

*****Proposed New Rule - August 12, 2025*****

5123-2-XX Use of audio or video devices in intermediate care facilities for individuals with intellectual disabilities and residences of individuals who receive home and community-based services.

(A) Purpose

This rule sets forth general parameters regarding use of audio or video devices as well as requirements and procedures to be followed when an audio or video device is being considered and/or installed in an individual's residence. This rule applies when:

(1) The individual:

- (a) Receives home and community-based services in the residence;
- (b) Receives home and community-based services in a family home where an audio or video device is used while any person is being paid to provide home and community-based services; or
- (c) Resides in an intermediate care facility for individuals with intellectual disabilities; and

(2) The audio or video device is:

- (a) Located in a bedroom; and/or
- (b) Installed for the purpose of implementing a rights restriction.

(B) Definitions

For the purposes of this rule, the following definitions apply:

- (1) "Audio or video device" means equipment or technology with capability to capture, store, monitor, and/or record sound or a person's image. "Audio or video device" does not include:
 - (a) Simple sensors that do not rely on camera technology (e.g., a fall sensor or seizure mat).
 - (b) Alternative imaging technologies such as thermal detection, motion capture, or computer vision provided the generated images are non-identifiable representations.
 - (c) Equipment or technology such as a video doorbell or security camera used to protect outside areas of a residence.
- (2) "Home and community-based services" has the same meaning as in section 5123.01 of

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the Revised Code.

- (3) "Human rights committee" has the same meaning as in rule 5123-2-06 of the Administrative Code.
- (4) "Individual" means a person with a developmental disability.
- (5) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual and includes an "individual program plan" as that term is used in 42 C.F.R. 483.440.
- (6) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (7) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430.
- (8) "Rights restriction" has the same meaning as in rule 5123-2-06 of the Administrative Code.
- (9) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123-5-02 of the Administrative Code.
- (10) "Team" has the same meaning as in rule 5123-4-02 of the Administrative Code or means an "interdisciplinary team" as that term is used in 42 C.F.R. 483.440.

(C) General parameters regarding audio or video devices

- (1) Use of an audio or video device may be appropriate to address an individual's assessed needs in a manner that promotes the individual's autonomy and minimizes the individual's dependence on others.
- (2) An individual and the individual's team may consider use of an audio or video device after all other available strategies and options (including alternative equipment or technology) for ensuring the individual's health and welfare have been explored and determined to be ineffective at meeting the individual's assessed needs.
- (3) A team pursuing use of an audio or video device will consider and document:
 - (a) Alternative strategies and options explored and determined to be ineffective.
 - (b) How the audio or video device will meet the individual's assessed needs.
 - (c) How the audio or video device will increase the individual's independence.

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- (d) Where specifically in the residence the audio or video device will be installed, including when applicable, the recording range of the device.
 - (e) Times of day and/or types of activities when the audio or video device will be activated and methods for ensuring the audio or video device is not activated during other times or activities.
 - (f) Persons who will have access to live or preserved images, recordings, or information captured by the audio or video device.
 - (g) Measures necessary to respect and ensure the individual's privacy.
- (4) An audio or video device will not be used for convenience of providers.
- (5) An audio or video device will not be used in a bathroom.
- (6) At an intermediate care facility for individuals with intellectual disabilities, an audio or video device will not be used for any reason in areas where there are the highest expectations of privacy such as areas for private visitation or private phone calls.
- (7) The fact that a physician or other licensed practitioner recommends, approves, certifies, orders, or prescribes use of an audio or video device does not, in and of itself, make the audio or video device medically necessary and does not guarantee approval.
- (D) Review of use of an audio or video device by the human rights committee
- (1) When the criteria set forth in paragraphs (A)(1) and (A)(2) of this rule are met, a request to use an audio or video device will be submitted to the human rights committee in accordance with the process described in rule 5123-2-06 of the Administrative Code.
 - (2) When reviewing a request to use an audio or video device, the human rights committee will consider:
 - (a) The reasons for using the audio or video device.
 - (b) Documentation that demonstrates that other available strategies and options for ensuring the individual's health and welfare have been explored and determined to be ineffective.
 - (c) Where the audio or video device will be located in the residence.
 - (d) When applicable, steps that will be taken to mitigate an individual's objection to use of the audio or video device, including objection by an individual who is a minor child or an adult who has a guardian.

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- (e) Whether the audio or video device will be monitored and how the images, recordings, or information will be safeguarded.
- (f) The actions to be taken by caregivers based on images, recordings, or information captured by the audio or video device.
- (g) The impact of the audio or video device on other individuals in the residence.
- (h) Documentation developed by the individual and the individual's team that addresses:
 - (i) The procedure to be followed if the individual or the individual's guardian, as applicable, requests the audio or video device be turned off.
 - (ii) How long audio or video recordings will be retained
 - (iii) How audio or video recordings will be secured and stored in conformance with applicable federal and state laws, up to and including disposal or destruction.
 - (iv) Who will have access to the audio or video device and images, recordings, or information captured.
 - (v) Under what circumstances and to whom images, recordings, or information may be released.
- (3) In making its determination whether or not to approve a request for use of an audio or video device, the human rights committee will:
 - (a) Ensure all information and documentation required by paragraph (D)(2) of this rule has been provided.
 - (b) After consideration of the information and documentation required by paragraph (D)(2) of this rule, determine whether the proposed use of an audio or video device is the best solution to meet the individual's assessed needs and ensure the individual's health and welfare.
- (E) Installation of an audio or video recording device
 - (1) When an individual and the individual's team determine to proceed with installation of an audio or video device, and installation has been approved by the human rights committee as required in accordance with paragraph (D) of this rule, the individual's service and support administrator or qualified intellectual disability professional, as applicable, will:

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- (a) Document how the audio or video device will be used in the individual service plan. The individual service plan will specify the times of day and/or types of activities when the audio or video device will be activated and include the protocol to be followed should an individual or the individual's guardian, as applicable, request that the audio or video device be deactivated.
 - (b) Obtain written consent from the individual and other individuals who share the space being monitored or recorded by the audio or video device or the individuals' guardians, as applicable.
 - (i) The form used to obtain written consent will include a description of what use of the audio or video device entails, such as who will be able to observe activities and/or listen to conversations in the residence, where specifically in the residence the audio or video devices will be installed, and whether recordings will be made.
 - (ii) The service and support administrator or qualified intellectual disability professional, as applicable, will maintain a copy of each signed consent form.
 - (2) Safeguards will be in place to ensure that:
 - (a) Only designated persons have access to the audio or video device and images, recordings, or information captured.
 - (b) Images, recordings, and information are disposed of in a secure manner and in conformance with applicable federal and state laws.
 - (3) If a major unusual incident as defined in rule 5123-17-02 of the Administrative Code occurs while an audio or video device is used, the provider of services will retain any audio and/or video recordings pertaining to the incident for at least seven years from the date of the incident.
- (F) Continued use of an audio or video device
- (1) On an annual basis, or more frequently as determined by an individual and the individual's team, the individual and the individual's team will determine if use of the audio or video device is effective and should continue.
 - (2) In making its determination, the individual and the individual's team will consider:
 - (a) The individual's experience in terms of achieving intended outcomes.
 - (b) Whether the audio or video device enhanced the individual's health or welfare.
 - (c) Whether the audio or video device reduced dependence on staff by increasing the

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individual's independence.

- (d) Whether the individual or guardian, as applicable, has a desire to continue to use the audio or video device.
- (e) Whether the audio or video device is the best solution to meet the individual's assessed needs and ensure the individual's health and welfare.