

Title: Recording Meetings

Issuance Date: July 2, 2024

(Must be reviewed annually)

Applicable Regulations, Guidelines, and AHS Policy:

Federal statute or rule:

- Standards for the Privacy and Security of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");
- 45 C.F.R. § 155.260;
- 42 CFR Part 431 Subpart F; and
- 42 CFR Part 2.

Vermont statute or rule:

- Agency of Human Services Consumer Information Privacy and Security Rule 08-048;
- Vermont Public Records Act: 1 V.S.A. §§ 315 et seq.;
- Vermont Open Meeting Law: 1 V.S.A. §312(a)(1)

Other:

- Laws of other states may prohibit recording conversations without notice or consent.

Purpose:

This SOP addresses the recording of business meetings conducted by DVHA staff. DVHA strongly discourages recording of business meetings. The recording of business meetings implicates significant existing state and federal statutes, regulations, guidelines and policies that must be addressed when a recording is created. These include, but are not limited to, 1) DVHA's obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 C.F.R. § 155.260, 42 C.F.R. Part 431 Subpart F, and 42 C.F.R. Part 2, to protect individually identifiable and/or health information acquired and used by DVHA; 2) DVHA's obligations under the Vermont Public Records Act (1 V.S.A. § 315 et seq.)

Standard Operating Procedure

to preserve records produced or acquired in the course of business; and 3) the privacy rights of individuals who participate in the meeting, who may participate remotely from other states or jurisdictions that have laws that differ from Vermont. Because of the complex relationship between DVHA's obligations both to protect entire categories of information from disclosure and enable transparent disclosure of DVHA records where appropriate, business meetings shall not be recorded by DVHA staff unless the party that seeks to record the meeting requests, and is granted, prior approval to record the meeting.

DVHA staff who wish to record a business meeting, or to instruct a contractor to record a business meeting, must receive prior approval from DVHA Legal. Once authorized, notice to participants must be provided prior to and during all recorded meetings.

DVHA Legal generally considers contractor records to be subject to disclosure under the Public Records Act once they can be directly accessed by DVHA staff. This includes documents on the contractor's SharePoint and any recording of a meeting that is reviewed by DVHA staff in the course of DVHA business.

Public hearings held to provide a venue for public comment on a proposed rule during the rulemaking process may be recorded without prior approval but notice requirements must be followed.

Procedure:

Request to Record a Meeting:

Any request to record a business meeting must be approved by DVHA Legal. Please contact DVHA Legal to request approval for recording of a meeting and copy your supervisor on the request. Requests should be submitted at least ten business days prior to the time of the meeting. This period may be shortened in exceptional circumstances. Staff that wish to record a meeting must state in their request:

- 1) The subject matter of the meeting,
- 2) The expected participants, and
- 3) Why other methods of documenting the meeting are not practicable.

As needed, the requesting staff will also work with DVHA Legal and the Public Records Officer to determine a records schedule applicable to the meeting record, and a storage location for the Record Copy of the meeting.

Notice Requirements for Recording of Meetings:

Unannounced or covert recording of meetings carries potential legal risks and does not align with the level of transparent, responsible, professional conduct expected of DVHA staff. To ensure that meeting attendees, especially phone participants and the visually impaired, are properly notified and prepared to have their participation recorded, the following steps must be followed every time a meeting is to be recorded:

- 1) Notification in writing to attendees - All attendees must be notified in writing at the time the meeting is scheduled and by a reminder within 48 hours before the meeting that the meeting will be recorded. The following notice shall be provided:

This meeting will be recorded. This recording and all paper and electronic copies of materials presented or shared on the screen will be subject to Vermont's Public Records Act. This means the recording and all paper or electronic copies of material will be made available to the general public upon request. Participants are responsible for ensuring that no confidential or proprietary information is presented or discussed in the meeting and associated materials. This recording may not be deleted or destroyed except as provided under DVHA's record retention schedule.

- 2) Visual and spoken notification - The following message must be read out loud at the start of the recording. If the meeting is recorded on video, this notification should also be displayed on screen the first time it is read aloud.

THIS MEETING IS BEING RECORDED

This recording and all paper and electronic copies of materials presented or shared on the screen will be subject to Vermont's Public Records Act. This means the recording and all paper or electronic copies of material will be made available to the general public upon request.

Participants are responsible for ensuring that no confidential or proprietary information is presented or discussed in the meeting and associated materials.

- 3) Attendees who were not present when the notice was read at the beginning of the meeting should be given a brief reminder that the meeting is being recorded if the attendee will be visible or audible in the recording. Reminders should also be provided if opening up the floor for questions or comments.

Conducting a Recorded Meeting:

When sharing screens or attending on camera, ensure that nothing personal or confidential is included in the recording.

- Close all unused programs, documents, and browser tabs.
- Do not share your screen while browsing file folders to open or save documents.
- Close Outlook and disable all on-screen notifications.
- Protect the privacy of your family: Remove family photos from the background if appearing on camera, do not use family photos as your desktop background if sharing your screen, and ensure that family members are not recorded on screen or heard speaking in the background.

Recorded meetings must be conducted with the same level of formality as meetings open to the public.

Revision History:

Date	Summary of Revisions
2/14/23	Language updated to clarify that this policy applies to business meetings. Also, to include language that public hearings for the purpose of public comment during the rulemaking process does not require prior authorization to be recorded. Also updated the notification to use less legalese.
6/22/23	OMU update to ADA template.
7/2/24	Annual review, minor edits for clarification.

Table 1 Revision History