

Audio/Video Recording in Healthcare Practices

Question

Is it legal for my patients to record our conversations (either audio or video) during their appointments in my office?

Answer

Ninety percent of Americans own a smartphone¹ — and some patients use them to record their encounters with their healthcare providers. Patients might share these recordings with family members/caregivers and use the information to help recall important details and medical advice. However, in some cases, patients and families/caregivers are recording encounters without providers' knowledge or permission (whether legal or not), and some video has appeared on public websites and social media.

One study showed that almost 1 in 5 patients in the United States has recorded their medical appointments.² Some states allow audio recording if at least one party to the conversation consents. Therefore, patients may record a clinical visit without obtaining the healthcare provider's consent in those states. In other states, all parties must consent to the recording. State laws also might differ regarding telephone versus in-person recording requirements.³

In any state, healthcare providers can develop policies on patients using smartphones as a recording device in their healthcare practices. Policies may distinguish between recordings made in public areas (such as waiting rooms) and recordings made in private areas (such as examination rooms). Providers may want to consider prohibiting their patients from making recordings in public areas of the office to avoid any allegations of privacy breaches from other patients and staff members.

Give your patients a written copy of your policy, and ask them to sign it to acknowledge their understanding. Keep a copy of the signed form in each patient's record.

If your practice doesn't have a written policy on patients making audio/video recordings, you may want to consider this approach if your patients ask to record:

- Ask your patients why they want to record conversations so you can understand their intentions. You may learn that some of your patients need extra attention.
- Consider whether options/alternatives exist, such as recording only parts of the clinical encounter or providing written summaries or transcripts. Discuss these options with patients.
- Accept or decline the request. If you decline, explain why and offer to continue with the appointment. If your patient insists, use your discretion on continuing the appointment.
- Be sure to document in patients' health records if recording were made in your office. Documentation should include the duration of the recording, topics discussed, and other pertinent details. Ask patients for copies of recordings. When possible, retain copies of recordings in patients' health records.⁴

If a patient initiates a recording but does not give it to the healthcare provider, then the recording is not subject to HIPAA laws. HIPAA laws apply when the recording is "created or received" by a "covered entity," including healthcare practitioners.⁵

Patients may find it very beneficial to have recordings of their clinical visits, and the presence of a recording also can protect healthcare providers. Keeping the lines of communication open about audio/video recording may decrease any threats to other patients' privacy as well as the privacy of staff members. Below are some risk management tips regarding recording:

- Familiarize yourself with your state laws and regulations on audio and video recording.
- Touch base with your professional liability carrier about recording policies and responsibilities in relation to your malpractice insurance policy.
- Consult a HIPAA compliance officer or an attorney if your concerns include HIPAA violations or a damaged reputation as a result of allowing patients to record clinical encounters.
- Avoid responding to dissemination of information on social media or in public forums.⁶

In summary, healthcare providers should anticipate that some patients may want to create audio/video recordings of their appointments. Thus, healthcare practices should have policies in place

that cover any issues related to consent, limitations on recording locations in the office, duration, and content to avoid potential liability exposure.

Endnotes

¹ Pew Research Center. (2024, January 31). *Mobile fact sheet*. Retrieved from www.pewresearch.org/internet/fact-sheet/mobile/

² Barr, P. J., Bonasia, K., Verma, K., Dannenberg, M. D., Yi, C., Andrews, E., . . . Durand, M. A. (2018). Audio-/videorecording clinic visits for patient's personal use in the United States: Cross-sectional survey. *Journal of Medical Internet Research*, 20(9), e11308. doi: <https://doi.org/10.2196/11308>

³ Justia. (2024, September [last reviewed]). *Recording phone calls and conversations*. Retrieved from www.justia.com/50-state-surveys/recording-phone-calls-and-conversations/

⁴ Canadian Medical Protective Association. (2017). *Smartphone recordings by patients: Be prepared, it's happening*. Retrieved from www.cmpa-acpm.ca/en/advice-publications/browse-articles/2017/smartphone-recordings-by-patients-be-prepared

⁵ Elwyn, G., Barr, P. J., & Castaldo, M. (2017, July 10). *Can patients make recordings of medical encounters?* American Patient Rights Association. Retrieved from www.americanpatient.org/can-patients-make-recordings-of-medical-encounters/

⁶ Healthcare Training Leader. (2024, October 22). *5 ways to manage risk when patients want to record visits*. Retrieved from <https://healthcare.trainingleader.com/2024/10/manage-risk-patient-recordings/>

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