

Department of Behavioral Health
TRANSMITTAL LETTER

SUBJECT Visual and/or Auditory Recordings of Consumers		
POLICY NUMBER DBH Policy 460.2	DATE MAY 23 2014	TL# 252

Purpose. This policy updates the procedures for securing consent to make visual and/or auditory recordings of consumers, includes a shorter consent form, and adds a new media request agreement.

Applicability. Applies to Department of Behavioral Health (DBH) employees, except for the substance use Assessment and Referral Center (ARC), which prohibits visual and/or auditory recordings. Also See Section 6b of the policy for media requests and Section 9 for requirements for DBH certified providers.


This policy does not apply to recordings of consumers for administrative purposes at Saint Elizabeths Hospital (e.g., photo in medical record).

Policy Clearance. Reviewed by affected responsible staff and cleared through appropriate Behavioral Health Authority (BHA) offices.

Effective Date. This policy is effective immediately.

Superseded Policy. This policy replaces CMHS Policy 50000.460.2.

Distribution. This policy will be posted on the DBH web site at www.dbh.dc.gov under Policies and Rules. Applicable entities are required to ensure that affected staff are familiar with the contents of this policy.



Stephen T. Baron
Director, DBH


**DEPARTMENT OF
BEHAVIORAL HEALTH**
**Policy No.
460.2**
Date MAY 23 2014

Page 1
**Supersedes
CMHS Policy 50000.460.2, dated August 11, 1995**
Subject: Visual and/or Auditory Recordings of Consumers

1. **Purpose**. It is the policy of the Department of Behavioral Health (DBH) to prevent the invasion of privacy of consumers that might occur from the use of photography, videotaping, digital imaging, and other visual recordings during consumer care or other health activities. The purpose of this policy is to establish procedures for securing consent to make visual and/or auditory recordings of consumers, and to establish parameters that protect consumer privacy and meet federal and state laws.

2. **Applicability**. Applies to Department of Behavioral Health (DBH) employees, except for the substance use Assessment and Referral Center (ARC), which prohibits visual and/or auditory recordings. Also see Section 6b for media requests and Section 9 for requirements for DBH certified providers.

This policy does not apply to recordings of consumers for administrative purposes at Saint Elizabeths Hospital (e.g., photo in medical record for identification purposes).

3. **Authority**. Department of Behavioral Health Establishment Act of 2013; D.C. Mental Health Information Act of 1978, as amended (MHIA); and the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA).

4. **Definitions**.

4a. **Informed Consent** – is a legal condition whereby a person can be said to have given consent based upon a clear appreciation and understanding of the facts, implications and future consequences of an action. In order to give informed consent, the individual concerned must have adequate reasoning faculties and be in possession of all relevant facts at the time consent is given. *Questions regarding capacity to consent should be directed to the consumer's psychiatrist.*

4b. **Personal Representative** – any adult that has a decision-making capacity and who is willing to act on behalf of a consumer. A personal representative would include an individual who has authority by law or agreement from the individual receiving services, to act in the place of the individual. This includes parents, legal guardians or properly appointed agents, like those identified in documentation (e.g. Durable Power of Attorney, or individuals designated by law).

5. **Policy**.

5a. Visual and/or auditory recordings of consumers by DBH personnel or other individuals/organizations acting under the authority of DBH is prohibited except in accordance with this policy.

5b. Visual and/or auditory recordings of consumers should only occur in limited circumstances such as for treatment, training, agency sponsored activities, investigations, or special events where there is a benefit to the consumer.

5c. All media requests must be referred immediately to the Agency Public Information Officer (See Section 6b).

5d. The following items must be considered prior to approving a request to make visual and/or auditory recordings of consumers:

- purpose of the request,
- proposed use,
- consumer privacy issues and consent,
- possible impact on consumers (benefit or harm),
- possibility for unintended/improper use, and
- public benefit (e.g., training purposes).

5e. Written informed consent must be obtained from each consumer or their legal personal representative prior to photographing or recording the consumer. Exception for law enforcement officials is outlined in Section 7a(2) below.

5f. All video and audio recording participation is voluntary. No services or treatment are conditional on participation in video and/or auditory recordings.

6. Procedures.

6a. Program Staff who Receive a Request to Make a Visual and/or Auditory Recording of a Consumer shall:

- (1) Obtain approval from supervisory clinical staff to ensure consumer privacy issues and impact on consumers (benefit and harm) are considered. If the request is from or involves the media, refer the request to the Agency Public Information Officer (See Section 6b).
- (2) Advise requestor that video and/or audio recordings may only be used for stated purpose, otherwise may be in violation of law.
- (3) Ensure that a member of the consumer's treatment team or authorized designee:
 - Reads and discusses Form DBH-753, DBH Consumer Consent for Visual and/or Auditory Recordings, (Exhibit 1) with the consumer.
 - Obtains the consumer's consent on Form DBH-753 before a consumer is photographed or recorded. See exceptions in Section 7a below.
 - Documents request and approval and files the signed original consent form in the consumer's clinical record. Provides a copy to the consumer or personal representative, and upon request, provides copy to the individual making the recording.

6b. For Media Requests: If the Agency Public Information Officer approves a media request, obtain required Consumer Consent for Visual and/or Auditory Recordings on Form DBH-753 (Exhibit 1) and ensure the media representative signs a completed Media Agreement for Visual and/or Auditory Recordings (Exhibit 2), agreeing not to photograph/record any other consumer without their consent.

6c. For Law Enforcement and Protection and Advocacy Program Requests to Photograph or Record Consumers:

- Record the name, identification number and agency of the law enforcement officer or name and title of the protection and advocacy program employee, the stated purpose, and the name of the consumer that the law enforcement officer or protection and advocacy program employee wishes to photograph.
- Obtain consumer consent on DBH Form 753 or comparable written consent form. See 7a(2) below for exception.

7. Consumer Informed Consent.

7a. Informed written consent for visual and/or auditory recordings must be obtained from adult consumers on DBH-753, except as indicated below:

Exceptions: (1) If a law enforcement official or a protection and advocacy program employee has a comparable consent form, it may be used instead.

(2) Consent is not required if the consumer has been recently arrested for a criminal offense and requires photographing for identification purposes for law enforcement processing of his/her charges, and the law enforcement official so certifies in writing.

7b. Adult consumers lacking the capacity to give informed consent may not be the subject of visual and/or auditory recordings unless the consent of the legal personal representative is obtained on DBH-753. Questions regarding capacity to consent should be directed to the consumer's psychiatrist.

7c. Adult consumers at Saint Elizabeths Hospital must have his or her treating psychiatrist attest to the capacity to provide informed consent to visual and/or auditory records.

7d. Written informed consent for minor children must be provided on DBH-753.

If the consumer is at least 14 years of age, but under 18 years of age, the consent is not valid unless the consumer signs in addition to the parent/guardian/other personal representative. A minor of any age may consent based on his or her signature alone, if (1) he or she is an emancipated minor, or (2) he or she is receiving treatment or services without a parent or legal guardian giving consent.

8. **Non-Compliance.** DBH employees who violate this policy and/or violate the MHIA, HIPAA, or 42 CFR Part 2, shall be subject to discipline in accordance with Chapter 16 of the District Personnel Manual and applicable collective bargaining agreements.

9. Guidance for DBH Certified Providers.

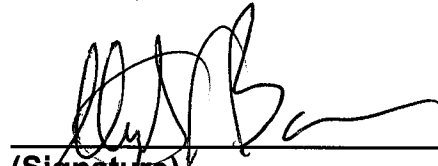
9a. If a DBH certified provider allows audio/visual recordings, the provider must develop procedures for securing written consent to make visual and/or auditory recordings of DBH consumers in compliance with the MHIA, HIPAA, and 42 CFR Part 2, and use a form comparable to the DBH Consumer Consent for Visual and/or Auditory Recordings form (Exhibit 1).

9b. The Agency Public Information Officer should be contacted regarding situations that involve consumers and the media.

10. **Inquiries**. Questions regarding this policy should be addressed to the Director of the Office of Consumer and Family Affairs or the Office of General Counsel.

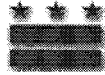
Approved by:

Stephen T. Baron
Director, DBH


(Signature)


(Date)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF BEHAVIORAL HEALTH



CONSUMER CONSENT FOR VISUAL AND/OR AUDITORY RECORDINGS

I, _____ hereby authorize the Department of Behavioral Health (DBH) employees or
consumer's name (print)

_____ acting under the authority of DBH, to do the following:
other individual or organization's name (print)

Yes [] No [] Take my photograph or draw a likeness.

Yes [] No [] Record my voice during an interview or general conversation.

Yes [] No [] Make a video of me.

Usage of Visual and/or Auditory Recordings

I understand that the visual and/or auditory recordings may be used as stated below:

Yes [] No [] I understand that I may be identified as a DBH consumer, or as an individual who is receiving behavioral health care.

Yes [] No [] I consent only if my photograph, image, or voice is camouflaged, and my identity remains anonymous.

I understand that a DBH representative may determine, for my protection, that my photograph, voice, or recorded image be camouflaged and that my identity be withheld.

I understand that I, or a DBH representative, may terminate at anytime an interview or media production involving me, for any reason, and revoke my consent.

Expiration: This form is valid from: _____ to: _____, or, list other timeframe
as applicable: _____.

Consumer's Name (Printed): _____

Consumer's Signature: _____ **Date:** _____

ONLY Complete if the Consumer Lacks Capacity to Consent (e.g., is under 18 or has been determined to lack capacity to consent in the clinical record):

Parent/Personal Representative's Signature: _____ Date: _____

List relationship that gives authority to act on consumer's behalf (e.g., parent, legal guardian, other (specify) :

ONLY Complete if the Consumer is an In-patient at Saint Elizabeths Hospital:

THE ABOVE CONSENT WAS READ, DISCUSSED, AND SIGNED IN MY PRESENCE. IN MY OPINION, THE PATIENT WHOSE SIGNATURE APPEARS ABOVE HAS THE CAPACITY TO EXECUTE THIS CONSENT AND PARTICIPATES FREELY AND WITH FULL KNOWLEDGE AND UNDERSTANDING OF THE CONSENT AGREEMENT'S CONTENT AND THE IMPLICATIONS OF SUCH CONTENT.

Psychiatrist's Signature: _____ Date: _____

File the signed original of this form in the consumer's clinical record
and provide a copy to the consumer and, if requested to the individual making the recording.

THE UNAUTHORIZED DISCLOSURE OF PROTECTED HEALTH INFORMATION IS PROHIBITED BY LAW.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF BEHAVIORAL HEALTH



**MEDIA AGREEMENT FOR
VISUAL AND/OR AUDITORY RECORDINGS**

LOCATION: _____

DATE: _____

The District of Columbia Department of Behavioral Health (DBH) hereby grants to _____, (name of media representative)
the right to enter _____ for the limited purpose of making a visual and/or auditory
(service site)
recording of _____, on the date and time noted above.
(name of consumer)

The media representative has represented to _____ that the consumer and/or his
guardian has consented to the visual and/or auditory recording in writing and _____ has
verified the consent.

The media representative agrees to the following conditions:

1. Media representative agrees to adhere to requirements outlined in the signed consumer consent, and specifically agrees not to photograph or record any other consumer without their written consent.
2. Media representative will not disclose or redisclose any protected health information concerning the consumer without the consumer or guardian's written consent.
3. Media representative agrees to indemnify and hold harmless the District of Columbia from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorneys' fees and costs, arising out of media representative's visual and/or audio recording of the consumer.

I hereby agree to the terms of this media agreement form. I understand that the Department may restrict or terminate access in the event of a breach of the foregoing terms.

Signature (media representative)

Date

Print Name (media representative)

Organization

Address

Telephone

File the signed original of this agreement in the consumer's clinical record with the signed consumer consent form and, if requested provide a copy to the individual making the recording.