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To: Hospitals
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Hosp 10
CBRF 11
AFH 09

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Patient Privacy During Inpatient Psychiatric Treatment

The purpose of this memo is to provide DHFS guidance to providers of psychiatric inpatient (residential) services about patients' right to privacy in relation to audio/video monitoring.

APPLICABLE REGULATIONS

Regulations relevant to this issue include both the federal hospital Medicare Conditions of Participation found at [42 CFR 482.13](#), and the State law and administrative code governing patient rights found in s. 51.61(1)(o), Stats., and [Chapter HFS 94](#).

The applicable federal regulations are:

CFR 482.13(c) Standard: "The hospital must ensure that specific privacy and safety requirements are met."

CFR 482.13(c)(1): "The patient has the right to personal privacy."

The federal Interpretive Guidelines discuss how these regulations are applied as follows:

"The underlying principle of this requirement is the patient's basic right to respect, dignity, and comfort. 'The right to personal privacy' includes at a minimum, that patients

have privacy during personal hygiene activities (e.g., toileting, bathing, dressing), during medical/nursing treatments, and when requested as appropriate

“People not involved in the care of the patient should not be present without his/her consent while he/she is being examined or treated, nor should video or other electronic monitoring/recording methods be used while he/she is being examined without his/her consent. If an individual requires assistance during toileting, bathing, and other personal hygiene activities, staff should assist, giving utmost attention to the individual's need for privacy. Privacy should be afforded when the MD/DO or other staff visits the patient to discuss clinical care issues or conduct any examination.

“Additionally, audio/video monitoring (does not include recording) patients in medical-surgical intensive-care type units would not be considered violating the patient's privacy as long as patients/patient representatives are aware of the monitoring and the monitors or speakers are located so that the monitor screens are not visible or where speakers are not audible to visitors or the public. Staff must take appropriate precautions to provide patient privacy while patients are toileting, bathing, or being examined.

“A patient's right to privacy may be limited in situations where a person must be continuously observed, such as when restrained or in seclusion when immediate and serious risk to harm self (such as when the patient is under suicide precautions or special observation status) or others exists. In most situations, security cameras in non-patient care areas such as stairwells, public waiting areas, outdoor areas, entrances, etc., are not generally affected by this requirements [sic].”

Relevant State regulations include:

s. 51.61(1)(e), Wis. Stats.

“Each patient shall . . . have the right to the least restrictive conditions necessary to achieve the purposes of admission, commitment or placement, except in the case of a patient who is admitted or transferred under s. 51.35(3) or 51.37 or under ch. 971 or 975.”

HFS 94.07 Least restrictive treatment and conditions.

HFS 94.07(1): “Except in the case of a patient who is admitted or transferred under s. 51.35 (3) or 51.37, Stats., or under ch. 971 or 975, Stats., each patient shall be provided the least restrictive treatment and conditions which allow the maximum amount of personal and physical freedom in accordance with s. 51.61 (1) (e), Stats., and this section.”

s. 51.61(1)(o), Wis. Stats.

“Each patient shall . . . Except as otherwise provided, have a right not to be filmed or taped, unless the patient signs an informed and voluntary consent which specifically authorizes a named individual or group to film or tape the patient for a particular purpose or project during a specified time period. The patient may specify in such consent periods during which, or situations in which, the patient may not be filmed or taped. If a patient is legally incompetent, such consent shall be granted on behalf of the patient by

the patient's guardian. A patient in a ... facility under § 980.065, may be filmed or taped for security purposes without the patient's consent, except that such a patient may not be filmed in patient bedrooms or bathrooms for any purpose without the patient's consent.”

HFS 94.18 Filming and taping.

HFS 94.18(1): “No patient may be recorded, photographed, or filmed for any purpose except as allowed under s. 51.61 (1) (o), Stats., and this section.”

HFS 94.18(2): “A photograph may be taken of a patient without the patient's informed consent only for the purpose of including the photograph in the patient's treatment record.

HFS 94.18(3): “The informed consent document shall specify that the subject patient may view the photograph or film or hear the recording prior to any release and that the patient may withdraw informed consent after viewing or hearing the material.”

s. 51.61(1)(m), Wis. Stats.

“Each patient shall . . . Have a right to a humane... physical environment within the hospital facilities. These facilities shall be designed to afford patients with comfort and safety, to promote dignity and ensure privacy. Facilities shall also be designed to make a positive contribution to the effective attainment of the treatment goals of the hospital.”

HFS 94.24 Humane psychological and physical environment.

HFS 94.24(1): “CLEAN, SAFE AND HUMANE ENVIRONMENT. Treatment facilities shall provide patients with a clean, safe and humane environment as required under s. 51.61 (1) (m), Stats., and this section.”

HFS 94.24(2): COMFORT, SAFETY AND RESPECT.

HFS 94.24(2)(a): “Staff shall take reasonable steps to ensure the physical safety of all patients.”

HFS 94.24(2)(b): “Each patient shall be treated with respect and with recognition of the patient's dignity by all employees of the service provider and by all licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.”

HFS 94.24(3): SOCIAL, RECREATIONAL AND LEISURE TIME ACTIVITIES

HFS 94.24(3)(h): “Patients have a right to be free from having arbitrary decisions made about them. To be non-arbitrary, a decision about a client shall be rationally based upon a legitimate treatment, management or security interest.”

Given this background of regulations, we now move to discussion of potential scenarios.

NO CAMERAS IN CERTAIN AREAS

Neither cameras with film or tape nor audio/visual monitoring without film or tape are permitted in patient bathrooms or during patient physical examination or physical treatments. Hospitals must assure that a sufficient number of staff is present for patients who need assistance in

toileting and bathing, and that sufficient staff are present to assure safety during physical examination or physical treatments.

CAMERAS PERMISSIBLE IN CERTAIN AREAS

Monitoring (without film or tape) of common areas such as hallways, stairwells, and common areas on the unit is permitted. Cameras may both monitor and tape or film exit doors and exterior public areas such as parking lots.

CAMERAS IN BEDROOMS UNDER INDIVIDUALIZED CONDITIONS

Monitoring of patient bedrooms can be conducted under limited, individualized conditions when it is necessary to protect the health and safety of the patient. Each hospital should have policies and procedures to assure that when patient bedrooms are monitored (without film or tape), such visual or audio monitoring is done in accordance with individual patient need. A hospital may develop separate policies and procedures for audio monitoring vs. video monitoring, bearing in mind that both modalities are intrusive to some extent.

Ongoing patient assessment is necessary to determine need for monitoring. Potential reasons for such monitoring include acute detoxification, physical impairment such as documented risk of falling, and suicide precautions based on current assessment.

Assessment of a need for monitoring in a patient's bedroom should be reflected in the patient's treatment plan. The patient should be aware of the monitoring. When it is possible, the patient's consent should be obtained. Monitoring should be discontinued when the need is no longer present. If the patient is in a double room with a roommate who does not require monitoring, staff should either obtain consent of the roommate for whom there is no documented need for monitoring, or relocate one of the patients.

The monitor screen or speaker must be placed in an area not visible or audible to other patients or visitors, and staff should be assigned to the monitor to assure that the conditions being guarded against are actually observed.

Cultivation of a therapeutic relationship between the patient and staff members may obviate the need for mechanical surveillance. From both a treatment perspective and a regulatory perspective, camera monitoring is no substitute for personal interactions and relationships with patients.