

## **Policy Title: Use of Video and Audio Technology**

**Policy Statement:** Qualify Provider is committed to expanding opportunities to improve the lives of individuals with intellectual disability and other developmental disabilities through the use of various technology-supported options. Video and audio technologies are some of the many types of technology that can be used to (1) enhance an individual's independence, (2) monitor an individual's health and safety, (3) deter abuse and neglect of an individual, (4) improve program quality and integrity, and (5) maximize the effectiveness of staff. The use of video and audio technologies by the Qualified Provider shall be in accordance with all applicable laws and professional and ethical standards.

**Purpose Statement:** While this procedure focuses on the specific use of video or audio technology for monitoring purposes, it is the expectation of the Qualified Provider that the individual's planning and support team will explore all types of support options to increase and enhance an individual's level of independence. The procedure outlines the requirements related to the use of video and audio technology to support individuals, the review process for the installation and use of video and audio devices and the rights of individuals when video and audio technology is used.

**Applicability:** This procedure applies to the Qualified Provider's programs, services or support locations, excluding an individual's own home or an individual's family home. It applies to all of the Qualified Providers employees.

### **Definitions:**

"DDS Human Rights Committee" or "HRC" means the group of persons in the region who review and advise the DDS regional and training school directors in circumstances that pertain to the protection of the rights of individuals receiving funding or services from the department. Each HRC shall consist of not less than five members including staff of DDS qualified providers and community volunteers. A DDS employee shall act as liaison between the HRC and the regional or training school director.

"DDS Qualified Provider" means an agency, organization or individual practitioner that meets the criteria defined by the department as a prerequisite to providing support services to an individual or group of individuals with intellectual disability. A qualified provider is knowledgeable of the current practices in the field, adheres to the DDS policy and procedures, and follows the requirements and guidelines detailed in the DDS provider Assurance Agreement.

"Individual" means a person who is receiving funding or services from the Department of Developmental Services

"Planning and support team" or "PST" means the group that includes the individual; the individual's family, guardian or advocate, as applicable; the individual's case manager; a registered nurse; persons who provide supports and services to the individual; and any other person who the individual requests to participate. The planning and support team shall assist the individual to develop, implement, and evaluate his or her individual plan and shall assist the individual to obtain, manage, evaluate, and adjust supports, as needed.

### **Implementation**

1. A video or audio device may be installed in a program location or in a vehicle once the following criteria are met: (1) the appropriate written consent has been obtained from the individual or the individual's legal representative, if applicable; (2) the individual's Planning and Support Team has reviewed and approved the use of the device and its use has been documented in the individual's IP; (3) the DDS Human Rights Committee (HRC) has reviewed and approved the proposed use of the video or audio device in accordance with subsections 8 and 9 of this procedure; and (4) the DDS regional director or the regional director's

designee has approved the use of the video or audio device in accordance with subsections 8 and 9 of this procedure.

2. Information obtained through any video or audio technology shall be used solely to ensure at least one of following:
  - a. Enhancement of an individual's independence;
  - b. The health and safety of an individual;
  - c. Appropriate administration of an individual's medications;
  - d. Protection of an individual's financial interests;
  - e. Deterrence of abuse or neglect of an individual;
  - f. The health and safety of an individual's support staff;
  - g. Program quality and integrity; or
  - h. Security of the program, service or support location.
3. No video or audio device shall be placed in a bathroom, bedroom or other personal care area, except that an individual requires monitoring in these private areas for a specific health or safety related issue. Access to any video or audio recordings of these private areas shall be restricted to DDS-approved or Qualified Providers -approved staff.
4. Any individual, or his or her legal representative, who lives in or participates in a program, service, or support location, including riding in a vehicle that has a video camera installed, may request a review at any time by the DDS HRC.
5. Any information obtained through video or audio recording shall only be released or shared in accordance with this procedure or as required by any applicable state or federal law.
6. A video camera, installed for security purposes, which monitors the exterior of a facility or a publicly accessed community area at a support location, shall not require approval by the DDS.
7. Signed written consent from each individual, or each individual's legal representative, who is affected by the use of the video or audio technology, and prior written notification of its use to the regional director or the regional director's designee is required for the following uses of video or audio devices:
  - a. In a Qualified Providers vehicle used to transport an individual or individuals in which a video device is installed and in use; or
  - b. Non-recording video or audio devices used to enhance the independence of an individual who lives alone, when the device's use has been agreed to by the individual's planning and support team.
8. The use of video or audio technology other than in the manner listed in subsection 7 shall require review by and approval of the DDS Human Rights Committee. The Qualified Provider shall be required to submit the following:
  - a. A completed Request for Human Rights Committee Review Form (I.F.PO.006 Attachment B), including:
    - i. Behavior Support Plan for the individual who requires the use of video or audio technology; and
    - ii. Written consent by the individual or his or her legal representative for the use of video or audio technology and written consent by any other individual who is affected by its use.
  - b. A request for department approval for the installation and use of video or audio technology from the Agency Administrator that includes, but is not limited to, the following information:
    - i. The reason for the use of video or audio devices and how its use is expected to improve the quality of life of the individual;
    - ii. A floor plan or diagram of the proposed placement of the video cameras and audio devices;
    - iii. Who or what each video or audio device will be monitoring;

- iv. The type of video camera being installed and the features of the camera intended to be used (i.e., can it record, does it have audio, can it zoom in, is it motion activated, is it stationary or portable?);
  - v. Frequency of any video or audio recording (i.e., all the time, at specific times, at random times, on activation by a sensor?);
  - vi. Frequency of the use of video or audio technology and any related intervention plans to address suspected instances of abuse or neglect or inappropriate behavior;
  - vii. List of other less intrusive measures that have been taken to protect the health and safety of an individual prior to requesting the use of video or audio technology. (Not applicable for video or audio technology requested for enhancing an individual's independence);
  - viii. Plan to educate each individual and his or her legal representative, if applicable, on the use of video and audio technology;
  - ix. Plan to provide a copy of all legally required notifications describing the use of the video and audio technology and an individual's rights concerning the use of this technology that is to be installed to the individual or his or her legal representative, if applicable;
  - x. Plan to protect each individual's privacy;
  - xi. Description of the type of data that is anticipated to be collected and how the data will be collected by the video and audio devices;
  - xii. List of any additional technology supports that have been explored to assist the individual to enhance or increase his or her ability to be more independent; and
  - xiii. Backup plan for the ongoing use of video or audio technology in case of power loss or other emergency situation.
9. a. The DDS Human Rights Committee shall review and recommend approval or disapproval of each request to install and use video or audio devices based upon the justification of their need and the balance between the opportunity to improve an individual's life through the use of video or audio technology and its infringement upon the individual's rights to privacy.
- b. Before the DDS HRC may send a final recommendation to disapprove the use of a video or audio device, the committee shall:
- i. Submit to Qualified provider making the request suggested alternatives that would make the use of video or audio technology acceptable; and
  - ii. Document the committee's recommendation and the Qualified Provider's follow up in the final recommendation to approve or disapprove the use video or audio devices sent to the regional director.
10. Any program, service, or support location that has received approval from the DDS HRC for the use of video or audio technology is required to notify all persons who enter the premises of the use of video or audio devices. This notification shall be displayed in a variety of ways in order to allow individuals with various abilities to understand that video and audio devices are in use at the location. All versions of the notification shall note that any use of video or audio devices or recording is required to comply with all applicable HIPAA rules and regulations.
11. An individual, an individual's legal representative, or other person who is visiting or working with the individual may request that a video or audio device be turned off if private or confidential information is being discussed in a location where there are such devices. DDS or Qualified Provider's shall make every reasonable effort to accommodate these requests.
12. Any video or audio recording or other related data shall be maintained on the devices for a minimum of seven (7) days at which time the recording or data may be overwritten. Approval by the regional director or the

regional director's designee is required for installation of any video or audio technology that records for less than the minimum of seven (7) days. Once the recording or data is overwritten, it shall not be recoverable.

13. No video or audio recording or other related data shall be deleted or overwritten if it is determined by DDS or Qualified Provider's to contain:
  - a. a suspected or substantiated instance of abuse or neglect;
  - b. any instance of inappropriate or unprofessional conduct by the staff; or
  - c. any instance where an individual, a visitor or a family member at the program or facility displays behavior that could be subject to complaint.

A video or audio recording that meets the provisions of subdivisions (a), (b) or (c) of this subsection shall be preserved for use in an abuse or neglect investigation, disciplinary action or any administrative review deemed necessary by the commissioner or the commissioner's designee.

14. The regional director or the regional director's designee shall be notified by DDS staff or Qualified Provider's staff of any malfunction of an approved video or audio device whenever the backup video or audio technology plan has been activated for 24 hours or more.
15. If Qualified Provider uses or plans to use video or audio technology:
  - a. Qualified Provider shall ensure that any area where an individual's private medical information is located or can be accessed is only monitored in a way that protects this information from being seen, heard or recorded by a video or audio device (i.e., file cabinets, desks and computer screens are out of camera view, audio devices are not used in areas where confidential information is likely to be discussed).
  - b. Qualified Provider shall restrict access to any video or audio recordings or other related data to designated staff only.
  - c. Qualified Provider's guidelines on how the video or audio recordings or other related data may be viewed.
  - d. Qualified Provider's timeline for maintaining any recordings and clarifies the situations in which recordings need to be preserved.
  - e. Qualified Providers will outline steps that shall be taken by staff in response to a specific instance of suspected abuse or neglect or inappropriate behavior having been identified on a video or audio recording, including who is required to be notified and how and with whom any recording shall be shared.
  - f. Create a process by which an employee subject to disciplinary action resulting from the use of video or audio technology has the opportunity to review any video or audio recording prior to any hearing at which disciplinary action may be taken.
  - g. Qualified Provider's will have a system to alert designated staff that a video or audio device is not working properly
  - h. Qualified Provider will have a backup plan for any approved video or audio device used to enhance an individual's independence or to monitor health and safety concerns that is malfunctioning or offline.

16. Qualified Provider's shall store all video or audio recordings securely at the program, service, or support location or with the information technology vendor contracted to oversee the video or audio technology. Qualified Provider shall establish security measures to minimize the risk of unauthorized electronic access to any recordings. Any video or audio recording downloaded as evidence of a specific incident shall be safeguarded in an appropriate and secure manner.

17. If DDS determines that a video or audio recording or other related data from a video or audio device may be evidence in an abuse or neglect complaint or any other investigation in regards to an individual, Qualified provider shall submit in a secure manner any requested recordings or data to the DDS Director of Investigations, or the DDS Director of Legal and Government Affairs, or the directors' designee, within 48 hours of the request.

18. If DDS determines that a video or audio recording or other related data from a video or audio device is evidence in a complaint regarding the qualified provider or its staff at a program, service, or support location, Qualified Provider shall submit in a secure manner any requested recordings or data to the DDS Director of Investigations, or the DDS Director of Legal and Government Affairs, or the directors' designee, within 72 hours of the request.
19. Any copy of a video or audio recording or other related data may only be released as allowed by state and federal law.

**Policy and Procedure Reference Material:**

I.F.PO.006 Attachment B [Request for Human Rights Committee Review Form](#)