

1075 USE OF RECORDING DEVICES

I. Purpose:

This establishes the Department of Human Services Policy regarding the audio or visual recording of agency clients or patients in the course of conducting work for the agency, as well as recording other employees or supervisors regarding personnel issues.

II. Applicability:

- (a) This policy will protect client and patient information as mandated by the federal Health Insurance Portability and Accountability Act (HIPAA), the Arkansas Personal Information Act (PIPA) Arkansas Code § 4-110-101, and other applicable federal and state laws, rules and regulations.
- (b) This policy allows for the use of recording devices for personnel matters based on Arkansas Code § 5-60-120, though this policy defines parameters specifically outlined for employees of the Department of Human Services.

III. Definitions:

- (a) “Breach” means generally, an impermissible use or disclosure under the Health Insurance Portability and Accountability Act Privacy Rule, that compromises the security or privacy of the protected health information such that the use or disclosure poses a significant risk of financial, reputational, or other harm to the affected individual.
- (b) “Disclosure” means the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.
- (c) “Personal Identifying Information” means information that is protected from disclosure by state law or regulation; relates to specific items or personal information (first name or first initial along with the last name plus Social Security Number, or financial account number and PIN, or medical information) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person (Arkansas Code § 4-110-101 et seq.).
- (d) “Protected Health Information” means health information which:
 - (1) Identifies the individual or offers a reasonable basis for identification;
 - (2) Is created or received by a covered entity or an employer;
 - (3) Relates to past, present, or future, physical or mental health or condition;
 - (4) Provision of health care or payment for health care; or
 - (5) Has been electronically transmitted or electronically maintained by a covered entity and includes such information in any other form.

- (e) “Record” or “Recording” means to preserve data, or data that is or has been preserved, in audio, video, or photographs.

IV. Recording Clients or Patients:

- (a) DHS employees shall not record (audio, video, or photographs) agency clients or patients, their information, or conversations with them, unless the following three mandates are met:
 - (1) The recording is mandated as part of the employee’s specific job function and is being done in the line of duty (such as an investigator conducting an assigned investigation);
 - (2) The recording is conducted with a secure device issued by the Department of Human Services or a device approved by the agency Chief Information Security Officer; and
 - (3) The recording follows all relevant federal and state laws, including, but not limited to, the Health Insurance Portability and Accountability Act, Arkansas Personal Information Act (HIPAA), and Arkansas Code § 5-60-120.
- (b) Unauthorized recordings (audio, video, or photographs) of protected health information will be considered a breach and must be reported immediately upon discovery through the Real Time Reporting System located on Department of Human Services SharePoint site.

V. Recordings of Employees for Investigations

- (a) DHS employees being questioned by an agency mediator, grievance officer, or investigator conducting an investigation will not record the proceeding. If the mediator, officer, or investigator records the exchange, the employee can request a transcript or copy later, if the release is allowed.
- (b) DHS employees serving as investigators will follow the recording procedures or policies established by their Division as they relate to their job requirements.

VI. Personal Recordings

- (a) Personal recordings (audio, video, photographs) among employees and supervisors with a personal device (like a cell phone or small digital recorder) are not allowed, unless the following four mandates are met:
 - (1) All parties involved in the conversation are aware of the recording;
 - (2) The recording device must be presented and made visible;

- (3) The other participants may record the proceeding with their own devices as well, or, may request a copy be made immediately; and
 - (4) All confidential information disclosed between employees and supervisors must remain confidential.
- (b) Any employee or supervisor who was recorded and who requests a copy of the recording must be allowed to observe the copying process to ensure the recording is not edited or altered.
 - (c) All personal recordings are subject to Freedom of Information Act (FOIA) requests, though confidential information would be redacted by the agency for the release.
 - (d) No protected health information, personal identifying information, or confidential information of any client shall be discussed or disclosed while the device is recording.

VII. Failure to Comply:

- (a) Unauthorized recordings of protected health information or confidential information may result in termination.
- (b) The DHS Privacy Officer will investigate all breaches and in the process of reporting incidents to federal authorities, may recommend appropriate sanctions, including termination, depending on the circumstances of the breach. Failure to report a breach can also incur disciplinary action. The supervisor may take additional disciplinary action under Policy 1084, "Employee Discipline Policy: Conduct and Performance."
- (c) If an employee makes an allegation against another employee or supervisor with a recording that fails to comply with the standards set forth in this Policy, specifically, all elements of Section VI., then the recording may be considered non-compliant, or unauthorized, and suspected of tampering or editing.
- (d) While employees have the right to record certain personal exchanges as outlined in this Policy, employees will be held responsible for recordings they make. If recordings are handled in a non-professional manner, shared inappropriately, or violate any other agency policy, including DHS Policy 1084 "Behavior Expectations," employees shall face disciplinary action, including, or up to, termination.