Audio/Video Recording in Healthcare Practices

Question
Are my patients allowed to record audio or video our conversations during their visits to my office?

Answer
With emerging technology and the proliferation of smartphones, many patients can record visits with their healthcare providers. These recordings might be shared with family members and caregivers and used to help recall important details and medical advice. However, in some cases, patients and families are recording encounters without providers’ knowledge or permission (whether legal or not), and some video has appeared on public websites and social media.

At least 1 in 10 U.S. patients now records discussions at medical appointments. In 39 of the 50 states and the District of Columbia, a one-party consent law allows the consent of any one party to a conversation to be sufficient, including the person making the recording. Therefore, patients may record a clinical visit without obtaining the healthcare provider’s consent in those states. However, the provider’s consent is needed in 11 states that have a two-party recording law. This law makes it illegal to make a recording without the permission of all parties to the conversation.

In any state, healthcare providers can devise a policy on using recording devices in their healthcare practices. The policy may distinguish between recordings made in public areas, such as waiting rooms, and recordings made in private areas, such as examination rooms.

Providers may also want to consider prohibiting patients from making recordings in public areas of the office to avoid any allegations of a privacy breach from other patients and staff members. Topics to discuss and the duration of the recording should also be included in the policy.
Give your patients a written copy of your policy, and be sure to get them to sign it to acknowledge their understanding. If your practice doesn’t have a written policy on audio/video recording by patients, you may want to consider this approach if patients ask to record:

- Ask them why they want to record the conversation so you can learn their intentions. You may learn that some patients need extra attention.

- Consider whether other options exist including recording only parts of the clinical encounter. Discuss these options with the patient.

- Accept or decline the request. If you decline, explain why and offer to continue with the appointment. If a patient insists, use your discretion on continuing the appointment.

- Be sure to document in the patient’s health record if a recording was made in your office. Documentation should include the duration of the recording, topics discussed, and other pertinent details. Also, ask the patient for a copy of the recording. When possible, retain a copy of the recording with the patient’s health record.

If the patient initiates the recording and does not give it to the healthcare provider, then the recording is not subject to the Health Insurance Portability and Accountability Act (HIPAA) laws. HIPAA laws apply when the recording is “created or received” by a “covered entity,” including healthcare practitioners.

It can be very beneficial to patients to have a recording 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. Most importantly, healthcare organizations should consider implementing a policy on audio/video recording that covers issues related to consent, limitations on recording locations in the office, duration, and content.

2 Ibid.
