

# REQUEST FOR CLARIFICATION/INTERPRETATION

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| TO: | Name and Title:<br>Jannis Conselyea   | FROM: | Name and Title:<br>Chris Kleinsasser DDP QIS |
|     | Organizational Unit:<br>DPHHS/DSD/DDP |       | Organizational Unit:<br>DDP Region II        |
|     | Address:<br>HELENA, MT                |       | Address:<br>Great Falls, MT                  |

1. TYPE OF REQUEST:  Follow-up to Verbal Request  Written Request

## 2. STATEMENT OF QUESTION OR ISSUE:

I've attended a couple of consumer meetings lately where a provider has recorded the meeting. They stated they were doing it prior to the meeting and sent a sign in sheet around that basically stated that all parties were made aware of the recording and that they used the information for planning purposes.

1. Can a provider do this?
2. Do consumers and or team members have the right to refuse a recorded meeting?
3. Is this in compliance with HIPAA?
4. What's the liability for the state and provider?
5. If this is acceptable, what provisions need to be put in place for all parties to be in compliance?

## RESPONSE:

1. A meeting can be recorded as long as all parties are in agreement and all parties sign a written release which states why the meeting is being recorded, what the recording will be used for after the meeting and provides a date the tape will be destroyed. All parties should realize that should a lawsuit be entered into by any of the participating parties, the court has the right to order any or all recordings subpoenaed as evidence.
2. Any party present at a meeting has the right to refuse participating in a recorded meeting. The party who refuses then must either leave the meeting if the other attendees wish to participate in a recorded meeting and have signed a written release agreeing to the recording of the meeting, or the request to record the meeting may be withdrawn. If a participating member has a guardian, the guardian must sign the release prior to the individual participating in a recorded meeting.
3. There are no HIPPA issues as long as there is a written, signed document by the participants which gives a participant the right to record the meeting and the tape is locked in a safe, secure cabinet.
4. There is always the potential of liability for the state or the provider when meetings are recorded.
5. A written release form needs to be provided by the participant requesting the recording of the meeting and all parties must agree to the recording of the meeting and sign a release form.

Approved and Issued by:  Jeff Sturm, Program Director  
Developmental Disabilities Program 1/26/2010

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| <p>4: DISTRIBUTION:</p> <p>One Copy: Requestor</p> <p>One Copy: Manual Coordinator</p> <p>One Copy: Division Files</p> <p>Additional Copies:</p> <p><input type="checkbox"/></p> | <p>5: FOLLOW-UP:</p> <p><input type="checkbox"/> To be issued as Bulletin to: _____ (Division Administrator)</p> <p>Manual. Expected Date of Issuance:</p> <p><input type="checkbox"/> A.R.M. Change</p> <p><input type="checkbox"/> State Plan Change</p> |
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