



State, federal laws govern whether doctor visits can be recorded

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At a clinic visit for a child with developmental concerns, the patient's father takes out his smartphone and begins videotaping your discussion of next steps for behavioral management of his child. He states that this will help him remember how to care for his child. You have had prior conflicts with this family and are uncomfortable with the conversation being recorded. What can you do?

Audio and video recordings of doctors' visits can be used to improve patients' and families' understanding of medical conditions and care instructions. In some situations, however, providers may be concerned that recordings could be harmful or illegal or may cause liability down the line.

What legal protections apply to recordings of doctors' visits, and what rights do doctors have to limit recordings when they are uncomfortable?

The federal wiretapping law (18 U.S. Code §2511) requires that only one party consent to recording a conversation. States also have laws governing recording. In most cases, state laws that are more restrictive than federal law would supersede the federal statute (*Privacy: An Overview of Federal Statutes Governing Wiretapping and Electronic Eavesdropping. Report for Congress. January 2003, <https://www.epic.org/privacy/wiretap/98-326.pdf>*).

In states requiring only one party's consent, a patient may claim to have a right to record the conversation regardless of whether the provider agrees. Twelve states (California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, New Hampshire, Oregon, Pennsylvania and Washington) require all parties to a conversation to consent to recording. In these states, recording an encounter with a physician would not be allowed without the physician's consent (Elwyn G, et al. *JAMA*. 2017;318:513-514).

Even if only one party's consent is needed to record a conversation under state law, other policies and protections may limit recording of physician visits. Some health care practices have policies restricting patients' and families' abilities to use photography or recording devices in the facilities; others may call for approval to record clinical care or require that recordings are discontinued if the physician, nurse or another staff member deems this necessary. State laws and a practice's location may govern the types of restrictions and policies that can be implemented. A practice on private property may have more options to limit recording of physician encounters.

If a patient or family member records an interaction with a provider, Health Insurance Portability and Accountability Act (HIPAA) privacy restrictions would not apply since the recording party is not a covered entity under HIPAA. Recording other patients, however, would be prohibited.

Practices can take steps to prevent prohibited recordings, such as posting signs restricting recording in the waiting room or other common areas or including such guidelines in privacy policies.

If someone makes an unauthorized recording in a state that requires all parties to consent, he or she may face legal consequences, including possible felony charges. There may be additional legal consequences for disseminating the recording.

While patients would not be prevented from disseminating a recording made in states in which only one party's consent is required, other legal ramifications may apply, particularly if a physician's reputation is damaged.

Risk management pointers



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AAP News

- Be familiar with laws regarding audio and video recording in your state of practice.
- Develop practice policies on recording or consult your institution about existing policies.
- Confer with a local malpractice carrier regarding recording policies and responsibilities under HIPAA in your state of practice.
- Consult an attorney or compliance officer if you are concerned about HIPAA violations or reputation damage resulting from recordings.
- Avoid responding to dissemination of information on social media or in public forums.

Dr. Sigman is a member of the AAP Committee on Medical Liability and Risk Management.

Resources

- [AAP News article "Should pediatricians allow parents to videotape office visits?"](#)
- [Additional Pediatricians and the Law columns](#)