



Virginia Department of Behavioral Health
and Developmental Services

DBHDS Office of Human Rights (OHR)
Uses of Video and Audio Monitoring in Provider Service Settings

Effective **??/??/2024**

Purpose

Individuals receiving services licensed, funded, or operated by the Department of Behavioral Health and Developmental Services (“department” or “DBHDS”) have the right to reasonable privacy [[12VAC35-115-50 C 3 a](#)] and confidentiality [[12VAC35-115-80](#)]. The information provided in this guidance is regarding the use of monitoring devices as necessary for safety and operational purposes in a provider service setting relative to provider policies and the *Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services* (“Human Rights Regulations,” [12VAC35-115](#)).

Defined Terms (See [12VAC35-115-30](#).)

“Individual” means a person who is receiving services. The term includes the terms “consumer,” “patient,” “resident,” “recipient,” and “client.”

“Local human rights committee” or “LHRC” means a group of at least five volunteers appointed by the State Human Rights Committee. (The LHRC shall review any restriction on the rights of any individual imposed pursuant to [12VAC35-115-50. Dignity](#) or [12VAC35-115-100. Restrictions on Freedoms of Everyday Life](#), that lasts longer than seven days or is imposed three or more times in a 30-day period and shall review behavioral treatment plans with restrictions, restraint or timeout pursuant to [12VAC35-115-105. Behavioral Treatment Plans](#) for providers within the LHRC’s jurisdiction.)

“Monitoring device” is not a defined term in the Human Rights Regulations; however, when used in this document, it refers to any equipment used by a provider to capture, record, or transmit an image or sound, including audio or video.

“Provider” means any person, entity, or organization offering services that is licensed, or funded, or operated by the department.

“Restriction” means anything that limits or prevents an individual from freely exercising his rights.¹

“Services” means care, treatment, training, habilitation, interventions, or other supports, including medical care, delivered by a provider licensed, operated, or funded by the department.

Provider Policies

Any providers that determine the need to utilize monitoring devices in a service setting must have policies and procedures that make clear for individuals, families, and staff the purpose for the use of the monitoring and how the provider will ensure individuals’ confidentiality, safety, and privacy.

Providers must make certain that processes established for monitoring will not be used to diminish or substitute for staff responsibilities specific to supervision and support of individuals receiving services.

Provider policies and procedures must:

- Specify whether the monitoring device is equipped with the capacity for audio or video or both;
- Identify the location of the monitoring device(s);
- Specify who is responsible for and who will have access to the live video, audio, or recordings;
- Explain the process used for review of audio or video and whether it will be reviewed in real-time or at established intervals;
- Specify whether access and review of live video or audio or recordings is limited to on-site viewing or is available for access remotely (off-site). If remote access is provided, indicate from where an authorized user may obtain access (i.e., provider staff may view only onsite from an administrative office, or from the staff’s home office, from an agency-issued cell phone, etc.);
- Detail quality controls in place to ensure against unauthorized viewing, sharing, or tampering with the monitoring device(s) or recordings. This should include a process to remove access to view live or recorded audio or video when a previously authorized person no longer requires access for their duties, or the previously authorized person is no longer associated with the provider;
- Indicate how long video or audio recordings will be stored, where they will be stored, and when they will be erased;
- Describe how all staff, individuals, parents, guardians, and authorized representatives, if applicable, will be notified of the monitoring policy and procedures (e.g., upon hire, prior to admission) and outline procedures for obtaining signed written acknowledgments attesting to their understanding of the policy and procedures;

¹ Note: The full definition currently in regulation includes “privilege,” but that definition is expected to be edited in a regulatory action to make clear the distinction between a restriction and the “privilege” process used by DBHDS for individuals receiving services within state facilities who have a forensic status.

- Make clear that all required oversight and protection agencies will have access to all recordings upon request, including the DBHDS Offices of Human Rights and Licensing, DSS Adult and Child Protective Services (APS and CPS), and law enforcement.
- Acknowledge that recordings that identify an individual or otherwise include protected health information (PHI) such as full-face photos, photos of unique identifying marks, or discussion of services are subject to HIPAA. If a recording identifies an individual or contains PHI, it must be stored, used, and disclosed only in accordance with state and federal law.

Any new policy or policy change that impacts the rights of individuals receiving services requires review by the Office of Human Rights (12VAC35-115-260 A 9) prior to implementation.

Local Human Rights Committee Review

When positioned in common areas and the protections referenced above have been addressed in a provider's policy and procedures, the use of monitoring devices does not require review by a Local Human Rights Committee (LHRC).

When the use of a monitoring device is being considered for placement in a non-common area such as inside a bathroom or bedroom, or the monitoring device is being considered for use as an individualized support, the provider must submit all applicable proposed policies, procedures, or individualized services plans (ISPs) to the Human Rights advocate for review, prior to implementation ([12VAC35-115-260](#)). At a minimum, the ISP shall include the type of monitoring (audio or video or both); the reason for the monitoring; the specific location of the monitoring device; and detailed procedures for the use of the device. For example, "staff will turn off the monitor when the individual is changing their clothes," or "the monitor will only be used during sleeping hours." If after consultation with the advocate, the proposed use of the monitoring device is determined to be a restriction for the individual, the provider will follow the appropriate process outlined in [12VAC35-115-50](#), [12VAC35-115-100](#), or [12VAC35-115-105](#) in order to implement the restriction. This may include review by an LHRC.

All provider requests for review by an LHRC must be submitted using a standard form and process. A recorded overview of the LHRC review forms and process are available on the OHR webpage, under the "Resources for Providers" tab linked [here](#). The assigned advocate will review with the provider regulatory requirements associated with the type of review being requested and provide information about upcoming scheduled LHRC meetings. The LHRC Meeting Schedule and due dates for submitting agenda items are located on the OHR webpage, under the "LHRC and SHRC" tab linked [here](#).

Assurance of Rights (See [12VAC35-115-40](#).)

Residential and inpatient programs should have signage posted notifying anyone entering the location(s) that monitoring is occurring.

Providers are responsible for ensuring individuals are aware of their rights and the procedure for filing and resolving a complaint for violation of their rights. Information provided to individuals must be in the manner, format, and language most frequently understood by each individual, and include at a minimum, the name and current contact information of each individual's assigned regional advocate and a description of the human rights advocate's role.

Any individual or authorized representative, if applicable, who believes an individual's rights were violated, can make a complaint directly with the provider or through the human rights advocate: [Office of Human Rights Contact List](#).