

*****Proposed New Rule - March 30, 2026*****

5123-2-10 Use of audio or video devices in residential settings.

(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 or used in an individual's residence. This rule is intended to protect the rights of individuals receiving services while ensuring their health and welfare.

(B) Scope

This rule applies when the following criteria are met:

(1) An individual:

- (a) Receives home and community-based services or county board-funded services in the individual's residence;
- (b) Receives home and community-based services or county board-funded 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 county board-funded 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 the individual's bedroom; and/or
- (b) Used for the purpose of implementing a rights restriction.

(C) 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.
 - (a) "Audio or video device" includes an individual's personal device that is also used to receive remote support or to allow a provider, caregiver, or other person to regularly observe or monitor activities in the individual's residence.
 - (b) "Audio or video device" does not include:
 - (i) Simple sensors that do not rely on camera technology (e.g., a fall sensor or

*****Proposed New Rule - March 30, 2026*****

seizure mat).

- (ii) Alternative imaging technologies such as thermal detection, motion capture, or computer vision provided the generated images are non-identifiable representations.
 - (iii) Equipment or technology such as a video doorbell or security camera used to protect outside areas of a residence.
 - (iv) An individual's personal phone, tablet, computer, or other electronic device that is not intended to be used to recurrently or constantly capture audio, images, or video for review, viewing, or listening by another person.
 - (v) An individual's personal use of an electronic device to send pictures, videos, or sound recordings to recipients of the individual's choosing.
- (2) "County board" means a county board of developmental disabilities.
 - (3) "Home and community-based services" has the same meaning as in section 5123.01 of the Revised 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) "Major unusual incident" has the same meaning as in rule 5123-17-02 of the Administrative Code.
 - (8) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430.
 - (9) "Remote support" has the same meaning as in rule 5123-9-35 of the Administrative Code.
 - (10) "Rights restriction" has the same meaning as in rule 5123-2-06 of the Administrative Code.
 - (11) "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.

*****Proposed New Rule - March 30, 2026*****

(12) "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.

(D) 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 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) Whether the audio or video device will increase the individual's independence or decrease the individual's dependence on in-person supports.
 - (d) The specific type of audio or video device to be used and whether the device continuously or automatically monitors or records activities (such as a device activated by movement or sound).
 - (e) Where specifically in the residence the audio or video device will be used, including when applicable, the recording range of the device.
 - (f) 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.
 - (g) Measures necessary to respect and ensure the individual's privacy.
 - (h) The procedure to be followed if the individual or the individual's guardian, as applicable, requests the audio or video device be turned off.
 - (i) How long audio or video recordings will be retained.
 - (j) How audio or video images, recordings, and information captured 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.

*****Proposed New Rule - March 30, 2026*****

- (k) The names of persons designated by the team who will have access to the audio or video device and images, recordings, or information captured.
 - (l) Under what circumstances and to whom (besides an individual or an individual's guardian) images, recordings, or information may be released.
 - (m) The right of an individual or the individual's guardian, as applicable, to access and/or request destruction of audio or video device images, recordings, or information captured and the procedure to be followed if an individual or guardian makes such a request.
 - (n) Additional safeguards to be put in place when an individual is a minor.
- (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 an area where a private visit or private phone call is taking place.
 - (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.
 - (8) Use of an audio or video device will be time-limited and reviewed regularly to determine whether continued use is effective.
- (E) Review of use of an audio or video device by the human rights committee
- (1) When the criteria set forth in paragraphs (B)(1) and (B)(2) of this rule are met, the individual's service and support administrator or qualified intellectual disability professional, as applicable, will submit a request to use an audio or video device to the human rights committee established in accordance with paragraph (G) of rule 5123-2-06 of the Administrative Code.
 - (2) 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 paragraphs (D)(3) and (E)(3) of this rule has been provided.
 - (b) After consideration of the information and documentation required by paragraphs (D)(3) and (E)(3) 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

*****Proposed New Rule - March 30, 2026*****

the individual's health and welfare.

- (3) 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 from the team regarding the factors listed in paragraph (D)(3) of this rule.
 - (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.
 - (e) Whether the audio or video device will be monitored and how the images, recordings, or information captured will be secured from accidental disclosure or access by unauthorized persons.
 - (f) Where the recordings will be stored and the name and contact information for the person responsible for security.
 - (g) The actions to be taken by caregivers based on images, recordings, or information captured by the audio or video device.
 - (h) The impact of the audio or video device on other individuals in the residence.

(F) Initial use of an audio or video recording device

When an individual and the individual's team determine to proceed with an audio or video device, and use of the audio or video device has been approved by the human rights committee in accordance with paragraph (E) of this rule, the individual's service and support administrator or qualified intellectual disability professional, as applicable, will:

- (1) Document, in the individual service plan, how the audio or video device will be used. 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.
- (2) 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. Written consent for all individuals sharing the space will be secured before an audio or video device is used.

*****Proposed New Rule - March 30, 2026*****

- (a) 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 used, and whether recordings will be made. The form will indicate when an audio or video device that continuously or automatically monitors or records activities (such as a device activated by movement or sound) will be used.
- (b) The service and support administrator or qualified intellectual disability professional, as applicable, will maintain a copy of each signed consent form.

(G) 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 increased the individual's independence or decreased the individual's dependence on in-person supports.
 - (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.
- (3) When the individual and the individual's team determine use of the audio or video device is effective and should continue, the individual's service and support administrator or qualified intellectual disability professional, as applicable, will submit a request to the human rights committee in accordance with paragraph (E) of this rule. Use of the audio or video device may continue only after approval by the human rights committee is secured.

(H) Maintenance of audio or video recordings

- (1) No audio or video recording will be maintained 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 service and support administrator or qualified intellectual disability professional, as applicable, will document the reason.

*****Proposed New Rule - March 30, 2026*****

- (2) If a major unusual incident occurs while an audio or video recording was made, whoever holds the recording will provide the recording to the investigative agent assigned to investigate the major unusual incident.