

 <p style="text-align: center;"><b>County of Sacramento</b>  <b>Department of Health Services</b>  <b>Division of Behavioral Health Services</b>  <b>Policy and Procedure</b></p>	Policy Issuer (Unit/Program)	<b>QM</b>
	Policy Number	<b>QM-03-11</b>
	Effective Date	<b>03-10-2008</b>
	Revision Date	<b>01-04-2021</b>
Title: <b>Video and Audio Recordings of Consumers</b>	Functional Area: <b>Confidentiality, Consent, Privacy &amp; Security</b>	
Approved By: (Signature on File) <b>Signed version available upon request</b>		
<b>Alexandra Rechs, LMFT</b> Program Manager, Quality Management		

**BACKGROUND/CONTEXT:**

The Division of Behavioral Health Services and the Sacramento County Mental Health Plan (MHP) must provide clients (and/or their legal Personal Representative) with a ‘Consent to Video or Audio Recording’ form prior to obtaining the video or audio record. It is recognized that this information is subject to the same confidentiality, privacy and security laws and regulations as a written or electronic medical record and is to be classified as Protected Health Information (PHI). The client has a right to informed consent to the recording and to any future use. Recordings must be available for use and disclosure as required by Federal, State and Local laws and regulations. All video and audio recording participation is voluntary. No services or treatment are conditional to participation in video or audio recording.

**DEFINITIONS:**

**Recording** - Video and/or audio (either conventional or digital excluding photographs at the Mental Health Treatment Center used solely for the purpose of identification)

**Protected Health Information (PHI)** - Is individually identifiable health information, which that is transmitted or maintained in any form or medium. Individually identifiable health information is health information created or received by a health care provider or health plan that identifies an individual and relates to the physical or mental health or condition of an individual or relates to the provision of health care to an individual or relates to the payment for health care.

**Personal Representative** - Any adult that has decision-making capacity and who is willing to act on behalf of a client. A personal representative would include an individual who has authority, by law or by agreement from the individual receiving treatment, to act in the place of the individual. This includes parents, legal guardians or properly appointed agents, like those identified in documents like Durable Power of Attorney for Healthcare, or individuals designated by state law.

**Institutional Review Board/Independent Ethics Committee (IRB/IEC)** - Is a group that has been formally designated to approve, monitor, and review biomedical and behavioral research involving humans with the alleged aim to protect the rights and welfare of the subjects. In the United States, Food and Drug Administration (FDA) and the Department of Health and Human Services (HHS) regulations have empowered IRBs to approve, require modifications in (to secure approval), or disapprove research. An IRB performs oversight functions for research conducted on human subjects that are *scientific, ethical, and regulatory*.

**DHS Research Review Committee (RRC)** - The DHS RRC is a group that has been designated by the Director to approve research that is using County employees or patients as subjects. The RRC is empowered to approve and require modifications (to secure approval), or disapprove research using

County staff or clients. The RRC ensures the rights of staff or clients, and ensures that participation is voluntary and that not participating in no way jeopardizes employment or services. (See Research, Evaluation and Performance Outcome P&P 01-03, regarding Research with Patients in Sacramento's Mental Health Plan).

## **PURPOSE:**

The purpose of this policy is to establish parameters that protect client privacy and allow for video and/or audio recordings that meet federal and state laws. All video images and audio recordings that illustrate a client's condition or an aspect of their treatment or care are to be considered a medical record, whether they were originally created specifically for this purpose or not. They have to be treated with all the protections in place for a medical record in terms of its procurement, storage, retention and destruction.

## **DETAILS:**

### **Procedure:**

Before creating a video or audio recording of a client, a "Consent for Video or Audio Recording" form should be completed and signed by the requesting provider and countersigned by the client or the client's personal representative. A copy of this signed document is to be given to the client/personal representative and the original is to be filed in the client's permanent medical record.

### **A. Levels of Consents:**

Written Consent: The "Consent to Video or Audio Recording" form allows for four levels of consent:

- I. First Level: for identification in the medical record only. If the recorded identification is a photograph(s) then this type of identification is not subject to time-limitation *if* contained as a part of an existing Medical Record. *An existing consent to treat in the medical record is sufficient.*
- II. Second Level: for the medical record, teaching and/or program evaluation. Recordings used for teaching, instructional, or program evaluation purposes will have a time-limitation not to exceed 20 years (the current standard for medical records). *Use attached advisement and consent.*
- III. Third Level: for research. Recordings used for research will have a time-limitation that is specified in the consent form for the research. The consent form(s) and research protocol must receive pre-approval from an Institutional Review Board (IRB), the Department of Health and Human Services Research Review Committee (RRC) and the Program Manager for Research, Evaluation and Performance Outcomes in accordance with MHTC Policy & Procedure 06-25 and/or Research, Evaluation, Performance Outcome Policy & Procedure 01-04. This ensures the research is ethical and protects the rights and privileges of clients being recorded. *Use IRB approved protocol and consent.*
- IV. Fourth Level: for one specific purpose other than those listed above. This level is a specifically limited additional consent for a specific purpose. For example, to illustrate a condition in a clinical supervisory class. It is not sufficient or acceptable to describe such further use in an open-ended way such as "publication as required". Recordings used in this manner will have a time-limitation not to exceed two-years from the date of procurement. *Use attached advisement and consent.*

### **B. Provider Responsibility:**

Based on the level of consent required, the provider is responsible for the following privacy and security protections in accordance with State and Federal laws. The Mental Health Treatment Center Policy & Procedure 06-25 (Integration of Research and Treatment) applies to all practices at the facility.

- I. In all cases, “time expired” recordings will be confidentially destroyed on or before the date of expiration on the written consent.
- II. Subjects may withdraw their consent, in writing, at anytime and request destruction of all recordings except those used for client identification.
- III. The signed consent will remain in the client’s medical record as part of the permanent record under the legal/authorization section of said chart.
  - a) A written advisement (See Attachment A) will be provided *prior* to obtaining a signed consent.
  - b) Based on level of consent, the provider will take responsibility to secure a “Consent for Video or Audio Recording” *prior* to the commencement of the video or audio recording (See Attachment B)
- IV. Video images or audio recordings must be secured, like any other Medical Record, to ensure limited access for use and specific consented disclosure (See Medical Record Retention, Storage and Destruction Policy & Procedure 09-04). The video or audio recording is treated with the same protections as a electronic or written medical record.

**REFERENCE(S)/ATTACHMENTS:**

- W&I 5328, 42 USC §1320d, 45 CFR Part 160 and Part 164, subparts A and E

**RELATED POLICIES:**

- Medical Record Retention, Storage & Destruction #09-04
- Integration of Research and Treatment #06-25
- Research, Evaluation, Performance Outcome Policy & Procedure #01-04
- Sacramento County HIPAA Privacy Rule, Policies and Procedures, Revised January 2, 2018

**DISTRIBUTION:**

Enter X	DL Name	Enter X	DL Name
X	Behavioral Health Staff		
X	Mental Health Treatment Center		
X	Adult Contract Providers		
X	Children’s Contract Providers		
X	Substance Use and Prevention Treatment		
X	Specific grant/specialty resource		

**CONTACT INFORMATION:**

- Quality Management Information  
[QMInformation@saccounty.net](mailto:QMInformation@saccounty.net)

**Insert Your Agency Letterhead**  
**ADVISEMENT**  
**CONSENT TO VIDEO OR AUDIO RECORDING**

The Sacramento County Mental Health Plan (MHP) has adopted a policy to give you the right to control the future use of video or audio recordings taken of you during the course of your treatment.

\_\_\_\_\_ (Name of County contracted Provider/County-operated unit) would like take video or audio recording (circle which recordings apply) for the purpose of (check one of the appropriate use applications below):

- Either your medical record
- Or for teaching of staff or students
- Or for program evaluation
- Or for some other specific and limited use as detailed on the consent form you will be asked to sign giving your permission for such use.

Your specific and additional permission is required for any future use of these video and/or audio recordings. For example, future use of video or audio tape in presentations/seminars or citation in a textbook would require a new, specific permission.

Your participation is *always* voluntary. You may withdraw your permission, in writing, at anytime and the recorded images will be confidentially destroyed. Your decision to not participate or to withdraw your participation will not result in any change or loss of service.

These recordings do have a time limitation date and will be confidentially destroyed upon the expiration date indicated on this consent form.

If you should have any additional questions regarding the use and disclosure regarding this video and/or audio recording, please contact:

Provider Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Provider Address: \_\_\_\_\_  
Provider Phone No: \_\_\_\_\_

Thank you for your cooperation and participation.

**Insert Your Agency Letterhead**

**CONSENT FOR VIDEO OR AUDIO RECORDING**

Sacramento County Mental Health Plan (MHP) has adopted a policy in line with the Healthcare Insurance Portability & Accountability Act (HIPAA) and other relevant regulations that give you the right to control the future use of video or audio recordings taken of you during the course of your treatment or the treatment of your child or Conservatee.

This consent limits the use and disclosure to the purposes only specified by you for one of the following (check appropriate box):

- I consent to video and/or audio recording being taken for my personal Medical Record
- I consent to video and/or audio recording being taken for the purpose of teaching of staff or students
- I consent to video and/or audio recording being taken for the purpose of program evaluation
- I consent to video and/or audio recording being taken for the specific purpose described below. This consent does NOT extend to any further publication(s).

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I understand that the video and/or audio recording for teaching and/or specific use (described above) will be confidentially destroyed by Date: \_\_\_\_\_ (*not to exceed two years from date of signed consent below*)

Signature of Client/Parent/Legal Guardian (circle one):	
Date:	
Relationship, if not Client:	

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

Agency: \_\_\_\_\_