

Camera and Video Use in Residential Settings

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Purpose

The purpose of this document is to provide clarification about the use of cameras and video recording devices in ODP-licensed residential settings.

Background

The use of cameras is ubiquitous in Americans' everyday lives. The ready availability and relatively low costs of cameras coupled with the benefits of their use has contributed to the general public's acceptance of their presence in both public and private spaces.

Settings that provide residential services to individuals with intellectual / developmental disabilities and Autism are no exception; ODP has seen a significant increase in camera use in recent years.

The use of camera in such settings presents a challenge to providers, specifically: how does the provider ensure that cameras are being used in a manner that allows individuals to enjoy the benefits offered by cameras while protecting their right to privacy?

Discussion

Cameras are used in licensed settings for a variety of reasons. In most cases, the manner in which the cameras are used and the purposes for their use vary based on the specific details of a given situation. As a result, there is no single "one-size-fits-all" approach to regulating camera use in licensed settings; there cannot be a yes-or-no answer to the question "are cameras allowed in residential settings?"

The need for a case-by-case analysis is primarily demonstrated by the following regulations in 55 Pa.Code Chapter 6100:

§ 6100.182(a)- An individual has the right to receive scheduled and unscheduled visitors, and to communicate and meet privately with whom the individual chooses, at any time.

§ 6100.182(e) - An individual has the right to make choices and accept risks.

§ 6100.182(h) - An individual has the right to privacy of person and possessions.

§ 6100.182(i) - An individual has the right of access to and security of the individual's possessions.

§ 6100.184(a) - An individual's rights shall be exercised so that another individual's rights are not violated.

Determining whether Camera Use is a Violation of Privacy

While determining whether a camera use is a violation of individual privacy is dependent on the circumstances unique to the situation, it is important that the *method* used to evaluate each case must be the same for purposes of fairness and consistency. ODP's method for evaluating whether camera use constitutes a privacy violation is to collect data and analyze information about how the camera is used to determine if the camera use does or does not violate individual privacy.

ODP collects the following information to inform its determination:

1. Individual Notice –Prior to use of the camera, has the individual been educated on the camera and how it works, why the camera is being recommended, and the potential impacts to the individual's privacy if the camera is used?

2. Individual Consent – Did the individual consent to use of the camera?

3. Individual Control – Does the individual have:

- *Total control of the camera*, e.g. can turn the camera off as desired, initiates use of the camera, etc., or
- *Partial control of the camera*, e.g. can request that the camera be turned off, or
- *No control of the device*, e.g. a camera placed in common areas of a Community Home.

4. Evaluation Plan

Prior to use of the camera, has an evaluation plan been developed that includes:

- The need(s) of the individual that will be met by the camera.
- How the camera will ensure the individual's health, welfare and independence.
- The training needed to successfully utilize the camera.
- The back-up plan that will be implemented should there be a problem with the camera.

OR

An evaluation plan has not been developed.

5. Impact to Other Individuals

Does the camera impact:

A single individual only, e.g. the camera is in an individual's bedroom in a one-person home,

OR

Multiple Individuals, e.g. the camera is in an individual's bedroom in a three-person home and other individuals spend time with the individual in the individual's bedroom.

6. Location of Camera(s)

Is the camera located:

- Outside the home – Exterior grounds only.
- Outside the home - Entrances and exits.
- Inside the home - Areas inaccessible to individuals, e.g. a staff office that individuals do not enter.
- Inside the home - Common Areas / Hallways.
- Inside the home – Bedroom(s).
- Inside the home – Bathroom(s).

7. Purpose(s) of Camera

The camera is used:

- In lieu of additional staff to maximize individual independence.
- For ad-hoc monitoring of medical need for a single Individual.
- For ad-hoc monitoring of behavioral need for a single Individual.
- Crime prevention, e.g. property vandalism.
- Staff supervision.
- Monitoring individuals' interactions with others.
- Reducing the number of paid staff persons solely for the convenience of the provider.

8. Type of Camera

- Wireless camera, e.g. doorbell cameras, audio/video monitoring device, closed circuit television security system
- Cameras activated under specific conditions, e.g. triggered by a pressure pad or sensor
- Thermal camera used to protect privacy/identity
- Two-way video camera system that complies with HIPAA requirements
- Cameras connected to software/applications utilizing artificial intelligence

9. Video Footage Retention

- Camera captures “real time” footage only – recordings are not retained, OR
- Footage is retained on a time-limited basis, e.g. 10-day retention, OR
- Footage is retained on a permanent basis with no disposal schedule.

10. Video Footage Access

Video captured by the device is accessible to:

- The individual.
- Unpaid (natural) supports.
- Provider management only, e.g. CEO, House Manager, etc.
- Program specialists or clinical staff.
- Select direct support staff persons.
- All direct support staff persons.
- Everyone.

11. Other Relevant Information

- A medical professional has recommended or ordered use of the camera.
- The camera is only used at certain times, e.g. during sleeping hours.
- Alternative to camera use is staff observation, e.g. in-person checks.
- Need and purpose of the camera is addressed in the individual Plan.
- The provider has policies and procedures related to camera use.

Scenarios

Below are some examples of how ODP's method is applied based on the circumstances unique to the situation:

Scenario #1: The provider prohibits camera use in any way.

Determination: The prohibition is a violation of § 6100.182(h) and § 6100.182(i). Providers may not limit any possession unless it presents a significant health and safety risk to the individual or others.

Scenario #2: An individual wants to have a camera in his bedroom. The individual has total control of the camera.

Determination: This does not constitute a privacy violation provided that the individual is educated on the need to turn off the camera when another individual who does not wish to be on camera is present in the bedroom (which would constitute § 6100.184(a) in that the "visiting" individual's right to privacy would be violated).

Scenario #3: The individual's family has requested that a camera be placed in an individual's bedroom. The family would have total control of the camera and would be the only parties who can view the video footage. The individual does not have a guardian and is capable of making her own decisions. She does not want the camera in her bedroom.

Determination: Honoring the family's request would constitute a violation of § 6100.182(a), § 6100.182(e), and § 6100.182(h); the individual would be deprived of her rights to communicate and meet privately with whom the individual chooses, to make choices, and privacy of person.

Scenario #4: Cameras are placed in the common areas of the home to supervise staff conduct. The individuals residing in the home are aware of the cameras and have consented to the camera use.

Determination: This does not constitute a privacy violation; the camera is placed in an area where there is no reasonable expectation of privacy, and all individuals have consented to camera use.

Scenario #5: An individual is at risk of falling out of bed when sleeping. A physician has ordered that a camera be placed in the room so the individual can be monitored without the need for in-person checks. The individual's guardian has consented to use of the device. The video footage is real-time only. The monitor that displays the video footage is located in an area where other individuals, visitors, and anyone else can view the footage.

Determination: This is a violation of § 6100.182(h). Placing the monitor in an area where a person who is not authorized to watch the person sleep violates the individual's right to privacy of person. If

the monitor was moved to an area where only the staff responsible for monitoring the individual, this would not be a privacy violation.

Conclusion

Camera use offers significant benefits to individuals but can also violate an individual's right to privacy. Because there are many ways that cameras can be used it is impossible to establish a blanket policy about whether cameras can or cannot be used. ODP has developed a 11-step method for evaluating whether camera use constitutes a privacy violation to ensure fairness and consistency in applying regulatory requirements. This method has been applied since June 2018 with great success. It is recommended providers contact ODP for technical assistance and support when faced with a scenario that may constitute a privacy violation.

Providers may contact the appropriate ODP regional office for technical assistance or contact the ODP Regulatory Administration Unit at RA-odplicensing@pa.gov or RA-PW6100REGADMIN@pa.gov.