

**BARRY COUNTY COMMUNITY MENTAL HEALTH AUTHORITY
POLICY AND PROCEDURE MANUAL**

Policy: Fingerprinting, One-Way Glass, Photographing, Audio/Videotaping 7-L		Application: BCCMHA Staff & Providers
Reviewed 9/6/2023	Revised	First Effective 7/20/2022

I. PURPOSE

To provide clear guidelines assuring the protection of rights of recipients as specified by the Mental Health Code.

II. POLICY

BCCMHA will provide guidelines for BCCMHA and contracted staff specifying the conditions under which audiovisual production and reproduction may be made to assure that proper notification is made, that consent is obtained prior to the photographing, audio taping, videotaping or transmitting of images/voices of consumers, or the use of one-way glass, and to specify the disposition of the audiovisual products. No recipients will be fingerprinted as part of any BCCMHA program.

III. STANDARDS

The use of photographs, video and audio taping or transmitting of images/voices of recipients shall only be used as a tool in treatment following consultation and authorization by the Chief Clinical Officer. The Office of Recipient Rights shall be notified when this practice is intended to be utilized with recipients.

IV. PROCEDURES

CONSENT/OBJECTION:

A photograph, video or audiotape of the client shall not be taken or used if the client has indicated their objections, regardless of whether or not the client, parent or guardian has previously given written consent.

All of the following are elements of Informed Consent apply as stated in AR 7003(1):

- (a) Legal competency: An individual shall be presumed to be legally competent unless there is a court appointed guardian who has the authority make decisions within the scope and authority of the guardianship.
- (b) Knowledge. A recipient or legal representative must have basic information about the procedure (purpose), risks, other related consequences (discomforts, risks, and benefits that can reasonably be expected), and other relevant information including: A disclosure of appropriate alternatives advantageous to the recipient and offer to answer further inquiries.
- (c) Comprehension. An individual must be able to understand what the personal implications of providing consent will be based upon the information provided under subdivision (b). [MHC 1724(2)/AR 7003(1)(c)]
- (d) Voluntariness. There shall be free power of choice without the intervention of an element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint

or coercion, including promises or assurances of privileges or freedom. There shall be an instruction that an individual is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the recipient. [AR 7003(1)(d)]

Withdrawal of consent can be made in writing to their case holder or Recipient Rights Officer at any time.

MEDIA USE:

Photographs or audio taping by or on behalf of the public news media or agency-related media, including brochures and annual reports, may be taken only when prior written consent is obtained from one of the following, using the consent form for taping/photography. [See Attachment Packet:](#)

- a. A client (if 18 years of age or older) and competent to consent;
- b. The guardian of the client if legally empowered to execute such consent;
- c. A parent, if the client is less than 18 years of age

TO PROVIDE SERVICES/RESEARCH:

Photographs, video or audio recordings may be taken and used and 1-way glass may be used in order to provide services, including research, to a recipient or in order to determine the name of the recipient only when prior written consent is obtained from one of the following:

- (a) The recipient if 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 a consent.
- (c) The parent with legal and physical custody of the recipient if the recipient is less than 18 years of age. [MHC 1724(2)]

IDENTIFICATION PURPOSES:

Photographs, video or audio recordings taken in order to determine the name of a recipient shall be kept as part of the record of the recipient. If a photograph, video or audio recording is delivered to an individual who is not an employee of the CMHSP for the purpose of identifying a recipient; the individual receiving will be informed of the requirement to return it. It is required that the photograph, video or audio recording is returned together with copies that were made.

Upon return, the fingerprints, photographs, or audio recordings, together with copies, shall be kept as part of the record of the recipient. [MHC 1724(4)]

RECIPIENT PERSONAL USE:

Photographs of a recipient may be taken for purely personal or social purposes and shall be maintained as the recipient's personal property. A photograph of a recipient shall not be taken or used under this subsection if the recipient has indicated his or her objection. [MHC 1724(6)]

EDUCATIONAL/TRAINING PURPOSES:

Photographs video or audio recordings may be taken and 1-way glass may be used for educational or training purposes only when express written consent is obtained from 1 of the following:

- (a) The recipient if 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 a consent.
- (c) The parent with legal and physical custody of the recipient if the recipient is less than 18 years of age. [MHC 1724(7) (a-c)]

RETENTION/DESTRUCTION/DISCHARGE:

Photographs, video or audio recordings taken in order to provide services/treatment to a recipient, and any copies of them, shall be kept as part of the record of the recipient and as such are protected by confidentiality regulations.

All such materials will be stored in a locked area, annually assessed for continued need and immediately destroyed or returned to client when not needed, or at the time of discharge.

Photographs, video or audio recordings in the record of a recipient, and any copies of them, shall be given to the recipient or destroyed when they are no longer essential in order to achieve 1 of the above objectives, or upon discharge of the resident, whichever occurs first. [MHC 1724(5)]

The above does not apply to recipients of mental health services referred under Criminal Provisions of the MHC Chapter 10.

VIDEO SURVEILLANCE:

Video surveillance may be conducted in a psychiatric hospital for purposes of safety, security, and quality improvement. Video surveillance may only be conducted in common areas such as hallways, nursing station areas, and social activity areas within the psychiatric unit. Video surveillance recordings taken in common areas shall not be used for treatment or therapeutic purposes. Before implementation of video surveillance, the psychiatric hospital shall establish written policies and procedures that address, at a minimum, all of the following:

- (a) Identification of locations where 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 members have access to view recorded surveillance video. The security provisions shall include all of the following:
 - (i) Who may authorize viewing of recorded surveillance video.
 - (ii) Circumstances under which recorded surveillance video may be viewed.
 - (iii) Who may view recorded surveillance video with proper authorization.
 - (iv) Safeguards to prevent and detect unauthorized viewing of recorded surveillance video.

- (v) 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 unless notice is received that an incident requires investigation by the department's office of recipient rights, the licensing division of the bureau of health systems, law enforcement, licensed psychiatric hospital or unit office of recipient rights, and the United States department of health and human services centers for Medicaid and Medicare services. In that case, archived footage of video surveillance recordings may be retained for the duration of the investigation.
- (g) Recorded video surveillance images shall not be maintained as part of a recipient's clinical record. [MHC 1724(9)]

RECIPIENT RIGHTS INVESTIGATION:

If photographs are required for gathering evidence in an allegation of abuse, consent is not required from the client or his/her parent or guardian, but may be taken at the direction of the Executive Director or his designee or the Recipient Rights Officer.

REFERENCES

MHC 724, 752
AR 7003

APPROVED BY:

Richard Thiemkey
Executive Director

Date