

	State of New York Office Of Mental Health	Date Issued 03-17-06	T.L. 06-03	Section # QA-602
	OMH Official Policy Manual	Section: Quality Assurance		
		Directive: Use of Personal Cell Phones and Recording Devices in Facilities		

A. POLICY STATEMENT

Any facility or program operated by the Office of Mental Health shall restrict the use of personal cell phones and recording devices by anyone on the grounds of such facility or program¹, except as set forth in this policy directive, provided, however, that the use of personally owned cell phones 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.

A. 1. Purpose

In order to enhance a safe and therapeutic environment for patients and protect the privacy of our patients' protected health information, this policy directive is adopted to govern the use of personal cell phones and recording devices 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 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, are quickly becoming an industry standard.

OMH is committed to ensuring its facilities create a safe and therapeutic environment for patients, staff, and visitors. The pervasive use of cell phones and recording devices 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 recording devices. While the confidentiality of patients in facilities operated by the Office of Mental Health is protected 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. A cell phone is not a secure mode of information transmission.

¹In this regard, this policy directive is intended to apply to patients, staff, and members of the public who are visitors to the facility or program.

Furthermore, some technological innovations can exacerbate the problem. For example, camera phones easily allow users to take secret (and perhaps inappropriate) photos in places where cameras aren't normally allowed. Another popular electronic communication device that may have an integrated camera, depending on the model, is the Personal Digital Assistant, or PDA. This technology makes it possible to send a picture instantly to someone or post it on the internet. Once a photo enters cyberspace, it is extremely difficult to stop it from spreading. Many people are still unfamiliar with this technology and are not aware that when someone holds up a cell phone or uses a PDA, it may be recording their image.

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 cell phones and recording devices 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, PDA with an integrated camera, video camera, digital camera, audio recorder, camera phone, and similar devices capable of recording visual and/or audio images.

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, patients, 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) The ring tones on all personally owned cell phones must be deactivated upon entry to facility grounds, both in inpatient and outpatient settings. Cell phones must be put on vibrate mode while on facility grounds.

(c) 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 hallways²). This prohibition shall include patient-accessible areas in both inpatient and outpatient settings³.

(d) 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.

(e) 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 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 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.

(f) 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.

(g) 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.

2). *Prohibited use of personally owned recording devices.*

(a) Because of the risk to patient privacy, recording devices shall not be permitted anywhere upon the grounds of a State operated facility or program⁴,

² 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 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.

³ In some unique circumstances, e.g. Crisis Programs, patients may only have cell phone service and thus must wholly rely on a cell phone to receive all calls and messages. A facility may address circumstances such as this in its own facility policy to ensure patients are able to communicate freely outside the facility.

⁴ This prohibition shall not be deemed to prevent camera phones or other recording devices from being stored in personally owned vehicles while parked on facility grounds.

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 patients and visitors, (including contractors and vendors), of the program, unless an exception has been granted in accordance with paragraph D)3)b) of this policy directive.

(b) This provision does not apply to State-issued recording devices when used in accordance with the OMH Privacy Policy Manual⁵ and facility policy and practice.

(c) Facilities shall employ reasonable steps to ensure that recording devices are not brought onto 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 in certain areas designated by the facility if:

(i) the patient 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 device 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.

(d) Facilities shall employ reasonable steps to ensure that recording devices are not brought into 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-

⁵Note 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.

friendly format. Such notice can be in the form of a separate document, or it can be incorporated within other documents which advise patients of facility rules and regulations.

(b) However prepared, each facility shall ensure that patients and/or their personal representatives receive notice of these restrictions at the time of their admission.

(b) Each facility shall make reasonable efforts to ensure that all visitors, (including contractors and vendors), patients 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.