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**Date:** August 6, 2009

DQA Memo 09-029

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**From:** Shari Busse, Director  
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**Via:** Otis Woods, Administrator  
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**Personal Wireless Handheld Device Guidance**

The Division of Quality Assurance (DQA) recognizes the value and efficiencies gained by the appropriate use of wireless handheld devices in healthcare settings and does not intend to prevent the legitimate use of new technologies. Rather, the purpose of this memo is to recommend uniform guidelines for the appropriate use of personal wireless handheld devices including, but not limited to, cell phones, cameras, and personal digital assistants (PDA's), as well as raise awareness of the potential for misuse of such devices.

Therefore, DQA recommends that healthcare facilities and nurse aide training programs (further referred to as entities) proactively respond to the potential privacy violations and caregiver misconduct issues that may arise from the use of such devices. This memo contains important information and guidance on the following topics:

- Wireless Handheld Device Usage Background,
- Resident Rights,
- HIPAA Protections,
- Caregiver Misconduct Issues,
- Entity Responsibility, and
- Resources.

## **Wireless Handheld Device Usage Background**

As the popularity of wireless handheld devices increases, so does the potential for misuse or abuse by electronic means. Cameras on cell phones, PDA's and laptops are particularly troublesome because they can be used without anyone knowing that a photograph is being taken. Further, the user can instantaneously transmit the photograph to the Internet, at which point the subject's confidential information may no longer be protected or private. Information may be transmitted by electronic media or transmitted or maintained in another form or medium. With the ever-increasing popularity of online social networking websites including, but not limited to, Facebook, MySpace, and YouTube, the potential for the inappropriate use of handheld devices in healthcare settings is also growing.

## **Resident and Patient Rights**

Wisconsin state statutes and administrative rules for all regulated healthcare providers consistently address each resident's and patient's right to privacy in care, treatment and accommodations. In addition, Wis. Stats 51.61 rights apply to patients served by AODA, mental health and psychiatric hospital programs. The inappropriate use of handheld wireless devices to capture or transmit images of residents receiving care and treatment or engaging in activities of daily living is not consistent with the provider's obligation to protect and promote each resident's right to privacy. Furthermore, invasion of privacy may form the basis for criminal or civil liability. See Wis. Stat 942.08, 942.09 and 995.50.

All entities have an obligation to protect the rights of their clients, patients or residents. For more information regarding resident rights, fair treatment, privacy and confidentiality, please access the Department's website at [http://dhs.wisconsin.gov/rl\\_DSL/index.htm](http://dhs.wisconsin.gov/rl_DSL/index.htm), select the appropriate provider type and go to Rules and Regulations.

## **HIPAA Protections**

All entities have a duty under the Health Insurance Portability and Accountability Act (HIPAA) of 1996 to protect Individually Identifiable Health Information (IIHI). Photographic and comparable images that record the physical or mental health or the condition of an individual fall within the definition of "protected health information" in 45 CFR 164.

Entities generally have recognized that photographs, which identify or allow for the identification of clients, constitute protected health information and have prohibited staff from taking photographs of a client without the client's consent. For more information regarding HIPAA requirements, please see the US Department of Health and Human Services website at <http://www.hhs.gov/ocr/privacy/index.html>.

## **Caregiver Misconduct Issues**

Along with resident rights violations and possible HIPAA violations, the misuse of handheld devices may also constitute caregiver misconduct. Over the last three years, the Department has

seen an increase in the number of reported incidents involving the misuse of camera phones and the inappropriate and unauthorized dissemination of client information. The following are actual case examples of incidents reported by Wisconsin healthcare facilities:

- Cell phone photo of a client with food all over her face posted on caregiver's MySpace webpage with statement "good eater."
- Cell phone video of a caregiver jumping on a client's bed and client repeatedly asking "why would you do this to me?" and to "stop."
- Cell phone photo of caregivers giving a combative client a shower.
- Cell phone photo of a client on the toilet with Attends on her head, which was then sent to another caregiver's phone.
- Caregiver was outside the facility showing a cell phone photo of a deceased client to friends.
- Caregiver wrote comments on her MySpace webpage using client's name.
- Caregiver showed a client sexually inappropriate cell phone photos.

### **Entity Responsibility**

To protect the safety of clients, staff, volunteers and visitors, it is recommended that entities adopt a written policy that defines the accepted appropriate use and the unaccepted inappropriate use of personal handheld devices in that entity's healthcare setting. This policy may be included as part of the entity's human resource policy and procedure manual and may incorporate the following:

- That personal devices are never to be used to record images of clients. If such images are needed for purposes of care or training, they should be obtained by authorized persons only and use only the equipment specified in the policy.
- Indicate that any authorized photographs or images are the sole property of the entity and that the distribution of these photographs or other images to any person outside the entity's setting without written authorization for a permissible use is prohibited.
- Define the areas of the entity and the circumstances in which personal cell phone and other wireless handheld devices may be used, i.e. on breaks or lunch in the breakroom or outside, etc. Specify the consequences for failure to abide by the entity's policy.
- Inform clients (or designated responsible agent) and family/visitors about privacy considerations and the use of personal cameras, cell phones and wireless handheld devices.
- Ensure that all staff, contract/pool agency staff, students and volunteers are aware of and trained on the entity's written policy on the use of personal cell phone and other wireless handheld devices.

Entities are strongly encouraged to regularly review and update policies and handbooks to assure that they are reflective of current (and future) technologies in order to assure client protection and privacy. Policies currently in place may not be reflective of the current usage/availability of cell phones/cameras. Consideration should also include that the use of personal devices can cause disruption and distraction to the caregiving process, aside from the privacy considerations. The following examples are actual entity and training program policies shared with DQA:

### *Entity Policy Examples*

#### *Example 1*

Use or possession of personal electronic devices capable of audio and/or video recording and or transmission is prohibited in any area open to, or adjacent to, areas of resident access. This includes devices capable of texting and still photographs. Use of any personal electronic device that impairs or distracts an employee's ability to respond to alarms, resident or staff injury, overhead pages, verbal warnings or calls for assistance is prohibited.

#### *Example 2*

Facility X prohibits the use of personal cell phones or PDA's during working hours for incoming and outgoing calls, text messaging and taking of photographs. The use of camera phones, PDA's or other audio or video recording capable devices within this facility may constitute an invasion of resident, patient and employee personal privacy. Therefore, the use of camera or other video-capable recording devices is prohibited without the express prior permission of the administrative team and of the person(s) present for the photography.

#### *Example 3*

Personal calls during work hours, regardless of the phone's use, can interfere with employee productivity and be distracting to others. Cell phones are not to be carried on the job without specific permission from management. Employees found using their cell phone or PDA during working hours will have their device taken by the supervisor until the end of the shift. Employees found using personal equipment to take photographs of residents or patients will have the equipment confiscated and receive corrective action up to and including termination.

#### *Nurse Aide Training Program Policy Example*

Personal cell phones and other electronic devices must be turned off while in the classroom and lab. Electronic communication devices are not allowed on your person when in the clinical portion. Students participating in a clinical rotation of a nurse aide training program must abide by the policies and procedures of the facility to which they are assigned.

### **Resources**

Please see the following articles related to wireless handheld device usage in healthcare settings:

- [Cell Phone Camera Use in Healthcare Facilities: Shutter It](#), Patricia A. Markus, Esquire and Erin S. Zuiker, Esquire, Smith Moore Leatherwood LLP
- [Hospitals Nationwide Combat Employee Camera-Phone Abuse](#), Randy Dotinga
- [Camera Phones Create Privacy Issues in Hospitals](#), Staci Curran, RN,C. MSN and Mary Ann Zeserman, RN, C, SN

If you have questions regarding HIPAA or resident rights requirements, please contact the appropriate DQA Bureau. See [http://dhs.wisconsin.gov/rl\\_dsl/bqa.htm](http://dhs.wisconsin.gov/rl_dsl/bqa.htm) for contact information. If you have questions regarding caregiver misconduct issues, please contact the Office of Caregiver Quality at [DHSCaregiverIntake@wisconsin.gov](mailto:DHSCaregiverIntake@wisconsin.gov) or (608) 261-8319.