreditation, certification, licensing, or credentialing activities. Included also are a broad range of activities necessary for business management and administration and business planning.</p> <p>HIPAA Privacy Rule: Title II, Subtitle F, Section 261-264 of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), and its corresponding regulations issued under 45 C.F.R. Parts 160 and 164.</p> <p>Observer: An individual who has requested to be present during a patient health care interaction but is not authorized to provide or assist with the provision of care, in any way.</p> <p>Privileged Providers are medical practitioners who have gone through credentialing review and have been evaluated and approved to have privileges to practice at Virginia Mason Medical Center.</p> <p>Protected Health Information (“PHI”): Any information, including demographic information that has the potential of tying the identity of the patient to their health record. Applies to information transmitted or maintained in any form or medium, including electronic, paper, and oral. It is the subset of individually identifiable health information to which the privacy protections of the HIPAA Privacy Regulations and rights of individuals apply. (This term does not include educational records governed by FERPA, and employment records.)</p> <p>Staff: Staff shall mean employees, students, volunteers on-site service providers, and contracted employees. Staff is the equivalent of “workforce” under the HIPAA Privacy Rule.</p> <p>Must: Indicates that staff are required to <u>comply</u> with the action(s) described or defined.</p> <p>Should/May: Indicates that staff are allowed to <u>use his/her own judgment</u> regarding compliance with the actions described or defined.</p>
<p>RELATED POLICIES OR REFERENCES</p>	<p>The following references reflect some, but not all, related policies:</p> <p>VMRC Policy: Clinical Research Administration Policies</p> <p>VMMC Policy: Industry Relations</p> <p>VMMC Policy: Departmental Release of Information Policies and Procedures</p> <p>VMMC Policy: Notice of Privacy Practices</p> <p>VMMC Policy: Workforce Privacy and Security Training and Agreement</p> <p>VMMC Policy: Progressive Discipline</p> <p><u>ROI Policy:</u> Minimum Necessary Use and Disclosure of Protected Health Information</p>
<p>REGULATORY REFERENCES</p>	<p>Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (Public Law 104-191) Sections 261 to 264.</p> <p>HIPAA STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION:</p>

	<ul style="list-style-type: none"> • 65 Fed. Reg. 82381 (Dec. 28, 2000) Office of Civil Rights privacy oversight authority • 65 Fed. Reg. 82462-82829 (December 28, 2000) final rule • 65 Fed. Reg. 82944 (Dec. 29, 2000) technical corrections to final rule • 66 Fed. Reg. 12433-12434 (Feb. 26, 2001) correction to effective and compliance dates • 67 Fed. Reg. 53182-53273 (Aug. 14, 2002) final modifications to privacy rule <p>HIPAA FEDERAL PRIVACY REGULATIONS</p> <ul style="list-style-type: none"> • 45 C.F.R. §§160.101-160.312 • 45 C.F.R. §§164.102-164.106 • 45 C.F.R. §§164.500-164.534 <p>WASHINGTON STATE LAW</p> <ul style="list-style-type: none"> • RCW 70.02 • RCW 42.48; WAC 388-04-010 <p>Guidance Standards for Privacy of Individually Identifiable Health Information, OCR HIPAA Privacy, December 3, 2002.</p>
SPONSORING AD, VP, CHIEF OR COMMITTEE	VMMC Privacy Committee VMMC Management Committee
AUTHOR	Kathy Lindsey, Director, Regulatory Compliance Gail D. Sausser, HIPAA Compliance Program Manager
IMPLEMENTATION & MONITORING PLAN	Email, post on Vnet, include in Privacy Training Treatment service delivery site staff will be trained according to procedures developed to support this policy.
RESOURCES	Privacy and Confidentiality Committee Privacy Officer

APPROVING BODY and POLICY APPROVAL DATE:

Approved by:	Date:
Privacy Committee	August 25, 2003
Management Committee	October 21, 2003

REVIEWED/REVISED DATE: October 2003