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A. POLICY STATEMENT

Any facility or program operated by the Office of Mental Health shall restrict the use of personal cell phones, recording devices, and wireless devices on the grounds of such facility or program, as set forth in this policy directive, provided, however, that the use of personally owned cell phones, recording devices, and wireless devices within forensic and secure facilities or units shall be in accordance with policies and procedures developed by the individual Facility Directors of such facilities or units. Patient use of personal cell phone, recording device, and wireless devices shall be governed in accordance with individual facility policies.

A. 1. Purpose


In order to enhance a safe and therapeutic environment for patients and protect the privacy of patients' protected health information, this policy directive is adopted to govern the use of personal cell phones, recording devices, and other wireless devices by employees and visitors in OMH facilities and programs.

A. 2. Background

The onset of the "digital era" has greatly enhanced the ability to quickly disseminate information and facilitate communication. Cellular phones and other wireless devices are a significant innovation in the evolution of communication and, as technology increases, more and more features are being added to them. For example, camera phones, which allow users to e-mail images to other phone users and website photo albums, or to store them, have become an industry standard.

However, as the popularity of wireless devices increases, so does the potential for misuse or abuse by electronic means. Cameras or other recording features on cell phones, tablets, and laptops are particularly troublesome because they can be used without anyone knowing that a photograph is being taken or a conversation is being recorded. Further, the user can instantaneously transmit a photograph or video to another person or to the Internet. Once this material enters cyberspace, it is extremely difficult to stop it from spreading. With the increasing popularity of online social networking websites, such as Facebook, MySpace, and YouTube, the potential for the inappropriate use of devices in healthcare settings is also growing. OMH is committed to ensuring its facilities create a safe and therapeutic environment for patients, staff, and visitors. The pervasive use of cell phones, recording devices, and wireless devices with audio and video recording capabilities in this environment compromises this goal. First, because cell phones have a tendency to make people accessible at any time and place, unrestricted cell phone usage can be annoying and distracting and can create a significant impediment to the therapeutic process.

More importantly, however, there are privacy implications associated with the use of cell phones and wireless devices with audio and video recording capabilities. While the confidentiality of patients in facilities operated by the Office of Mental Health is protected

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in accordance with Mental Hygiene Law Section 33.13 and 45 CFR Parts 160, 164 (HIPAA), advances in technology can be a challenge to their enforcement.


Therefore, in order to fulfill the Office's responsibility to enforce the privacy laws that protect the confidentiality of patients, and to enhance OMH's ability to provide a safe and therapeutic environment, this policy directive is intended to restrict the use of personally owned cell phones, recording, or wireless devices by employees and visitors on facility or program grounds, with limited exception.

B. RELEVANT STATUTES AND STANDARDS

NYS Mental Hygiene Law Section 33.13
45 CFR Parts 160, 164
OMH Privacy Policy Manual
OMH Official Policy Manual PC-050

C. DEFINITIONS. For purposes of this policy directive:

- 1) *"Cell phone"* means a non-State issued, personally owned wireless telephone with a built-in antenna to give widespread mobility, and means and includes a cellular, mobile, or PCS (Personal Communications Service) phone.
- 2) *"Camera phone"* means a cell phone with the ability to take, send and receive photographs or digital images, or any technological advancement that facilitates such capabilities.
- 3) *"Employee or staff"* means an administrator, employee, consultant, volunteer, or student affiliated with a program under the auspices of the Office of Mental Health, or a person employed by an entity which has a contract with such a program. The term "employee" or "staff" shall include employees or volunteers who are also patients of the facility or program.
- 4) *"Personal Digital Assistant" (PDA)* means a portable computing device capable of transmitting data. PDAs provide services such as paging, data messaging, electronic mail, computing, facsimile, date book and other information handling capabilities.
- 5) *"Recording Device"* means and includes a non-State issued or authorized, personally owned photographic camera, video camera, digital camera, audio recorder, and similar devices capable of recording visual and/or audio images.
- 6) *"Wireless device"* means and includes all non-State issued or authorized, personally owned device that uses cellular technology, including but not limited to camera phones, smartphones, blackberries, digital music players, treos, palm pilots, hand-held computers, laptop computers, tablet computers, and personal digital assistants (PDAs) and similar devices capable of recording visual and/or audio images


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D. BODY OF THE DIRECTIVE

1) *Restricted use of personally owned cell phones.*

- (a) This directive shall apply to all persons while on facility grounds, including employees or staff, and visitors (including contractors and vendors), provided, however, that this provision does not apply to State-issued cellular telephones when used in accordance with facility policy and practice.
- (b) Employees or staff:
- (i) Personally owned cell phones are permitted to be carried by employees or staff while on duty, but must be placed on silent mode, and allow voice mail to answer the call.
 - (ii) The use of personally owned cell phones is prohibited in the following areas: program and treatment areas, patient rooms, wards, and day use areas, and locations immediately outside of the living units (e.g., schools, recreation areas, and hallways¹). This prohibition shall include patient-accessible areas in both inpatient and outpatient settings.
 - (iii) Employees or staff shall make every reasonable effort to refrain from utilizing personally owned cell phones in common areas within the facility. Personally owned cell phones shall not be used in such a manner as to compromise the ability of an employee or staff member to effectively perform his or her duties.
 - (iv) Under no circumstances shall any employees or staff be permitted to use the camera function of a personally owned cell phone while on duty or on facility grounds.
 - (v) Facilities shall make every effort to permit employees to make use of facility landline phones to conduct only necessary personal business and in emergencies, in accordance with this policy directive.
- (c) Visitors: All visitors to a facility, (including contractors and vendors), shall be put on notice in accordance with paragraph D)4) of this policy directive that cell phones must be turned off or placed on silent mode and allow voice mail to answer the call while on facility premises, provided, however, that if a contractor or vendor is required to remain in contact with his/her principals via cell phone

¹ It shall not be considered a violation of the policy directive if a staff member or employee occasionally answers an incoming call in a hallway only to briefly advise the caller he/she will return the call after moving to an area where such action is permitted. However, employees and staff must be mindful of the fact that, in this circumstance, it is not the length of the call that is at issue; it is the use of the personally owned cell phone in certain facility areas. Thus, while not a policy violation if infrequently done, use of personally owned cell phones in hallways shall not be considered to be routinely permissible.

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while on the premises or otherwise needs to use a cell phone while on facility premises to perform the service for the facility, an exception can be made for that purpose.

- (d) Nothing in this policy directive shall be deemed to abrogate the rights of patients under Article 33 of the Mental Hygiene Law or corresponding implementing regulations.

2) *Restricted use of personally owned recording or wireless devices.*

- (a) Because of the risk to patient privacy, the recording feature of any recording or wireless device shall not be used anywhere upon the grounds of a State operated facility or program, regardless of whether or not patients or others are in the immediate vicinity of the user. This prohibition shall apply equally to employees or staff of the facility or program, as well as to visitors, (including contractors and vendors), of the program, unless an exception has been granted in accordance with paragraph D)c of this policy directive.
- (b) This provision does not apply to State-issued recording or wireless devices when used in accordance with the OMH Privacy Policy Manual² and facility policy and practice.
- (c) Facilities shall employ reasonable steps to ensure that recording devices or recording features of wireless devices are disabled or are not used on patient wards or other places accessible by patients, and are not otherwise used by employees or staff off-site, when engaged in the conduct of their job responsibilities, provided, however, a patient or family member or friend may use a recording device or recording features of wireless devices in certain areas designated by the facility if:
- i) the patient or any other person who is the subject of the recording is aware of, and indicates his/her consent to such recording;
 - (ii) no other patients or their protected health information are included in the recording;
 - (iii) the recording process shall immediately be discontinued at any time at the request of the facility; and
 - (iv) a member of the patient's treatment team has been consulted and has no objection to such recording.

²Note that audio or visual recordings made for treatment, payment, or health care operations purposes become part of the patient's "designated record set" and are subject to the patient's general right to request access to same. For further guidance, please refer to the OMH Privacy Policy Manual, Sections 8.5 and 10.1.

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- (d) Facilities shall employ reasonable steps to ensure that recording or wireless devices are not brought into, or the recording feature of such devices is disabled or not used in, any areas containing confidential or sensitive written information, such as Medical Records areas and Personnel Departments.

3) *Exceptions.*

- (a) In the case of a bona fide emergency, a facility director may temporarily suspend the general restriction on cell phone usage.
- (b) Special exceptions may be granted by the facility director (or his/her designee) on a case by case basis upon the approval of the Commissioner or his or her designee.

4) *Notice.*

- (a) Facilities shall ensure that they have prepared a short notice which advises of the prohibitions and restrictions outlined in this policy directive in a concise, user-friendly format. Such notice can be in the form of a separate document, or it can be incorporated within other documents which advise employees and visitors of facility rules and regulations.
- (b) Each facility shall make reasonable efforts to ensure that all visitors, (including contractors and vendors), and staff are made aware of the prohibitions and restrictions outlined in this policy directive when they enter any OMH building under the auspices of the facility.

5) *Enforcement.*

All staff of the facility shall be familiar with this policy directive and its contents. Staff shall be mindful of their obligation to take appropriate action, as necessary, to protect the confidentiality and security of patient information.