

Policy & the Use of Cameras in the New Choices Waiver Residential HCBS Setting

Although the allowance/prohibition of cameras is not specifically discussed in the HCBS Settings Final Rule, a minimum requirement of States is to ensure individual rights to privacy, dignity, and respect in all HCBS service settings.

The residential self-assessment asks the following question: “Are cameras present in the setting? If yes, please provide evidence that surveillance equipment has been authorized.” This question is to assess the use of cameras used for the purpose of surveillance that violate a person’s right to privacy.

Removal of cameras is not a requirement of the Settings Rule. The use of cameras must be assessed against the HCBS Settings Rule to ensure that the presence and intended use of cameras is in compliance with the Rule. Surveillance cameras in a setting may change the perception of the site as institutional in nature versus Home and Community Based. Use the following information to determine if surveillance equipment is inline with the settings rule:

Surveillance equipment in the following circumstances generally do not raise privacy concerns and can be used as similar non-HCBS settings would use them:

- In areas dedicated to provider staff (desks/offices)
- Monitoring entrances and exits
- Monitoring exterior areas of the building (parking lots)
- In commercial/integrated areas of the setting (such as stores, cafes, etc.)

Surveillance equipment may also be used if it achieves one of the following:

- Increased independence for individual(s) receiving HCBS services
- Addresses a complex medical condition or other extreme circumstance
- Reduces or minimizes critical incidents
- Improves the quality of supports

Surveillance equipment must meet the following requirements:

- **Address health and safety concerns, potential risks and safety planning**
- **Visual (concealed cameras are not allowed)**
- **Be the least restrictive option**
- **Be accessed (both equipment and any recordings) only by appropriate staff**
- **Method of secure disposal or destruction of any recordings after a reasonable period**

If an individualized assessment indicates that a person needs to be watched at all times so that staff can intervene when they engage in behavior that is dangerous to themselves or others, this modification should be reflected in their person centered plan.

If surveillance equipment is used in an HCBS setting, individuals receiving services and their guardian must provide informed consent. We recognize there will be times when the person's guardian may need to be heavily involved in this process. However, the participant, regardless of age, should be involved in the informed consent and planning process as much as possible.

Note:

Only a resident or the resident's legal representative may operate or install a monitoring device in the resident's room per Utah Administrative Code 26-21-303.

Submit any questions to HCBSSettings@utah.gov