

Electronic Recording of Conversations

(Issued July 2008)

(Reviewed May 2014)

Purpose

To clarify that DVR consumers are legally able to tape record conversations with DVR staff without informing the staff that the conversation is being recorded. To clarify that DVR staff are not able to tape record conversations without the consumer's consent.

Rationale

This issue arises from the receipt by DVR of a recorded conversation between a consumer, a DVR counselor and a third party. The consumers taped the conversation with the assistance of the third party.

Findings

1) Electronic Recording of Conversations by DVR Consumers

According to Wis. Stat. § 968.31: A person who is a party to a wire, electronic or oral communication, or who has obtained prior consent from one party, can legally record and divulge the contents of the communication, unless he does so for the purpose of committing a criminal or tortious act. Therefore, it is not unlawful in Wisconsin to record telephone conversations to which one is a party, even in the absence of disclosure to and consent of other parties to the conversations. [See Wis. Stat. § 968.31(2)(c), 18 U.S.C. § 2511(2)(d)].

Federal law also allows recording of telephone calls with the consent of at least one party to the call. This means that if an individual places, receives, or joins a call, that individual may record the telephone call (without giving any warning or notice) and may later make use of the recording (including court room use). Thirty-eight states and the District of Columbia permit an individual to record such telephone conversations. These laws are called "one-party consent" statutes. Wisconsin is one of those states.

2) Electronic Recording of Conversations by DVR Staff

This guidance under 1) above is not to be interpreted as permission for DVR staff to electronically record conversations with consumers without the consumer's knowledge. Such practice may be a violation of professional ethics rules and is not be permitted by DVR.

If a DVR staff person believes it is necessary to electronically record a conversation with a DVR consumer, he/she must clearly ask the consumer for consent to do so. If consent is provided such consent must be stated at the beginning of the recording.

If there are legal reasons to record a consumer without that consumer's consent, it can only be done after DWD legal counsel has reviewed the request and obtained all legal permissions necessary for such recording.