

 <p>Winnipeg Regional Health Authority Office régional de la santé de Winnipeg Caring for Health À l'écoute de notre santé</p> <p>POLICY</p>	<p>REGIONAL</p> <p>Applicable to all WRHA governed sites and facilities (including hospitals and personal care homes), and all funded hospitals and personal care homes. Including all other funded entities unless excluded within a particular Service Purchase Agreement.</p>		Level: 1
	Policy Name: Audio, Video, and Photographic Recordings	Policy Number: 10.40.280	Page 1 of 11
	Approval Signature: <i>Original signed by A. Wilgosh</i>	Section: General Administration	
	Date: March 2014	Supercedes: New	

**Attached to this policy is an appendix with a policy highlights overview.*

1.0 **PURPOSE:**

- 1.1 To establish effective and efficient processes in order to clarify the situations where Recordings may be made in relation to health care services within the Winnipeg-Churchill Health Region.
- 1.2 To outline the process for obtaining consent for the purpose of making Recordings where such Recordings are permitted.
- 1.3 To assist Health Care providers in the provision of Health Care to Patients by documenting injuries, the progress of a disease, or other Health Care matters through Recordings. In addition to ultimately benefiting the direct care for the Patient, such Recordings may also serve as a valuable educational or scientific tool.
- 1.4 To benefit a Patient through recording information received from a Health Care provider which may serve to assist them in better understanding their disease, condition or care and following the advice of the Health Care provider.
- 1.5 To allow a Patient to record certain Health Care events for personal reasons.
- 1.6 To reasonably provide for the safety and security of every person and the prevention of crime on property owned or operated by the WRHA/Health Care Facility.

2.0 **DEFINITIONS:**

- 2.1 **Consent:** Voluntary agreement or permission that is knowledgeable and free of fraud, duress, or misrepresentation. Consent is knowledgeable if the Patient who gives it has been provided with the information that a reasonable person in the same circumstances would need in order to make a decision about the purpose, making, collection, use, or disclosure of the Recording.
- 2.2 **Health Care:** Any care, service or procedure:
 - (a) provided to diagnose, treat or maintain an Patient's health;
 - (b) provided to prevent disease or injury or promote health;
 - (c) that affects the structure or a function of the body,
and includes the sale and dispensing of a drug, device, equipment or other item pursuant to a prescription.

- 2.3 Health Care Facility: A hospital, personal care home, psychiatric facility, medical clinic, laboratory, CancerCare Manitoba, community health centre, or other facility in which Health Care is provided and that is designated in the PHIA regulations.
- 2.4 Health Record: A compilation of Personal Health Information about an individual that is typically created by health care providers and is maintained and stored by facilities or programs of the WRHA or WRHA funded facilities as the official record of care and services provided. The Health Record is the physical property of a facility or program of the WRHA or WRHA funded facility. For the purposes of this policy, the Health Record includes a *clinical record* as defined in *The Mental Health Act* of Manitoba.
- 2.5 Media: Representatives of print, electronic and web-based news and current affairs outlets.
- 2.6 Medical Staff: Includes all physicians, dentists, midwives, psychologists, scientists, clinical assistants and trainees appointed by the WRHA Board to the Medical Staff pursuant to the WRHA Medical Staff Bylaw.
- 2.7 Member of the Public: Any person other than: (a) a Patient; (b) Staff; or (c) Media as defined by the WRHA Media Relations policy 10.30.020.
- 2.8 Patient: A patient, client, or resident receiving Health Care from the WRHA/Health Care Facility and where applicable includes Persons Permitted to Exercise Rights on Behalf of the Patient.

For greater clarity, Staff cease to be considered as such for the purposes of this Policy when they become a patient, client, or resident receiving Health Care from the WRHA/Health Care Facility and shall be bound by the Policy as if they were an Patient.

- 2.9 Personal Health Information: The information defined as personal health information in *The Personal Health Information Act (PHIA)* (Manitoba).
- 2.10 Personal Information: The information defined as personal information in *The Freedom of Information and Protection of Privacy Act (FIPPA)* (Manitoba).
- 2.11 Person Permitted to Exercise the Rights of the Patient:
- 2.11.1 (a) Any person with written authorization from the Patient to act on the Patient's behalf;
- (b) A proxy appointed by the Patient under *The Health Care Directives Act*;
- (c) A committee appointed for the Patient under *The Mental Health Act* if the committee has the power to make health care decisions on the person's behalf;
- (d) A substitute decision maker for personal care appointed for the Patient under *The Vulnerable Persons Living with a Mental Disability Act* if the exercise of the right relates to the powers and duties of the substitute decision maker;
- (e) The parent or guardian of an Patient who is a minor, if the minor does not have the capacity to make health care decisions;
- (f) The Personal Representative of a deceased Patient.

2.11.2 If it is reasonable to believe that no person listed in any clause of 2.8.1 exists or is available, the adult person listed first in the following who is readily available and willing to act may exercise the rights of an Patient who lacks the capacity to do so:

- (a) The Patient's spouse, or common-law partner, with whom the Patient is cohabiting;
- (b) A son or daughter;
- (c) A parent, if the Patient is an adult;
- (d) A brother or sister;
- (e) A person with whom the Patient is known to have a close personal relationship;
- (f) A grandparent;
- (g) A grandchild;
- (h) An aunt or uncle;
- (i) A nephew or niece.

Ranking: The older or oldest of two or more relatives of equal ranking described above is to be preferred to another of those relatives.

- 2.12 Personal Representative: An Executor/Executrix or joint Executor/Executrix named in a deceased Patient's will; or a court appointed Administrator or joint Administrator of a Patient's estate.
- 2.13 PHIA: *The Personal Health Information Act (Manitoba).*
- 2.14 Recording: An audio, video, or photographic record in any form that is recorded, transmitted or stored in any manner or on any medium (including but not limited to cameras, smartphones and portable electronic devices), or by any means, including film, tape, analog, digital, graphic, electronic or mechanical means.
- A Recording may or may not contain Personal Health Information and/or Personal Information.
 - A Recording includes live audio and/or video streaming through the internet.
 - A record made by medical equipment that serves a medical purpose such as, but not limited to, x-rays, CT scans, MRIs, ultrasounds, EKGs and pharyngograms are not included in the definition of Recording.
- 2.15 Secure Environment: Reasonable administrative, technical and physical safeguards that ensure confidentiality, security, accuracy and integrity of the Recordings, including controls that limit the use and access to Recordings, verification of a person's authorization to use or access Recordings, and procedures to prevent the interception of Recordings by unauthorized persons.
- 2.16 Staff: Includes all directors, officers, employees, volunteers, students, researchers, Medical Staff, educators, information managers (as defined by PHIA), trustees (as defined by PHIA), health agencies, contracted persons, or agents of any of the above, that work, provide services, or otherwise operate in connection with the WRHA/Health Care Facility unless excluded as set out within a particular service purchase agreement or funding agreement of the funded entity or program.

POLICY:

3.0 Recordings By Staff:

3.1 Recordings of Patients shall only be undertaken by Staff with the written or verbal Consent of the Patient and only if it relates directly to an existing Health Care service or activity of the WRHA/Health Care Facility. Recordings for educational purposes, scientific research, Patient identification, marketing and public relations are included as a related and permissible service or activity, provided appropriate Consent is obtained.

Exception:

- Where a Recording of a Patient is medically necessary in an emergent situation written or verbal Consent is not required;

3.2 In the event that a Recording of a Patient is required for forensic, educational, research, marketing, or public relations purposes, a written Consent must be completed by the Patient on a form approved by the WRHA/Health Care Facility.

3.3 Prior to making a Recording of a Patient, Staff shall obtain the written or verbal Consent from the Patient who is the subject of the Recording. In the event that written Consent is obtained, the Consent shall be filed in the Patient's Health Record. In the event verbal Consent is obtained, it shall be documented in the Patient's Health Record. The written Consent and the documentation in the Health Record of verbal Consent shall include:

- (a) the type of Recording;
- (b) the purpose of the Recording;
- (c) the subject matter of the Recording;
- (d) that Consent was obtained from the Patient; and
- (e) the name of the person who obtained the consent.

3.4 In the event that Recordings of Patients are to be undertaken over the course of more than one treatment, Staff are only required to obtain the Consent from the Patient once prior to the first treatment if the Patient is made aware of the intent to make Recordings over the course of future treatments. The Consent shall be considered as authorization for a period of up to one year following the date the Consent was obtained. Any significant change to the course of treatment, or purpose or intended use of the Recordings, requires a new Consent.

3.5 Consent may be withdrawn by a Patient at any time and shall be documented by Staff in the Patient's health record as being withdrawn.

3.6 Where practicable, the Recording shall be filed in the Patient's health record.

3.7 In the event that the Recording of a Patient is taken for educational or scientific purposes, Staff shall, where feasible, ensure that the identity of the Patient cannot be ascertained by taking reasonable steps to avoid the inclusion of identifying features or information.

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3.8 All Recordings of Patients shall be maintained in a Secure Environment to ensure confidentiality and shall not be used for any other purpose without the written or verbal Consent from the Patient except pursuant to PHIA, FIPPA, *The Mental Health Act* or other applicable federal or provincial legislation.

Exception: where the Recording is made for the purpose of providing it to the Patient in accordance with a healthcare service or activity, the Recording does not need to be retained by the WRHA/Health Care Facility.

3.9 A Recording of a Patient shall be retained pursuant to the WRHA *Retention and Destruction of Facility Health Records* policy 75.00.050 and/or any other applicable policy of the WRHA regarding the retention or destruction of records. Where a Recording is to be destroyed, it shall be destroyed in a manner that ensures the Recording is permanently destroyed or erased and cannot be reconstructed or recovered in any way.

3.10 In the event that a Recording is to be made by the WRHA Media Relations Department personnel or WRHA/Health Care facility communications representatives of Staff (not a Patient), Consent may be written, verbal or implied. Staff are not required to permit a Recording to be made of themselves by WRHA Media Relations Department personnel or WRHA/Health Care facility communications representative. Staff may withdraw Consent to make or use a Recording at any time.

Recordings for Safety, Security or Crime Control Purposes:

3.11 Recordings made by appropriate security Staff for safety, security or crime control purposes:

- (a) Do not require written or verbal Consent;
- (b) Except where otherwise legally permitted, shall only occur in areas where clear and understandable signage is present informing the persons present that video or photographic Recordings may be undertaken;
- (c) Shall not be undertaken in areas with a higher expectation of privacy such as a washroom, change room, shower facility, private office, or operating/examination room;
- (d) Shall be stored for a period of twenty days (20) in a secure location with controlled access by authorized security Staff;
- (e) May be preserved at the sole discretion of the WRHA/Health Care Facility for a period in excess of twenty (20) days; and
- (f) Shall be securely destroyed after twenty (20) days unless the WRHA/Health Care Facility has determined, in its sole discretion, to preserve the Recording for a longer duration.

3.12 Copies of Recordings undertaken by appropriate security Staff for safety, security or crime control purposes shall only be produced to Patients, Members of the Public, Media and police in order to comply with a subpoena, warrant, or order issued or made by a court, or pursuant to PHIA, FIPPA, *The Mental Health Act*, *The Missing Persons Act* or other applicable federal or provincial legislation. A copy of any subpoena, warrant or order shall be maintained and the disclosure documented accordingly.

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- 3.13 A copy of a Recording undertaken by appropriate security Staff for safety, security or crime control purposes may be given to a police service or police officer without a warrant or court order:
- (a) where the police are investigating an offence that has occurred, in whole or in part, on or adjacent to the property of the WRHA / Health Care Facility; or
 - (b) on written demand by police where a missing person is at risk of immediate and serious bodily harm or death; or
 - (c) in other exigent circumstances where there is a threat of immediate and serious harm or death to any person.
- 3.14 Observation by appropriate security Staff for safety, security or crime control purposes of Patients through Closed Circuit Television Systems (“CCTV”) may or may not occur simultaneously with Recordings. Access to Recordings and CCTV observation shall be restricted to appropriate security Staff who are trained and authorized to do so. Security Staff who operate Recording equipment for safety, security or crime control purposes shall abide by their obligations to protect the privacy of those persons being recorded.
- 3.15 A representative of a police service or a police officer shall not be permitted to observe Patients, Staff or Members of the Public by means of CCTV, whether or not the CCTV is generating a Recording, for the purposes of surveillance without a warrant or court order, except on written demand by police where a missing person is at risk of immediate and serious bodily harm or death or other exigent circumstances.
- 3.16 Where Recordings for safety, security or crime control purposes occur, each WRHA/Health Care Facility shall designate a person to respond to requests from anyone who is the subject of a Recording in order to advise of the following:
- (a) who is viewing the Recording;
 - (b) the purpose of the Recording;
 - (c) what information is being captured on the Recording; and
 - (d) how the Recording may be used.

Recordings by Patients:

- 3.17 **Audio:** A Patient may be permitted to make an audio Recording of the provision of Health Care or any other service or activity of the WRHA/Health Care Facility that they are receiving or participating in if they obtain prior written or verbal Consent from every person, including Staff, who will be recorded. Every Staff member that consents to being recorded on a Recording may require that the Consent be in writing, signed by the Staff member, and a copy provided to the Staff member for filing on the Health Record or otherwise retained as may be applicable.

Regardless of whether Staff Consent to being recorded, Audio Recordings are not allowed where:

- (a) the audio Recording would create a risk to the safety or health of the Patient or any other person; or
- (b) the audio Recording would be disruptive to the provision of Health Care or any other service, or activity of the WRHA/Health Care Facility; or
- (c) the audio Recording would permanently or temporarily interfere with or disrupt the proper or safe operation of medical equipment as per the WRHA *Public Use of Cell Phones and Other Wireless Communication Devices – Interference with Medical Equipment* policy 10.20.041, or other electronic or mechanical devices or equipment being operated by or for the WRHA/Health Care Facility; or
- (d) information is being provided to inform a Patient or a Person Permitted to Exercise Rights of an Patient in respect to a critical incident pursuant to Part 4.1 of *The Regional Health Authorities Act*.

3.18 **Video/Live-Streaming/Photographic:** A Patient shall not be permitted to make a video, live-streaming, or photographic Recording of any service or activity of the WRHA/Health Care Facility except in the following circumstances:

- (a) Where Staff is providing necessary information to the Patient by way of a physical demonstration of Health Care or a service or activity that the Patient is receiving and they obtain prior written or verbal Consent from every person, including Staff, who will be recorded; or
- (b) For the non-surgical birth of a child of the Patient and they obtain prior written or verbal Consent from every person, including Staff, who will be recorded.

Regardless of section 3.18(a) and (b), video/live-streaming/photographic Recordings are not allowed where:

- (c) it would create a risk to the safety or health of the Patient or any other person; or
- (d) it would be disruptive to the provision of Health Care or any other service or activity of the WRHA/Health Care Facility; or
- (e) it would permanently or temporarily interfere with or disrupt the proper or safe operation of medical equipment as per the WRHA *Public Use of Cell Phones and Other Wireless Communication Devices – Interference with Medical Equipment* policy 10.20.041, or other electronic or mechanical devices or equipment being operated by or for the WRHA/Health Care Facility; or
- (f) information is being provided to inform a Patient or a Person Permitted to Exercise Rights of a Patient in respect to a critical incident pursuant to Part 4.1 of *The Regional Health Authorities Act*.

3.19 A Patient is not required to obtain Consent and is permitted to make a Recording of their own Health Care progress or other event unrelated to an existing service or activity of the WRHA/Health Care Facility (such as a family or social gathering/celebration) where no other Patient, Staff, Member of the Public or existing service or activity of the WRHA/Health Care Facility is being captured in the Recording.

3.20 Family and/or Members of the Public that are acting with the Consent and under the direction of the Patient or the Person Permitted to Exercise the Rights of a Patient may make the Recordings on behalf of the Patient provided that the Recording is otherwise permitted under this policy. In all other circumstances, family and/or Members of the Public are not permitted to make a Recording.

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- 3.21 A Patient authorized pursuant to this policy to make an audio Recording may use an electronic device that records both audio and video simultaneously, such as a smartphone, if the video camera is covered or directed such that it does not capture images.
- 3.22 Consent may be withdrawn at any time in respect to Recordings by Patients.
- 3.23 Police are permitted to make their own photographic Recording of a Patient for the purposes of identification. In the event the police make a photographic Recording of a Patient for identification purposes, Staff shall document the event in the health record.

Recordings by the Media and other exceptional circumstances:

- 3.24 Media shall be permitted to make Recordings of Patients, Staff, Members of the Public at the WRHA/Health Care Facility, and/or the provision of Health Care or other services and activities of the WRHA/Health Care Facility provided that they follow the requirements of the Media Relations Policy 10.30.020 and obtain prior written or verbal Consent from every person who will be recorded.
- 3.25 The President and CEO of the WRHA and the COO of the Health Care Facility may permit Recordings by any other person in exceptional circumstances on the condition that Consent is obtained from every person to be recorded and such consent is documented accordingly.
- 3.26 Consent may be withdrawn at any time in respect to Recordings made by the Media or in other exceptional circumstances.

4.0 **PROCEDURE:**

Recordings by Staff (other than by security Staff for safety, security or crime control purposes):

- 4.1 To ensure appropriate Consent is obtained, Staff shall:
 - 4.1.1 Provide an explanation to the Patient including:
 - (a) the purpose of the Recording (e.g. medical, educational, forensic);
 - (b) what will be captured by the Recording;
 - (c) the approximate number of photos or images to be taken and/or the approximate length of time the session will take, or duration of the Recording as the case may be;
 - (d) the Recording medium to be used (eg. film, digital, audio or video);
 - (e) the identity of those persons who will observe the Recording, if known; and
 - (f) the possibility that the Recording will be observed by others but only in accordance with the Patient's consent or applicable legislation.
 - 4.1.2 Answer any of the Patient's questions concerning the Recording.
 - 4.1.3 Ensure the Patient understands that they can refuse to provide or withdraw Consent, has the right to stop the Recording at any time, and that any decision in this regard shall not impact in any way the service they are receiving.

Recordings for Safety, Security or Crime Control Purposes:

- 4.2 In the event of a written request by a police service or police officer to receive a copy of a Recording, the security manager or manager of facility & support services/facility administrator, or the WRHA regional manager of security, or the individual designated by the facility to respond to police requests, shall only produce a copy if satisfied that the purpose of the request is:
- (a) reasonably related to the investigation of a criminal act that may have been captured on the Recordings and there is activity recorded that relates to a criminal act; or
 - (b) to assist in locating a missing person; or
 - (c) to prevent or lessen a threat of immediate and serious harm or death to any person.
- 4.3 In the event that authorization is granted for a police service or police officer to receive a copy of a Recording, prior to producing the Recording the police service or police officer must acknowledge in writing or within a control log the following information:
- (a) The identity of the police service and the police officer, including badge number;
 - (b) The identity or description of the person or incident sought to be observed or viewed; and
 - (c) The purpose(s) or reason(s) for viewing or receiving a copy of the Recording.
- If the request is recorded in the control log, it shall be dated and signed by the police officer or representative of the police service as the case may be.

Recordings by Patients (including family members or Members of the Public):

- 4.4 In the event that Staff are requested to provide Consent to be recorded in a Recording, Staff shall promptly advise their direct manager or supervisor of the request prior to any decision to permit the Recording.
- 4.5 In the event that a Patient obtains Consent to make a Recording in accordance with this policy, the written Consent shall be filed with the Patient's Health Record, or an entry shall be documented on the Patient's Health Record confirming verbal consent. The Consent shall indicate the type of Recording, the purpose of the Recording (informed consent, diagnosis, demonstration, etc.), the name of the person who performed the Recording, the subject matter of the Recording, and that written or verbal Consent was obtained from every person who was to be recorded.
- 4.6 In the event that Staff observes a person making a Recording contrary to this policy, Staff:
- (a) shall either advise the person that the Recording is contrary to WRHA policy and request that the person cease making the Recording or promptly notify the applicable WRHA/Health Care Facility management or security personnel in order that they may take appropriate steps;
 - (b) shall promptly advise their direct manager or supervisor of the situation; and
 - (c) may request that the Recording be deleted.
- Staff, including security personnel, shall not seize the Recording device.

Recordings by Media

- 4.7 Media shall abide by and follow the requirements of the Media Relations Policy 10.30.020.
- 4.8 In the event that Media makes a Recording of a Patient, the written Consent shall be maintained by the site media representative and include:
 - (a) the type of Recording;
 - (b) the purpose of the Recording;
 - (c) the subject matter of the Recording; and
 - (d) that Consent was obtained from the Patient.

5.0 REFERENCES:

- 5.1 *The Personal Health Information Act (Manitoba)*
- 5.2 *The Personal Health Information Regulation (Manitoba)*
- 5.3 *The Health Care Directives Act (Manitoba)*
- 5.4 *The Freedom of Information and Protection of Privacy Act (Manitoba)*
- 5.5 *The Privacy Act (Manitoba)*
- 5.6 *The Mental Health Act (Manitoba)*
- 5.7 *The Vulnerable Persons Living with a Mental Disability Act (Manitoba)*
- 5.8 *WRHA Confidentiality of Personal Health Information policy # 10.40.020*
- 5.9 *WRHA Informed Consent policy # 110.000.005*
- 5.10 *WRHA Media Relations policy # 10.30.020*
- 5.11 *WRHA Public Use of Cell Phones and Other Wireless Communication Devices – Interference with Medical Equipment policy # 10.20.041*
- 5.12 *WRHA Staff Use of Cell Phones and Other Wireless Communication Devices – Interference with Medical Equipment policy # 10.20.042*
- 5.13 *WRHA Operational Guideline for Community Health Services: Consent for Client Photography, Video and Audio Recordings (Consent for Client Observation and Recordings), August 1, 2008*
- 5.14 *HSC Consent for Image and Audio Recordings of Patients at HSC policy # 80.115.004*

Policy Contact: Landis Esposito, Chief Privacy Officer

APPENDIX Policy Highlights Overview*

Where Staff Are Recording a Patient:

- Staff shall only record a Patient with written or verbal Consent and only if it relates to an existing Health Care service or activity (which includes purposes such as educational, scientific, identification, marketing and public relations). [s.3.1]
- Consent is not required in emergent situations. [s.3.1]
- Consent shall be filed or documented in the Health Record. [s.3.3 and 3.6]
- Consent may be valid for up to one year for a series of treatments unless there is a significant change in the course of treatment. [s.3.4]
- Recordings shall be maintained in a Secure Environment and retained pursuant to the WRHA *Retention and Destruction of Facility Health Records* policy. [s.3.8 and 3.9]
- Media shall be permitted to make Recordings in compliance with the WRHA *Media Relations Policy*. [s.3.24]

Security Recordings:

- Security Recordings shall only occur in a facility where signage is present informing persons that they may be recorded and shall not be made in areas where there is a high expectation of privacy. [s.3.11(a) and (b)]
- Security Recordings shall be stored for a period of 20 days and may be stored for longer at the discretion of the WRHA/Health Care Facility. [s.3.11(c) and (d)]
- Security Recordings shall only be produced to Patients or Members of the Public in order to comply with a subpoena, warrant, court order or other legislation. [s.3.12]
- Security Recordings may be produced to police without a subpoena, warrant, or court order where police are investigating a criminal offence that has occurred on or adjacent to property owned by the WRHA/Health Care Facility, or in certain other emergency situations. [s.3.13]

Where Patients Want to Make a Recording:

- A Patient may be permitted to make an *audio* Recording if they obtain prior Consent from every person, including Staff, who will be the subject of the Recording. Staff may require that the Consent be documented in writing, be signed by the Staff member, and to be provided with a copy of the Consent. [s.3.17]
- A Patient shall not be permitted to make a video Recording *except* where Staff are providing information by way of a physical demonstration of a Health Care service or activity, or for a non-surgical birth, and the Patient obtains the Consent of every person to be recorded. [s.3.18]
- Patients shall not be permitted to make any type of Recording where it would create a risk to safety or health, be disruptive, interfere with medical equipment, or in relation to the critical incident process. [s.3.17 and 3.18]
- Family and Members of the Public acting with the Consent and under the direction of a Patient may make Recordings on behalf of the Patient if the Patient is otherwise permitted to do so. Otherwise, they are not permitted to make a Recording. [s.3.20]

Procedure:

- In the event that Staff are requested to provide Consent for a Recording, they shall promptly advise their direct manager or supervisor of the request prior to any decision being made to permit the Recording. [s.4.4]
- In the event that staff observe a person making a Recording contrary to the policy, they shall either request the person cease Recording or notify the applicable management/security personnel, and advise their manager/supervisor. Staff may request that the Recording be deleted, but shall not seize Recording devices. [s.4.6]

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****This appendix is not to be considered as policy. In all cases, reference to the policy shall be made.***