

## **Requests for Comments on Draft Video Camera Policy in Certified settings other than ICF/IIDs 8/7/14**

OPWDD invites comments on this draft Video Camera Policy for OPWDD operated and certified HCBS settings. This policy addresses the use of cameras as a surveillance tool to aid in the investigation of untoward events, as well as to obtain information not otherwise available for clinical diagnosis and treatment planning.

Please note that this policy **does not** address the use of cameras or other electronic devices for the purpose of communication, telecare or telemedicine, or other uses that enable an individual to live independently without the ongoing presence of staff or caretakers.

While we welcome all comments regarding this topic, we appreciate stakeholders limiting comments to the stated purposes of this draft, i.e., the use of recording cameras for the purpose of future review to detect, or rule out, abuse or mistreatment, or to aid in the determination of injuries of unknown origin.

Comments can be sent to [quality@opwdd.ny.gov](mailto:quality@opwdd.ny.gov) include "Video Camera Policy" in the subject line.

### **OPWDD Video Camera and Recording Device Use Policy (2/20/2013 draft)**

#### Purpose

The Office for People With Developmental Disabilities (OPWDD) recognizes that protection of individuals with developmental disabilities is fundamental to achieving OPWDD's mission of enriching individual lives through a safe and therapeutic environment. Consistent with Mental Hygiene Law section 33.02, 42 CFR 483.420 (a) (5) and 14 NYCRR Parts 624 and 633 regulations, OPWDD is committed to protecting the individuals receiving services in facilities operated or certified by OPWDD from abuse and neglect while safeguarding their privacy interests.

#### Applicability

This policy governs the use of video cameras or other recording devices<sup>1</sup> in the interior of all OPWDD operated and certified facilities. This policy does not apply to recording devices at ingress and egress areas of facilities and it does not apply in non-certified settings.

### General Safeguards

The use of recording devices may enhance the efforts of OPWDD providers in protecting individuals and may aid in completing thorough and timely investigations of allegations of abuse and neglect. In addition, the use of recording devices may aid in collecting data for clinical diagnostic use and treatment planning. Use of recording devices requires that careful consideration be given to ensuring individual privacy consistent with 42 CFR 483.420 (a) and 14 NYCRR Part 633 regulations. To appropriately balance the use of this important investigatory and clinical tool with the need to safeguard the rights and privacy of the individuals, the following considerations/policies will apply to all use of recording devices:

- Recording devices shall **not** be used in areas of a certified facility where there is a high expectation of privacy such as bathrooms, dedicated areas in which individuals meet privately with visitors or make personal phone calls, or dedicated areas in which individuals receive health care services. The use of recording devices in bedrooms is addressed below.
- Recording devices shall not be used to substitute for adequate staffing levels or supervisory protocols necessary for the appropriate delivery of services or individual safety.
- Individuals, their guardians, involved family members, facility employees and visitors will be informed of the presence recording devices;
- Consent for use of recording devices in residential facilities must be obtained in accordance with the procedure for approval below.
- Consent is not required for use of recording devices in the common areas of non-residential facilities.
- The Agency will bear the full cost of installing and maintaining recording devices.

### Procedure for Approval of Recording Devices in Certified Residential Facilities

**Background** The federal Centers for Medicare and Medicaid Service (CMS) issued a memorandum dated July 29, 2011 on “The Use of Video Cameras in Common Areas in Intermediate Care Facilities for the Mentally Retarded (ICFs/MR)” (attached). The memorandum requires that use of video recording devices in an ICF must be reviewed and approved by the local Specially Constituted Committee.

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<sup>1</sup> For purposes of this policy, recording devices include any device that causes images and/or sounds to be recorded and viewed or replayed beyond the area being recorded, for example, video cameras, tape recorders, cell phones and cameras with recording capability.

OPWDD will assure adherence to the CMS policy in ICFs and extend a similar policy for use of recording devices for use in non-ICF residences. In such residences, use of recording devices must be reviewed and approved by the local Behavior Review/Human Rights Committee. The following procedure will also apply to the use of video cameras in bedrooms.

**Review by local committee** The local Specially Constituted Committee or Behavior Review/Human Rights Committee, as appropriate, must review the proposed usage of the recording device and weigh the legitimate need for its use against the privacy rights of individuals whose images may be captured on such recordings and document its reasons for approval or disapproval of the proposed use. Legitimate uses for recording devices include: (1) as an investigatory tool where there is a suspicion of abuse or neglect or (2) for medical and/or clinical purposes as determined by a member of the individual's treatment team. The request and consent of individuals and their guardians or involved family members, shall be considered by the Committee in approving the use of a recording device. If approved, the Committee shall review the continuing need for the use of the recording device at least annually or sooner if circumstances change.

**Obtain informed consent** Once approved, written informed consent must be obtained from every affected individual or his/her designated guardian or involved family member prior to the installation and use of recording devices. If recording devices are approved for use in a bedroom, additional written informed consent must be obtained from the individual and each roommate who shares such bedroom, or such individual's guardian or involved family member.

The use of recording devices need not be included in an individual's behavior support plan but may be appropriate for inclusion in his or her Individualized Plan of Protective Oversight or similar document.

Informed consent should be discussed with individuals and their guardians or involved family members at the time of admission to the residence and annually thereafter. The written consent will include a provision that, subject to the conditions set forth in the section below, allows the sharing of recordings with other individuals who live in the home, as well as their guardians or involved family members. It will also include a provision about the right to withdraw consent for use of the recording device at any time and the process for doing so.

#### Maintenance and Accessibility of Recordings

- Recordings that include images of individuals who receive OPWDD services will be treated as confidential information subject to Mental Hygiene Law §33.13, §33.16 and, where applicable, §33.25;
- The Agency must have policies and procedures in place: (1) to ensure that recordings may only be viewed by Agency personnel and representatives from OPWDD who have a legitimate need to view such recordings as part of investigatory, quality assurance, clinical function and/or management and employee disciplinary functions; (2) for appropriate and secure storage for recordings to minimize the risk that individuals

without a legitimate need for such information can access it; and (3) so that the recordings are maintained in accordance with an approved agency retention schedule.

- Upon written request to a Residence Manager or to the Treatment Team Leader, with final approval from the Agency Chief Executive Officer or State Operations Regional Director, or his or her designee, recordings may be made accessible for viewing to guardians or involved family members and to employees or their representatives in the event that such recordings are sought to be used as the basis for or as part of an employee disciplinary matter;
- Recordings requested by these parties will be accessible for viewing only at the location where the recording was made, with a representative of the Agency present during viewing. Date, time and location of viewing will be documented and signed by all present at the viewing and such documentation shall be maintained in accordance with the agency's policy.
- Except where necessary to further an investigation or employee disciplinary matter, recordings will not be downloaded onto any device without a court order specifying to whom the recording will be released, that the recording cannot be duplicated, and that the recording will be returned to the Agency subsequent to use in legal proceedings.