
PURPOSE

The purpose of this policy is to assure consistency across the Michigan Department of Health and Human Services (MDHHS) facilities, hospitals and centers in assuring that recipients shall be fingerprinted, photographed, audio-recorded or viewed through one-way glass only when prior written consent is obtained from the recipient or his/her legal representative.

REVISION HISTORY

This policy has not been updated since original publication effective date of May 16, 2010.

DEFINITIONS

Common areas are hallways within the psychiatric unit, nursing station and social activity areas within the hospital or center provided that group or individual therapeutic activities are not conducted in these areas.

Consent for purposes of this policy, means a written agreement or written documentation of a verbal agreement executed by a recipient or his/her legal representative that is based on a full disclosure of facts needed to make a decision which evidences the elements of knowledge, comprehension and voluntariness.

Legal representative means a court appointed guardian, a parent with legal custody of a minor recipient, in the case of a deceased recipient, the personal representative of the estate, or a patient advocate designated by a recipient under a valid durable power of attorney or other advance directive.

Photographing includes still pictures, motion pictures and video recordings.

Public news media means:

1. Publications including but not limited to newspapers, magazines, books and other printed materials produced by the public press, business or industrial firms, non-profit associations or public agencies (including mental health agencies).
2. Communication systems capable of transmitting photographs or sound via air or cable, for example, television or radio.

POLICY

It is the policy of the MDHHS that recipients in department operated hospitals/centers shall be fingerprinted, photographed, audio-recorded or viewed through one-way glass only when prior written consent is obtained from the recipient or his/her legal representative.

STANDARDS

1. Fingerprints, photographs or audio recordings may be taken and used and one-way glass may be used in order to provide services, including research, to a recipient only when prior written consent is obtained from one of the following:
 - a. The recipient is 18 years of age or over and competent to consent.
 - b. The guardian of the recipient if the guardian is legally empowered to execute such consent.
 - c. The parent with legal and physical custody of the recipient if the recipient is less than 18 years of age.
 - d. A patient advocate designated under a valid power of attorney with authority to consent to medical and/or mental health treatment.
2. Fingerprints, photographs or audio recordings taken in order to provide services to a recipient, and any copies of them, shall be kept as part of the record of the recipient.
3. Fingerprints, photographs or audio recordings and any copies in the record of the recipient shall be given to the recipient or destroyed when they are no longer essential to service provision or upon discharge of the recipient, whichever occurs first.
4. Fingerprints, photographs or audio recordings taken in order to determine the name of a recipient may be taken only when prior written consent is obtained from an individual.
5. Fingerprints, photographs or audio recordings taken for the purpose of determining the name of a recipient shall be kept as part of the record of the recipient, except that, when necessary, these may be delivered to others for assistance in the determination.

6. Fingerprints, photographs or audio-recordings so delivered shall be returned together with any copies that were made. An individual receiving photographs or audio recordings shall be informed of the requirement that return be made at the time the fingerprints, photographs or audio-recordings are delivered. Upon return, these together with any copies shall be kept as part of the record of the recipient.
7. Fingerprints, photographs or audio-recordings and any copies thereof in the record of the recipient shall be given to the recipient or destroyed when they are no longer essential in determining the name of the recipient or upon discharge of the recipient, whichever occurs first.
8. Photographing or audio-recording may be done for purely personal or social purposes and shall be maintained as the personal property of the recipient. Photographs or audio recordings of a recipient shall not be taken, made, or used under this subsection if the recipient has indicated his or her objection.
9. Public display of photographs taken of a recipient for personal or social purposes shall require that prior written consent is obtained from one of the individuals described in 1.(a)-(c) above.
10. Photographs or audio recordings may be taken and one-way glass used for educational or training purposes only when prior written consent is obtained from one of the individuals described in 1 above.
11. Sub-sections 1-10 do not apply to recipients of mental health services referred under Chapter 10 of the Michigan Mental Health Code, P.A. 258 of 1974 as amended, Criminal Provisions, specifically MCL 330.2001-2006a.
12. Video-monitoring may be done for purposes of safety and security in common areas of MDHHS hospitals and centers with written notice to recipients upon admission. Documentation of the recipient's receipt of the written notice shall be maintained in the recipient's record. Each hospital and center shall establish written policies and procedures that address, at a minimum:
 - a. Identification of locations where the video surveillance images will be recorded and saved.

- b. Mechanisms by which recipients and visitors will be advised of the video surveillance.
 - c. Security provisions that assure that only authorized staff have access to view recorded surveillance video, specifically:
 - 1. Who may authorize viewing of recorded surveillance video.
 - 2. Circumstances under which recorded surveillance video may be viewed.
 - 3. Who may view recorded surveillance video with proper authorization.
 - 4. Safeguards to prevent and detect unauthorized viewing of recorded surveillance video.
 - 5. Circumstances under which recorded surveillance video may be duplicated and what steps will be taken to prevent unauthorized distribution of the duplicate.
 - d. Documentation required to be maintained for each instance of authorized access, viewing, duplication or distribution of any recorded surveillance videos.
 - e. Process to assure retrieval of distributed recorded surveillance video when the purpose for which the video was distributed no longer exists.
 - f. Archived footage of video surveillance recordings for up to 30 days in situations where the incident requires investigation by the department's office of recipient rights, law enforcement, hospital or center administration and the U.S. Department of Health and Human Services Center for Medicaid and Medicare Services (CMS).
 - g. Recorded video surveillance images shall not be maintained as part of a recipient's clinical record.
13. Photographing, audio recording or viewing a recipient through one-way glass by or on behalf of public news media is permitted when prior written consent is obtained from an individual described in 1 above and the director of the MDHHS hospital or center.

14. If the director refuses to sign the consent despite the affirmative wishes of the recipient or his/her legal representative, that decision may be appealed by written or verbal notification to the appropriate Rights Advisor from the Office of Recipient Rights.
15. Written consent must include for the purposes of this policy:
 - a. Specific date of expiration.
 - b. Statement of intended use of photograph(s) (for example, in newspapers, television, professional journal, etc.) or audio-recording(s) or purpose for one-way viewing.
 - c. Statement approving or not approving use of recipient's full name by news media.
 - d. Instruction that an individual is free to withdraw consent at any time without prejudice to the recipient.
16. Conditions of consent for the purposes of this policy:
 - a. Consent may be obtained upon admission.
 - b. No consent is valid for more than a 12-month period, but may be renewed through the consent process.
 - c. Consent may be terminated by the recipient, the appropriate parent of a minor or a guardian so empowered, prior to the expiration date.
 - d. No consent may be given out on behalf of a minor which extends beyond the recipient's eighteenth birthday.
 - e. Written consent must be on file in the recipient's case record.
17. A recipient must be advised immediately prior to the time a photograph is to be taken, or voice recorded, or viewed through one-way glass and must be afforded an opportunity to object. If the recipient expresses verbal objection to being photographed, audio-recorded or viewed through one-way glass, such objection shall be honored whether or not the recipient (guardian or parent) has previously signed consent for such procedure.
18. News media representatives shall not be allowed to enter a hospital or center beyond the common reception area unless

prior approval is obtained from the Director of the Bureau of Hospitals, Centers and Forensic Mental Health Services.

19. News media representatives, while in a department hospital, center or facility are to be accompanied by a person designated by the hospital, center or facility director. This staff person shall be responsible for:
 - a. Providing a copy of this policy to the news media representative prior to granting approval for photographing, audio-recording, or viewing a recipient through one-way glass.
 - b. Checking validity of consent for each participating recipient.
 - c. Advising each recipient that a photograph, audio-recording or viewing through one- way glass is to take place and for what purpose.
 - d. Assuring that a verbal objection is honored if the recipient does not wish to participate.
 - e. Making an entry in the recipient's case record whenever a photograph is taken, whenever an audiotape is made, or a viewing through one-way glass is done, by or, on behalf of the news media, noting the date and intended use.
 - f. The staff person shall accompany the news media representative only for the purpose of assuring that the above are accomplished. He/she shall not interfere with the recipient's right to communicate freely with the news media representative unless a specified limitation has been imposed by the facility director or his designee.
20. Approval shall not be given for photographing recipients when the intent is to avoid identifiability by blocking out faces of recipients.
21. News media may be permitted to take and use pictures of department, hospitals, centers or facilities which do not include photographs of recipients of services.
22. A copy of the signed consent form(s) shall be made available upon request to an authorized media representative.

REFERENCES

- Michigan Mental Health Code, MCL 330.1752
- Michigan Mental Health Code, MCL 330.1724

CONTACT

For additional information concerning this policy, contact the Director of the Office of Recipient Rights at (517) 373-2319.