

5123-2-01

Technology first.

(A) Purpose

This rule implements the technology first policy in accordance with section 5123.025 of the Revised Code and sets forth parameters regarding use of technology solutions as well as procedures to be followed when a technology solution is being considered or used in an individual's home.

(B) Definitions

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

(1) "Camera" means equipment or technology used for the purpose of capturing, storing, monitoring, and/or recording a person's image.

(a) "Camera" includes an electronic device that would allow a provider, caregiver, or other person to regularly observe or monitor activities in an individual's home.

(b) "Camera" does not include:

(i) Simple sensors that do not rely on camera technology (e.g., a fall sensor or seizure mat).

(ii) Alternative imaging technologies (e.g., thermal detection, motion capture, computer vision, or an avatar) used to generate non-identifiable representations.

(iii) Equipment or technology such as a video doorbell or security camera used to protect outside areas of a home.

(iv) An individual's personal electronic device.

(v) An individual's use of a portable electronic device to engage in a video call with a remote support provider.

~~(1)~~(2) "County board" means a county board of developmental disabilities.

~~(2)~~(3) "Department" means the Ohio department of developmental disabilities.

~~(3)~~(4) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised Code.

- (5) "Human rights committee" has the same meaning as in rule 5123-2-06 of the Administrative Code.
- ~~(4)(6) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, the person's guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.~~
- ~~(5)(7) "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 as in effect on the effective date of this rule.~~
- (8) "Informed consent" means a documented written agreement to allow a proposed action, treatment, or service after full disclosure provided in a manner an individual or the individual's guardian understands, of the relevant facts necessary to make the decision. Relevant facts include the risks and benefits of the action, treatment, or service; the risks and benefits of the alternatives to the action, treatment, or service; and the right to refuse the action, treatment, or service. The individual or the individual's guardian, as applicable, may withdraw informed consent at any time.
- ~~(6)(9) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.~~
- (10) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430.
- (11) "Remote support" has the same meaning as in rule 5123-9-35 of the Administrative Code.
- (12) "Rights restriction" has the same meaning as in rule 5123-2-06 of the Administrative Code.
- (13) "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.
- (14) "Team," as applicable, 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.

~~(7)~~(15) "Technology first policy" means the state of Ohio policy, established in section 5123.025 of the Revised Code, that individuals with developmental disabilities have access to technology solutions.

~~(8)~~(16) "Technology solution" means any product, device, equipment, or service used to maintain, increase, or improve the functional capabilities of an individual ~~with developmental disabilities~~ and that is deployed in accordance with applicable federal, state, and local rules and regulations. The efficacy of a technology solution is subject to review and approval by the department.

(C) Implementing the technology first policy

(1) Each county board and each intermediate care facility for individuals with intellectual disabilities will:

(a) ~~Within one hundred eighty calendar days of the effective date of this rule or within one hundred eighty calendar days of licensure of a new intermediate care facility for individuals with intellectual disabilities, as applicable, develop~~Have and implement a written local policy to enact the technology first policy. The written local policy will:

(i) Clearly delineate that technology solutions are to be:

(a) Explored and documented throughout the initial and ongoing person-centered assessment and planning process; and

(b) Used to the greatest extent possible to support the outcomes in an individual service plan.

(ii) Address ability to increase capacity for use of technology solutions and outline specific steps, as applicable, to be taken including, when applicable, establishment of benchmarks for increasing the number of individuals who benefit from the use of technology solutions.

(iii) Identify strategies for increasing the level of knowledge, skill, and comfort of staff related to assessing how technology may help meet needs or achieve outcomes and the use of technology solutions.

(b) Annually review and update, as applicable, its goals and objectives related to increasing the use of technology solutions by individuals served.

(2) Each county board will actively collaborate with individuals served and their families, providers of services, the department, and community partners (e. g., local schools, mental health agencies, area agencies on aging, county

departments of job and family services, public transit authorities, local vocational rehabilitation centers, and employers) to expand awareness and use of technology solutions by individuals served.

- (3) Each intermediate care facility for individuals with intellectual disabilities will actively collaborate with residents served and their families, persons or entities under contract to provide services to residents, the department, and community partners (e.g., county boards, local schools, mental health agencies, local vocational rehabilitation centers, and employers) to expand awareness and use of technology solutions by residents served.

(4) The department will consult and collaborate with individuals and families who receive services, county boards, providers of home and community-based services, intermediate care facilities for individuals with intellectual disabilities, vendors of technology solutions, and other state agencies to:

(a) Identify best practices.

(b) Share information about available technology solutions and ways the technology solutions provide individuals with more independence.

(c) Identify funding sources or other means for procuring identified technology solutions.

(d) Identify and expand capacity for technology-related assessment.

(e) Facilitate effective partnerships.

(f) Identify ways the department can support statewide efforts to expand use of technology solutions.

(g) Provide training regarding implementation of this rule to county boards, intermediate care facilities for individuals with intellectual disabilities, and members of human rights committees.

(D) Use of cameras in an individual's home

When an individual resides at an intermediate care facility for individuals with intellectual disabilities or while an individual is receiving home or community-based services in the individual's home:

(1) A camera shall not be used in a bathroom under any circumstances.

(2) A camera may be used in an individual's bedroom when:

- (a) An individual (including an individual under guardianship) requests that a camera be placed in the individual's bedroom; or
- (b) An individual or the individual's guardian is concerned about the risk of abuse or neglect and less intrusive methods to address concerns have been tried and determined to be ineffective. Examples of less intrusive methods include, but are not limited to:
 - (i) Providing additional training to staff on preventing and reporting abuse and neglect;
 - (ii) Reviewing prior reports of abuse and neglect to identify other effective interventions;
 - (iii) Heightening the provider's oversight of staff;
 - (iv) Teaching the individual to identify when and how to report concerns about abuse and neglect; and
 - (v) Empowering the individual to be a self-advocate.

(3) Direct support professionals working in an individual's home will be made aware of all cameras used in the home and trained as necessary to support the individual's use and understanding of the cameras.

(E) Using a technology solution to meet an individual's assessed needs

~~(4)~~(1) Each individual served by a county board or an intermediate care facility for individuals with intellectual disabilities will participate in a person-centered assessment and planning process in accordance with rule 5123-3-03 or 5123-4-02 of the Administrative Code, as applicable, which identifies the individual's unique strengths, interests, abilities, preferences, and resources and explores how technology solutions might support the individual's desired outcomes.

(a) Through the person-centered planning process:

- (i) The individual and the individual's team will discuss any technology solution previously or currently used by the individual and the effectiveness of the technology solution;
- (ii) The individual and the individual's team will discuss the individual's needs, explore information regarding available technology solutions, and consider how each technology solution might:

- (a) Enhance the individual's personal freedom;
- (b) Increase the individual's ability to communicate effectively with others;
- (c) Expand opportunities for the individual to access and pursue available activities and establish meaningful relationships with people who are important to the individual;
- (d) Enable the individual to perform tasks that support the individual's efforts to obtain or maintain employment; or
- (e) Help the individual increase and/or maintain independence with daily tasks and activities.

~~(iii)~~(b) After discussing whether or not technology solutions may be appropriate, the individual and the individual's team:

- ~~(a)~~(i) Will discuss how available technology solutions may advance what is important to or important for the individual;
- ~~(b)~~(ii) May make referrals for assessments by technology subject matter experts to identify technology solutions; and
- ~~(c)~~(iii) May identify additional evaluations needed to determine whether other available technology solutions meet the individual's assessed needs.

(2) When an individual and the individual's team are pursuing use of a camera in an individual's bedroom:

- (a) The team will consider and the individual's qualified intellectual disability professional or service and support administrator will document:
 - (i) The specific type of camera to be used and whether the device continuously or automatically monitors or records activities (such as a device activated by movement or sound).
 - (ii) The assessed need the camera addresses.
 - (iii) Typical days of the week and times of day and/or types of activities when the camera will be activated and methods for ensuring the camera is not activated during other times or activities.

- (iv) Measures necessary to respect and ensure the individual's privacy is maintained in accordance with division (H) of section 5123.62 of the Revised Code.
 - (v) The protocol to be followed should the individual or the individual's guardian, as applicable, request the camera be deactivated.
 - (vi) The names of persons designated by the team who will have access to the camera and captured images, recordings, or information.
 - (vii) The right of an individual or the individual's guardian, as applicable, to access and/or request destruction of images, recordings, or information and the procedure to be followed if an individual or guardian makes such a request.
 - (viii) Additional safeguards to be put in place when the individual is a minor.
 - (b) The individual's qualified intellectual disability professional or service and support administrator will obtain informed consent from other individuals who share the bedroom or their guardians, as applicable.
- (3) A technology solution is subject to review by a human rights committee when:
 - (a) Use of a technology solution that meets the definition of a "rights restriction" in rule 5123-2-06 of the Administrative Code is being proposed. The individual's qualified intellectual disability professional or service and support administrator will submit the request to a human rights committee in accordance with that rule.
 - (b) Use of a camera in an individual's bedroom that does not meet the definition of a "rights restriction" in rule 5123-2-06 of the Administrative Code is being proposed in accordance with paragraph (D)(2) of this rule. The individual's qualified intellectual disability professional or service and support administrator will submit the request to the human rights committee in accordance with paragraph (F) of this rule.
- ~~(iv)~~ (4) When available technology solutions have been determined by the individual and the individual's team to meet the individual's assessed needs, and when applicable, approved by the human rights committee in accordance with paragraph (F) of this rule, they will be included in the individual service plan.
 - (a) When a camera is used, the individual service plan will specify:

(i) The assessed need the camera addresses.

(ii) Typical days of the week and times of the day and/or types of activities when the camera will be activated.

(iii) The protocol to be followed should the individual or the individual's guardian, as applicable, request the camera be deactivated.

~~(a)~~(b) Technology solutions included for the duration of the individual service plan may be reviewed and modified at any time based on a request by the individual or the individual's team. Technology solutions included on a trial basis are to be reviewed by the individual and the individual's team at the conclusion of the trial period.

~~(b)~~(c) When reviewing a technology solution to determine whether the technology solution is effective and should continue, the individual and the individual's team are to consider:

~~(i)~~(i) The individual's experience in terms of achieving outcomes described in paragraph ~~(C)(4)(a)(iii)~~(E)(1)(a)(ii) of this rule;

~~(ii)~~(ii) Whether the technology solution enhanced the individual's health or safety;

~~(iii)~~(iii) Whether additional support is needed to facilitate use of the technology solution (e.g., scheduled battery replacements or more frequent communication with the technology solution vendor).

~~(iv)~~(iv) Whether the technology solution reduced dependence on staff by increasing the individual's independence and without having the effect of isolating the individual from the individual's community or preventing the individual from interacting with people with or without disabilities; and

~~(v)~~(v) Whether the individual or the individual's guardian, as applicable, has a desire to continue to use the technology solution.

~~(b)~~(d) The results of the person-centered planning process, including, as applicable, the individual's desired outcomes as they relate to technology solutions and the activities that will occur to expand the individual's exploration, awareness, and use of technology solutions, will be integrated into the individual service plan. The individual service plan will be reviewed and amended in accordance with rule 5123-3-03 or 5123-

4-02 of the Administrative Code, as applicable, if the individual's service needs change.

~~(5) The department will consult and collaborate with individuals and families who receive services, county boards, providers of home and community-based services, intermediate care facilities for individuals with intellectual disabilities, vendors of technology solutions, and other state agencies to:~~

~~(a) Identify best practices;~~

~~(b) Share information about available technology solutions and ways the technology solutions provide individuals with more independence;~~

~~(c) Identify funding sources or other means for procuring identified technology solutions;~~

~~(d) Identify and expand capacity for technology-related assessment;~~

~~(e) Facilitate effective partnerships; and~~

~~(f) Identify ways the department can support statewide efforts to expand use of technology solutions.~~

(F) Human rights committee review of use of a camera in an individual's bedroom

(1) When an individual and the individual's team are pursuing use of a camera in the individual's bedroom in accordance with paragraph (D)(2) of this rule in a manner that does not meet the definition of a "rights restriction" in rule 5123-2-06 of the Administrative Code, the individual's qualified intellectual disability professional or service and support administrator will submit the request to the human rights committee in accordance with this paragraph.

(a) The individual or the individual's guardian, as applicable, is to be notified at least seventy-two hours in advance of the date, time, and location of the human rights committee meeting at which the request will be reviewed. The individual or guardian has the right to attend to present related information in advance of the human rights committee commencing its review.

(b) Notwithstanding rule 5123-2-06 of the Administrative Code, the human rights committee will review the request to determine that the team has complied with the requirements of paragraphs (D) and (E) of this rule. In its review of the request, the human rights committee is to:

- (i) Ensure that the planning process outlined in this rule has been followed and that:

 - (a) The individual or the individual's guardian, as applicable, has provided informed consent after being made aware of the elements described in paragraphs (E)(2)(a)(i) to (E)(2)(a)(viii) of this rule.
 - (b) Other individuals who share the bedroom or their guardians, as applicable, have provided informed consent.
- (ii) Ensure that the proposed use of a camera in the individual's bedroom meets the criteria set forth in paragraph (D)(2)(a) or (D)(2)(b) of this rule.
- (iii) Ensure that the overall outcome of the use of a camera in the individual's bedroom promotes the physical, emotional, and psychological well being of the individual.
- (iv) Verify that use of a camera in the individual's bedroom enables the individual to feel safe, respected, and valued while emphasizing choice, self-determination, and an improved quality of life.
- (v) Determine the period of time for which use of a camera in the individual's bedroom is appropriate and may approve use of the camera for any number of days not to exceed three hundred sixty-five.
- (vi) Approve in whole or in part, reject in whole or in part, monitor, and when indicated, reauthorize use of a camera in the individual's bedroom.
- (vii) Communicate the committee's determination, including an explanation of its rejection of use of a camera in the individual's bedroom, to the qualified intellectual disability professional or service and support administrator that submitted the request for approval.
- (c) The qualified intellectual disability professional or service and support administrator will communicate in writing to the individual or the individual's guardian, as applicable, the determination of the human rights committee, including an explanation of rejection of a request, as well as the individual's or guardian's right to seek reconsideration when the human rights committee rejects a request.

(2) An individual or the individual's guardian, as applicable, may seek reconsideration of rejection by the human rights committee of a request by submitting the request for reconsideration with additional information provided as rationale for the request to the qualified intellectual disability professional or service and support administrator, as applicable, in writing within fourteen calendar days of being informed of the rejection. The qualified intellectual disability professional or service and support administrator is to forward the request to the human rights committee within seventy-two hours. The human rights committee will consider the request for reconsideration and respond in writing to the individual or guardian within fourteen calendar days of receiving the request.

(G) Maintenance of images, recordings, and information

(1) Images, recordings, and information captured by technology solutions will be secured, stored, and disposed of in conformance with applicable federal and state laws, including when applicable, confidentiality requirements under the Health Insurance Portability and Accountability Act.

(2) Video recordings will be maintained for no more than thirty calendar days except when necessary to meet an individual's assessed needs or when a potential major unusual incident has been reported. When a longer retention period is required, the qualified intellectual disability professional or service and support administrator, as applicable, will document the reason.

(3) If a major unusual incident occurs while a video recording is made, whoever is aware will immediately report the major unusual incident in accordance with rule 5123-17-02 of the Administrative Code. Whoever holds the recording must preserve the recording and provide the recording to the investigative agent assigned to investigate the major unusual incident within three calendar days.