

Cameras in HCBS Settings

According to the Home and Community-Based Services (HCBS) Final Settings Rule, states must ensure individual rights to privacy, dignity, and respect in all HCBS service settings. The presence of cameras must be assessed to ensure compliance with the HCBS Final Settings Rule and with the Division of Developmental Disabilities (DDD) policies related to participant rights.

When you are unsure about whether you can utilize cameras in your HCBS setting, please contact the participant's Service Coordinator (SC).

General Requirements

- A. Camera use in areas where there is no reasonable expectation of privacy, like on the exterior of a residence, in a staff office, or in public areas of a day service site, is not a rights restriction and can be used in compliance with the HCBS Final Settings Rule.
- B. Camera use for the provision of remote or virtual supports is not a rights restriction and is compliant with the HCBS Final Settings Rule, if the cameras are being used at the participant's choice and to promote greater independence.
 - 1. A participant must **choose** to have cameras in their home. This choice must be documented in their Person-Centered Plan (PCP) and the provider must have a plan and/or policies to ensure the participant's rights to privacy, dignity, and respect.
 - a. When a participant is not able to consent to the use of cameras, cameras may not be used for virtual supports.
 - b. A participant may change their mind about the use of cameras in the setting at any time.
 - 2. The use of cameras as virtual supports must:
 - a. Be person-centered and facilitate community integration, not risk leading to the isolation of the participant from the community or interacting with other people.
 - b. Only be authorized in situations where the participant's health and safety would not be at risk.
 - c. Be clearly documented in the PCP, including assurance about how participant's needs can be met.
- C. Camera use in areas where the participant has an expectation of privacy, like common living areas of their home, is not allowed unless otherwise approved by the participant, their Person-Centered Planning (PCP) Team, and the Provider's Human and Legal Rights Review Committee (HLRC).
 - 1. Video cameras/monitors are not permitted in bedrooms and bathrooms.
 - 2. Additional information about rights restrictions can be found in:
 - a. Chapter 3 of the DD HCBS Provider Policy Manual;
 - b. The flowchart for Determining Psychotropic Medication Restrictiveness;
 - c. The flowchart for Determining Restrictiveness of Non-Medication Interventions;
 - d. Rights and Restriction resources; and

- e. Rights and Restrictions examples.

Provider Requirements

When camera use is compliant with the HCBS Final Settings Rule and requirements listed by DDD, providers must also meet the following requirements.

- A. The provider is responsible for ensuring cameras used comply with the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act.
- B. Cameras cannot be used to oversee or monitor individuals, for staff convenience, or to replace staffing.
- C. When cameras are being used, the provider must:
 - 1. Have clear, visible signage posted in the setting indicating that video and/or audio technology for monitoring purposes or recording is in use; and
 - 2. Before cameras are used, have policies and procedures in place and distributed that address the following:
 - a. Location of all the surveillance cameras;
 - b. How recordings will be secured and stored until they are disposed of or destroyed;
 - c. The method for how recordings will be securely disposed of or destroyed after a reasonable period; and
 - d. Who will have access to the equipment and any recordings.

Obtaining Consent

- A. The consent form may be within the resident agreement or a separate form.
- B. The consent must include the following:
 - 1. The location of all cameras;
 - 2. The reasons why the monitoring/recording is taking place;
 - 3. When audio/video recordings may be released and for what purposes;
 - 4. A statement that only appropriate staff have access to the equipment and recordings; and
 - 5. The length of time audio/video recordings are retained.