



<p>Team Name: Health Information Services</p> <p>Team Lead: Regional Officer- Privacy and Access</p> <p>Approved by: Regional Lead – Corporate Services & Chief Financial Officer</p>	<p>Reference Number: ORG.1411.PL.503</p> <p>Program Area: Health Information Services</p> <p>Policy Section: Privacy & Access</p>
<p>Issue Date: November 17, 2021</p> <p>Review Date:</p> <p>Revision Date:</p>	<p>Subject: Audio, Video, and Photographic Recording, including Surveillance</p>

Use of pre-printed documents: Users are to refer to the electronic version of this document located on the Southern Health-Santé Sud Health Provider Site to ensure the most current document is consulted.

**Capitalized terms have a specific definition.

POLICY SUBJECT:

Audio, Video and Photographic Recording, including Surveillance.

PURPOSE:

To set out guidelines for the appropriate creation and use of a Recording by anyone on or at a Southern Health-Santé Sud facility or site.

To recognize that in certain circumstances, a Recording may play an integral role in optimizing care for Clients, increasing awareness and informed consent to health care, improving education opportunities for Staff and sharing information about Southern Health-Santé Sud programs and services.

To protect Clients, Staff and other Third parties from unauthorized Recordings; and to ensure compliance with various laws, such as *The Freedom of Information and Protection of Privacy Act (FIPPA)*, *The Personal Health Information Act (PHIA)* and *The Workplace Safety and Health Act*.

To balance the legitimate need or right to make a Recording in certain circumstances, against Southern Health-Santé Sud’s obligation to respect the sensitivity of the Personal Information and Personal Health Information so recorded, and to comply with all applicable laws.

This policy is intended to set out general principles, which apply, to all Recordings, together with specific procedures, such as the process for obtaining informed consent from anyone who is depicted in a Recording. This policy covers Recordings of any form, whether audio, video or photographic, or a combination of same made:

- by Staff, for the purpose of delivering health care;
- for the purpose of safety and security, as well as the prevention of crime;
- by Clients, their natural supports, visitors and other Third Parties; and
- by Media.

BOARD POLICY REFERENCE:

Executive Limitation 1 (EL-1) Global Executive Restraint & Risk Management

Executive Limitation 2 (EL-2) Treatment of Clients

Executive Limitation 10 (EL-10) Public Relations

POLICY:

Recording by Staff

Images and audio, captured in a Recording, may contain personal information and/or personal health information of people depicted in the Recording. Therefore, in accordance with applicable law, staff should only create or use a Recording where it is necessary for a purpose which is related to the provision of health care. Before any Recording occurs, staff must be able to articulate the particular purpose for which it is to occur and whether that purpose is further to:

- delivery of health care services;
- safety and security;
- education and training; or
- administrative, public relations or any other purpose articulated by Southern Health-Santé Sud.

A Recording should capture the minimum amount of personal information and/or personal health information that is necessary in order to achieve the purpose for which the Recording has occurred.

Staff should consider whether the Recording could still achieve the purpose for which it occurred if it was Anonymized. This is particularly important if the purpose for the Recording is for education and training purposes.

An Individual's consent is required prior to creating and/or using any Recording that depicts that individual, unless, an exemption to consent under FIPPA or PHIA applies. For example, an emergent event, where there is a risk of serious harm to the health and safety of an individual or Southern Health-Santé Sud property.

A request for consent should provide enough information to the Individual (from whom consent is sought) to allow them to make an informed decision about whether or not to permit the Recording.

Consent may be given verbally unless written consent is required as indicated in Southern Health-Santé Sud policy.

In the event a Recording of a Client is required for forensic, educational, research, marketing or public relations purposes, a written consent must be completed on a form approved by Southern Health-Santé Sud.

A Recording is a record, which is in the custody and control of Southern Health-Santé Sud, and is therefore subject to the Access provisions set out in FIPPA and PHIA. Southern Health-Santé Sud is also responsible for ensuring a Recording is stored and retained in accordance with these laws and applicable policies.

Staff should not use personal devices to make a Recording, unless previously approved in writing by a supervisor or direct management. A Recording made with a personal device will be subject to all applicable policies, notwithstanding that it was produced and/or contained on the Staff member's personal device. A Recording forms part of the Client record and is the property of Southern Health-Santé Sud; therefore, Southern Health-Santé Sud may access, use and edit a Recording at any time, and Staff have no expectation of ownership or privacy in such a Recording.

Southern Health-Santé Sud holds copyright and moral rights in and to every Recording made by Staff. A Recording shall not be distributed to any person outside Southern Health-Santé Sud without prior written authorization by a supervisor or direct management.

Recordings by Clients, Natural Supports, Visitors and other Third Parties

Clients, Natural Supports, Visitors and other Third Parties are permitted to make a Recording at a Southern Health-Santé Sud Health Care Facility, if:

- consent has been obtained from every person who will be depicted in the Recording (including Staff); and
- the Recording is otherwise made in accordance with this policy and applicable laws.

However, a Recording may not be appropriate, even if consent is obtained from those who are depicted in the Recording. Examples of what might constitute an inappropriate Recording include:

- any depiction of any service or activity of Southern Health-Santé Sud, unless prior consent from all persons to be recorded has been obtained and the Recording relates to the provision of information about a service the Client is to receive from Southern Health-Santé Sud, or involves the non-surgical birth of the Client's child;
- where anyone is depicted without their consent;
- any depiction of an emergency room or other like facilities or sites; and
- a Recording which would pose a safety or health risk to anyone, disrupt the provision of health care, interfere with the safe operation of medical equipment or is otherwise prohibited by any other applicable policy or law.

Apart from anything else in this policy, Southern Health-Santé Sud, at its discretion, reserves the right to restrict or prohibit, for any reason, Recordings in any form.

A Client does not require consent to record her or himself, or any other event, which is not related to the provision of health care, which contains no Third Party or Southern Health-Santé Sud activity and does not depict any Third Party of Staff.

Natural Supports, visitors of Clients and other Third Parties are only permitted to make a Recording if:

- they are acting with the Client's consent (or they are a Person Permitted to Exercise the Rights of an Individual); and
- the Recording would otherwise be permitted by this policy.

Recordings by Natural Supports, and other Third Parties which do not comply with the terms and conditions set forth above are not permitted.

Recording by Media

Recordings by Media shall be permitted with the consent of the Media Specialist and the appropriate Senior Leader or designate and in accordance with ORG.1110.PL.003 Media Relations and Enquiries and ORG.1110.PL.004 Photography & Videography of Clients & Employees for Public Relations Purposes. Consent must be obtained from every person (including Staff) to be recorded, in a manner consistent with the consent guidelines, which are set out above under the "Recording by Staff" heading.

Recording in Other Circumstances

Recordings shall be permitted in other circumstances, not specifically set out in this policy (i.e. public relations, Recordings made by Drones at construction sites, Recordings of equipment in operation, reports to vendors etc.), at the discretion of the Media Specialist and/or the appropriate Senior Leader or designate of Southern Health-Santé Sud, provided that all Individuals, in the Recording, shall have provided consent in a manner consistent with the consent guidelines which are set out above under the "Recording by Staff" heading.

Recording for Safety, Security or Crime Prevention

Southern Health-Santé Sud recognizes that in certain circumstances, a Recording may be made for safety, security or crime prevention. This policy is intended to address when such Recording is appropriate.

In this case, a Recording for the purpose of safety, security or crime prevention is generally appropriate, if:

- there is a legitimate need for surveillance which will accomplish a safety, security or crime prevention objective; and
- Southern Health-Santé Sud has determined that a less privacy-invasive alternative to surveillance will not accomplish this objective.

While notification of a Recording for the purpose of safety, security or crime prevention may be provided, except where creating such a Recording without notification is permitted by law, express consent is not required.

Since surveillance footage is subject to FIPPA and PHIA, people whose images are captured must be provided access to their images, upon request. A staff person should be designated to respond to access requests, as well as questions about what information is captured, who will view it and for what purpose and what is being done with the footage.

All operators of the Recording system must be trained so that they understand their applicable privacy obligations.

DEFINITIONS:

Anonymize: Removing identifiable personal information and/or personal health information from a Recording (i.e. facial images, tattoos or audio about a client's demographics).

Client: Any person (including a Person Permitted to Exercise the Rights of an Individual, where the context so requires) who receives health care services within Southern Health-Santé Sud, including patients and residents.

Consent: An agreement or permission given by an Individual, which is given:

- voluntarily;
- after the Individual received information that a reasonable person in the same circumstances would require, in order to make a decision;
- after the Individual has received responses to her or his requests for additional information about those matters; and
- in the absence of misrepresentation or fraud.

Drone: Any unmanned aerial vehicle or unmanned aircraft system that provides a form of surveillance.

FIPPA: *The Freedom of Information and Protection of Privacy Act (Manitoba)*

Health Care Facility: A hospital, personal care home, Psychiatric Facility, medical clinic, laboratory, CancerCare Manitoba and community health centre or other facility in which health care is provided and that is designated in the PHIA regulation.

Individual: For the purpose of this policy, an individual includes any person, client or staff member.

Media: Representatives of any class of written publication, or any radio, television or electronic method of communicating information to the public.

Natural Support: For the purpose of this policy natural supports refers to a person (family member, friend, significant other etc.) who plays a significant role in offering support to an individual. A natural support is not necessarily a part of the formal support system and is not remunerated for offering support. This may include persons from a broad network of social support, (e.g. friends, clergy etc.) and is defined by the individual (MB Health 2007). Natural supports may or may not be the same as the individual's identified Next of Kin.

Person Permitted to Exercise the Rights of an Individual: As set out in Subsection 60(1) of PHIA and as defined in the supporting document PHIA Definitions ORG.1411.PL502.SD.01.

Personal Health Information: Recorded information about an identifiable individual that relates to:

- the individual's health, or health care history, including genetic information about the individual;
- the provision of health care to the individual; or
- payment for health care provided to the individual; and

as more particularly defined in PHIA.

Personal Information: Recorded information about an identifiable individual, as more particularly defined in FIPPA.

PHIA: *The Personal Health Information Act (Manitoba)*

Production Order: An order issued by a Judicial Justice of the Peace requiring a person or entity to produce the record(s) to a peace officer or public office named in the order within the time, at the place and in the form specified in the order.

Recording: Capturing an Individual's likeness (e.g. image or picture) or voice using photography, audio Recording, video Recording, digital imaging, or any other technology capable of capturing an image or audio.

Site: A Health Care Facility, community health centre, or community office within Southern Health-Santé Sud.

Staff: Includes all employees and persons associated with Southern Health-Santé Sud including: Medical staff, contracted individuals, students, volunteers, researchers, educators, and Board members.

Subpoena: A subpoena is a court order that is served for the purpose of having someone attend a proceeding as a witness and may require production of documents as evidence in court.

Third Party: Any person, group or persons, business or organization other than the Individual (or a Person Permitted to Exercise the Rights of an Individual).

Warrant to Search/Search & Seize: A document issued by a magistrate or justice of the peace that permits the Police to attend our premises, search it for the evidence set out in the warrant, and remove that evidence from our premises

IMPORTANT POINTS TO CONSIDER:

- Any person who is subject to a Recording shall be permitted to withdraw her or his consent to being Recorded at any time, subject to reasonable notice and contractual limitations. In some circumstances, this may mean the person may not be able to receive certain health care services. The implications of such a withdrawal should be discussed with the person.
- Transitory/working records are deleted on a routine basis as determined by the department/program. For example, digital photographs are deleted promptly from a Southern Health-Santé Sud issued camera once printed and/or uploaded.
- Every Recording which is made by Staff and/or is under the control or custody of Southern Health-Santé Sud is subject to FIPPA and/or PHIA. Accordingly, Staff shall conform to all applicable legislative requirements and Southern Health-Santé Sud policies regarding access, collection, use, disclosure, storage and retention of personal information and/or personal health information.
- A Recording that depicts a Client forms part of the Client record and should therefore, be given appropriate respect and treated as being confidential in nature.
- No Recording should be posted on social media without prior express written consent from the supervisor or direct management.
- Signage to provide notification about this policy should be conspicuously posted to clearly set out the nature and extent of the restrictions on Recording, so that all Staff, Clients and Third Parties understand what is and is not permitted. ORG.1411.PL.503.SD.01 Respect Privacy Poster – Long Term Care or ORG.1411.PL.503.SD.02 Respect Privacy Poster can be used for this purpose.
- Footage collected in a Recording by Staff should only be used for the specific purpose or purposes for which it was collected and consented to, unless consent for a new purpose is first obtained, or the use without consent is permitted by law.
- Consistent with FIPPA and PHIA, Staff should collect the minimum amount of personal information and personal health information which is necessary in order to achieve the purposes for which it was collected. Indiscriminate Recording is thus to be avoided.
- Access to a Recording should be limited to Staff who have a need to know the information, in order to perform their job duties.

PROCEDURE:

Section 1: Recording by Staff

- 1.1 Obtain consent for the Recording from the Client and every other person who will be depicted in the Recording, before the Recording occurs. Where written consent is required (i.e. for forensic, educational, research, marketing or public relation purposes), assist the Individual with completing the applicable form.
- 1.2 In order to achieve informed consent, the following should be explained to the Client:
 - what will be Recorded (including the content of the Recording, the duration of the Recording and the format of the Recording);
 - why it is being Recorded, and for what purposes the Recording will be used;
 - who will view the Recording and how it will be shared (if applicable); and
 - that the Client can refuse to provide consent, or withdraw consent at a later point in time (though a withdrawal of consent may limit the health care services which Southern Health-Santé Sud may be able to provide the Client).
- 1.3 Staff should answer any questions the Client might have, about the Recording.
- 1.4 The trustee may accept a verbal consent from an Individual if the Recording is related to Care Currently Provided. The Staff member who obtains consent should create a written record of the consent in the Client Record. The record of consent should contain a summary of the information which was provided to the Client, as well as the date of the consent and the name of the Staff member who obtained it.
- 1.5 If the Client is unable to provide consent (including instances where the Client is a minor who is not a mature minor), consent may be obtained from a person who is authorized to exercise the rights of another person.

Section 2: Recording by Clients, Natural Supports, Visitors and other Third Parties

The Client, Natural Support, visitor or Third Party is responsible for obtaining all necessary consents.

- 2.1 Copies of any consent so obtained should be filed in the Client's health record, where applicable, in a manner consistent with the record of consent, which is set out above under Section 1, paragraph 1.4.
- 2.2 No staff member shall permit themselves to be Recorded without first advising their direct manager or supervisor.
- 2.3 Staff should be present at all times while a Recording occurs, in order to ensure the Recording continues to comply with this policy and all applicable laws.
- 2.4 If the Recording is made by a Client, documentation of the Recording should be placed on the client file. That documentation should include a summary of:
 - what was Recorded, and why;
 - by whom;
 - the name of the Staff member who permitted and/or observed the Recording;
 - a general description of who was depicted in the Recording, if known;
 - a statement that consent was obtained from every person who was depicted in the Recording; and
 - the date.

Section 3: Recording by Media

Recordings of Staff and Clients for Public Relations Purposes must be in accordance with ORG.1110.PL.004 Photography and Videography of Clients and Staff for Public Relations.

- 3.1 Any Recording by Media should be documented by the Staff member who authorized the Recording, with a summary of:
 - what was Recorded, and why;
 - by whom;
 - the name of the Staff member who permitted and/or observed the Recording;
 - a general description of who was depicted in the Recording, if known;
 - a statement that consent was obtained from every person who was depicted in the Recording; and
 - the date.
- 3.2 Staff should be present at all times while a Recording occurs, in order to ensure the Recording continues to comply with this policy and all applicable laws.

Section 4: Recording for Safety, Security or Crime Prevention

- 4.1 Before a Recording is made, notification should be provided to any person who would be depicted in the Recording, before they enter the area which is in view of the Recording device. ORG.1411.PL.503.SD.03 Video Surveillance Notification can be used for this purpose.
- 4.2 Staff should also be informed that Recording will take place, together with a description of what information will be captured, who will view it and for what purpose and what is being done with the footage.
- 4.3 Recording should not take place in areas where people have a higher expectation of privacy, such as washrooms and change rooms.
- 4.4 Recording equipment and stored media must be stored in a secure fashion. In this context, secure refers to both physical safeguards (such as locked doors) and technological safeguards (such as passwords and controls on network access). Only those Staff who need to view the Recording should be permitted to access it.
- 4.5 A Recording should be retained only as long as is necessary to accomplish the particular safety, security or crime prevention objective for which it was made. Following that time, a Recording should be securely destroyed or anonymized.
- 4.6 If a request to review, copy or seize a Recording is received from law enforcement, Staff should contact their direct manager or supervisor and provide all supporting documents and other information received from law enforcement. In no circumstances should Staff release a Recording to law enforcement without first contacting and receiving the approval of their direct manager or supervisor.
- 4.7 Law enforcement should provide an official document such as a Warrant, Subpoena, Production Order or other court issued document that compels Southern Health-Santé Sud to produce a copy of a Recording (for law enforcement purposes). Law enforcement are permitted to view a Recording, or obtain a redacted copy when possible, prior to providing an official document.

- 4.8 Any decision to release a Recording to law enforcement should be documented in writing. That documentation should include a summary of the information released, the identity of the law enforcement individual to whom it was released, the stated authority for the release and the date.

Section 5: Contravention of this Policy

- 5.1 Staff who violate this policy may be subject to disciplinary action which may include termination of their employment or their engagement (as the case may be).
- 5.2 Media who violate this this policy may be asked to leave Southern Health-Santé Sud facilities or sites.
- 5.3 Natural Supports, Visitors and other Third Parties who violate this policy may be asked to leave Southern Health-Santé Sud facilities or sites and may be banned from re-entry except for the purpose of receiving health care.
- 5.4 Clients who violate this policy may, in appropriate circumstances, be asked to leave Southern Health-Santé Sud facilities or sites, or if this is not appropriate, may have their recording devices confiscated and stored until such time as they are discharged.
- 5.5 Staff who observe Clients, Natural Supports, visitors or other Third Parties violating this policy:
- should inform the Client or Third Party that their Recording is contrary to this policy, and ask them to cease Recording. Alternately, Staff who are uncomfortable approaching the Client or Third Party may notify their direct manager, supervisor or security personnel, who may then ask the Client or Third party to cease Recording;
 - may request that the Recording be deleted;
 - should, if the unauthorized Recording does not cease, ask the Client or Third Party to leave the Southern Health-Santé Sud facility or site;
 - if the Client or Third party does not leave, Staff should notify their direct manager, supervisor or security personnel, and explain the particulars of the situation; and
 - complete an Occurrence Report
- 5.6 Despite anything else in this policy, in no event should Staff:
- discontinue or deny the provision of health care, because of a contravention of this policy; or
 - seize any device which has been used to make a Recording.

SUPPORTING DOCUMENTS:

ORG.1411.PL.503.SD.01 - Respect Privacy Poster – Long Term Care

ORG.1411.PL.503.SD.02 - Respect Privacy Poster

ORG.1411.PL.503.SD.03 - Video Surveillance Notification

REFERENCES:

The Personal Health Information Act

The Freedom of Information and Protection of Privacy Act

The Privacy Act (Manitoba)

Canadian Charter of Rights and Freedom

The Workplace Safety and Health Act

Workplace Safety and Health Regulation, Part 10

Jones v. Tsige, 2012 ONCA 32

Prairie Mountain Health Policy Audio, Video and Photographic Recordings

Shared Health Policy Audio, Video and Photographic Recordings

CLI.4110.PL.001 - Consent for Procedures, Treatment and Investigations

CLI.4110.PL.001.FORM.01 - Consent for Procedures, Treatment and Investigations - Bilingual

CLI.4110.SG.005 - Wound Photography

ORG.1411.PL.101 - Access to Personal Health Information

ORG.1110.PL.003 - Media Relations & Enquiries

ORG.1110.PL.004 - Photography and Videography of Clients and Staff for Public Relations

Purposes

ORG.1110.PL.004.FORM.01 - Photo-Video-Audio Release Form

ORG.1411.PL.001.SD.01 - FIPPA Definitions

ORG.1411.PL.101.FORM.01 - Request to Access Personal Health Information Form

ORG.1411.PL.502 - Use and Disclosure of Personal Health Information

ORG.1411.PL.502.FORM.01 - Consent to Disclose Personal Health Information Form

ORG.1411.PL.502.FORM.02 - Consent to Use Personal Health Information Form

ORG.1411.PL.502.SD.01 - PHIA Definitions

ORG.1510.PL.005 - Respectful Workplace

ORG.1510.PL.016 - Social Media