

TO BE RESCINDED

5123:2-9-35 **Home and community-based services waivers - remote monitoring and remote monitoring equipment under the individual options, level one, and self-empowered life-funding waivers.**

(A) Purpose

The purpose of this rule is to define remote monitoring and remote monitoring equipment and set forth provider qualifications, requirements for service delivery and documentation of services, and payment standards for the services.

(B) Definitions

- (1) "Acquisition costs" means the cost of any attachments, accessories, or auxiliary apparatus necessary to make the equipment usable; taxes; duty; protective in-transit insurance; and freight charges.
- (2) "Actual price" means the actual price that the provider of remote monitoring equipment is charged to purchase an item of equipment by the seller and that fully and accurately reflects any discount or rebate the provider receives. The provider shall maintain documentation of the actual price in the form of an invoice from the seller that gives details of date, price, quantity, and type of equipment or other documentation approved by the department.
- (3) "Adult family living" has the same meaning as in rule 5123:2-9-32 of the Administrative Code.
- (4) "Adult foster care" has the same meaning as in rule 5123:2-9-33 of the Administrative Code.
- (5) "Agency provider" means an entity that employs persons for the purpose of providing services for which the entity must be certified under rules adopted by the department.
- (6) "Backup support person" means the person who is responsible for responding in the event of an emergency or when an individual receiving remote monitoring otherwise needs assistance or the remote monitoring equipment stops working for any reason. Backup support may be provided on an unpaid basis by a family member, friend, or other person selected by the individual or on a paid basis by an agency provider of homemaker/personal care or community inclusion, as applicable.

- (7) "Community inclusion" has the same meaning as in rule 5123:2-9-42 of the Administrative Code.
- (8) "Community respite" has the same meaning as in rule 5123:2-9-22 of the Administrative Code.
- (9) "County board" means a county board of developmental disabilities.
- (10) "Department" means the Ohio department of developmental disabilities.
- (11) "Environmental accessibility adaptations" has the same meaning as in rule 5123:2-9-23 of the Administrative Code.
- (12) "Funding range" means one of the dollar ranges contained in appendix A to rule 5123:2-9-06 of the Administrative Code, to which individuals enrolled in the individual options waiver have been assigned for the purpose of funding services other than adult day support, non-medical transportation, supported employment-community, supported employment-enclave, and vocational habilitation. The funding range applicable to an individual is determined by the score derived from the Ohio developmental disabilities profile that has been completed by a county board employee qualified to administer the tool.
- (13) "Group size" means the number of individuals who are sharing services, regardless of the funding source for those services.
- (14) "Home-delivered meals" has the same meaning as in rule 5123:2-9-29 of the Administrative Code.
- (15) "Homemaker/personal care" has the same meaning as in rule 5123:2-9-30 of the Administrative Code.
- (16) "Independent provider" means a self-employed person who provides services for which he or she must be certified under rule 5123:2-2-01 of the Administrative Code and does not employ, either directly or through contract, anyone else to provide the services.
- (17) "Individual" means a person with a developmental disability or for purposes of giving, refusing to give, or withdrawing consent for services, his or her guardian in accordance with section 5126.043 of the Revised Code or other person authorized to give consent.

- (18) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (19) "Manufacturer's suggested retail price" means the current retail price of an item of remote monitoring equipment that is recommended by the product's manufacturer. If a provider of remote monitoring equipment is also the manufacturer, the provider may establish a suggested retail price provided that the price is equal to or less than the suggested retail price for the same or a comparable item of equipment recommended by one or more other manufacturers.
- (20) "Monitoring base" means the location from which the remote monitoring staff monitor an individual.
- (21) "Ohio developmental disabilities profile" means the standardized instrument utilized by the department to assess the relative needs and circumstances of an individual enrolled in the individual options waiver compared to others. The individual's responses are scored and the individual is linked to a funding range, which enables similarly situated individuals to access comparable waiver services paid in accordance with rules adopted by the department.
- (22) "Personal emergency response systems" has the same meaning as in rule 5123:2-9-26 of the Administrative Code.
- (23) "Remote monitoring" means the monitoring of an individual in his or her residence by staff using one or more of the following systems: live video feed, live audio feed, motion sensing system, radio frequency identification, web-based monitoring system, or other device approved by the department. The system shall include devices to engage in live two-way communication with the individual being monitored as described in the individual service plan.
- (24) "Remote monitoring equipment" means the equipment used to operate systems such as live video feed, live audio feed, motion sensing system, radio frequency identification, web-based monitoring system, or other device approved by the department. It also means the equipment used to engage in live two-way communication with the individual being monitored.
- (25) "Residential respite" has the same meaning as in rule 5123:2-9-34 of the Administrative Code.
- (26) "Sensor" means equipment used to notify the remote monitoring staff of a

situation that requires attention. Examples include, but are not limited to, seizure mats, door sensors, floor sensors, and smoke detectors.

- (27) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.
- (28) "Service documentation" means all records and information on one or more documents, including documents that may be created or maintained in electronic software programs, created and maintained contemporaneously with the delivery of services, and kept in a manner as to fully disclose the nature and extent of services delivered that shall include the items delineated in paragraphs (D)(3) and (E)(3) of this rule, as applicable, to validate payment for medicaid services.
- (29) "Specialized medical equipment and supplies" has the same meaning as in rule 5123:2-9-25 of the Administrative Code.
- (30) "Team" has the same meaning as in rule 5123:2-1-11 of the Administrative Code.
- (31) "Three-year period" means the three-year period beginning with the individual's initial enrollment date and ending three years later. Subsequent three-year periods begin with the ending date of the previous three-year period and end three years later.
- (32) "Useful life" means three years.
- (33) "Waiver eligibility span" means the twelve-month period following either an individual's initial enrollment date or a subsequent eligibility re-determination date.

(C) General provisions for remote monitoring and remote monitoring equipment

(1) Provider qualifications

- (a) An applicant seeking approval to provide remote monitoring or remote monitoring equipment shall meet the requirements of this rule and complete and submit an application through the department's provider portal
(<https://doddportal.dodd.ohio.gov/PRV/certification/Pages/default.aspx>)

and adhere to the requirements of either rule 5123:2-2-01 or 5123:2-3-19 of the Administrative Code, as applicable.

- (b) Failure of a certified provider to comply with this rule and rule 5123:2-2-01 of the Administrative Code may result in denial, suspension, or revocation of the provider's certification.
- (c) Failure of a licensed provider to comply with this rule and Chapter 5123:2-3 of the Administrative Code may result in denial, suspension, or revocation of the provider's license.

(2) Requirements for service delivery

- (a) The individual's service and support administrator, in consultation with the individual and the individual's team, shall assess whether remote monitoring is sufficient to ensure the individual's health and welfare.
- (b) Remote monitoring and remote monitoring equipment shall be provided pursuant to an individual service plan that conforms to the requirements of paragraph (H) of rule 5101:3-40-01 of the Administrative Code, paragraph (H) of rule 5101:3-42-01 of the Administrative Code, or paragraph (K) of rule 5123:2-9-40 of the Administrative Code, as applicable.

(3) Payment standards

- (a) The billing units, service codes, and payment rates for remote monitoring and remote monitoring equipment are contained in the appendix to this rule.
- (b) Remote monitoring and remote monitoring equipment provided to individuals enrolled in the individual options waiver are subject to the funding ranges and individual funding levels set forth in paragraph (C) of rule 5123:2-9-06 of the Administrative Code.

(D) Specific provisions for remote monitoring

(1) Provider qualifications

- (a) Remote monitoring shall be provided by an agency provider that meets the requirements of this rule and that has a medicaid provider agreement

with the Ohio department of medicaid.

- (b) Remote monitoring shall not be provided by an independent provider, a county board, or a regional council of governments formed under section 5126.13 of the Revised Code by two or more county boards.
- (c) The requirements of paragraphs (C)(3)(a) and (C)(3)(b) of rule 5123:2-2-01 of the Administrative Code do not apply to an applicant for certification to provide remote monitoring.
- (d) Staff of agency providers and entities under contract with agency providers who monitor individuals from the monitoring base shall complete the training specified in paragraph (C)(3)(c) of rule 5123:2-2-01 of the Administrative Code.

(2) Requirements for service delivery

- (a) Remote monitoring is intended to ensure an individual's health and welfare and shall only be used to reduce or replace the amount of homemaker/personal care or community inclusion, as applicable, an individual needs.
- (b) Remote monitoring shall be done in real time, not via a recording, by awake staff at a monitoring base using the appropriate connection. While remote monitoring is being provided, the remote monitoring staff shall not have duties other than remote monitoring.
- (c) Remote monitoring shall not be provided in adult foster care, adult family living, or non-residential settings.
- (d) When remote monitoring involves the use of audio and/or video equipment that permits remote monitoring staff to view activities and/or listen to conversations in the residence, both of the following requirements shall be met:
 - (i) The individual who receives the service and each person who lives with the individual shall consent in writing after being fully informed of what remote monitoring entails including, but not limited to, that the remote monitoring staff will observe their activities and/or listen to their conversations in the residence, where in the residence the remote monitoring will take place, and whether or not recordings will be made. If the individual or a

person who lives with the individual has a guardian, the guardian shall consent in writing. The individual's service and support administrator shall keep a copy of each signed consent form with the individual service plan.

- (ii) A notice shall be prominently displayed within the residence that advises that the residence is equipped with audio and/or video equipment that permits others to view activities and/or listen to conversations within the residence.
- (e) The provider of remote monitoring shall provide initial and ongoing training to its staff to ensure they know how to use the remote monitoring system.
- (f) The provider of remote monitoring shall have a backup power system (such as battery power and/or generator) in place at the monitoring base in the event of electrical outages. The provider shall have other backup systems and additional safeguards in place which shall include, but are not limited to, contacting the backup support person in the event the remote monitoring system stops working for any reason.
- (g) The provider of remote monitoring shall comply with all federal, state, and local regulations that apply to the operation of its business or trade, including but not limited to, 18 U.S.C. section 2510 to section 2522 as in effect on the effective date of this rule and section 2933.52 of the Revised Code.
- (h) The provider of remote monitoring shall have an effective system for notifying emergency personnel such as police, fire, emergency medical services, and psychiatric crisis response entities.
- (i) The provider of remote monitoring shall provide an individual who receives remote monitoring with initial and ongoing training on how to use the remote monitoring system as specified in the individual service plan.
- (j) The provider of remote monitoring shall disclose to the individual and the individual's team during the provider selection process its current ratio of monitoring staff to individuals receiving remote monitoring. The provider shall update this information as needed, but no less than once a year.

- (k) If an emergency arises at an individual's residence, the remote monitoring staff shall immediately assess the situation and call emergency personnel first, if that is deemed necessary, and then contact the backup support person. The remote monitoring staff shall stay engaged with the individual during an emergency until emergency personnel or the backup support person arrives.
 - (i) The backup support person shall verbally acknowledge receipt of a request for assistance from the remote monitoring staff.
 - (ii) The backup support person shall arrive at the individual's residence within a reasonable amount of time (to be specified in the individual service plan) when a request for in-person assistance is made.
- (l) If an individual needs assistance but the situation is not an emergency, the remote monitoring staff shall address the situation as specified in the individual service plan.
- (m) The remote monitoring staff shall have detailed and current written protocols for responding to an individual's needs as specified in the individual service plan and/or the behavior support plan, including contact information for the backup support person to provide assistance at the individual's residence when necessary.
- (n) If an individual indicates he or she wants the remote monitoring system turned off, the following protocol shall be implemented:
 - (i) The remote monitoring staff shall contact the backup support person and request in-person assistance at the individual's residence.
 - (ii) The remote monitoring system shall remain in operation until the backup support person arrives.
 - (iii) If no one else at the residence is receiving remote monitoring, the remote monitoring staff shall turn off the system once the backup support person arrives at the residence and is briefed on the situation.
 - (iv) The remote monitoring staff shall contact the individual's service and support administrator who shall confirm whether the

individual/guardian chooses to continue to receive the service.

- (o) A monitoring base shall not be located at the residence of an individual who receives remote monitoring.
- (p) A secure network system requiring authentication, authorization, and encryption of data that complies with 45 C.F.R. section 164.102 to section 164.534 as in effect on the effective date of this rule shall be in place to ensure that access to computer, video, audio, sensor, and written information is limited to authorized persons.
- (q) If an unusual incident or a major unusual incident as defined in rule 5123:2-17-02 of the Administrative Code occurs while an individual is being monitored, the remote monitoring provider shall retain or ensure the retention of any video and/or audio recordings and any sensor and written information pertaining to the incident for at least seven years from the date of the incident.

(3) Documentation of services

Service documentation for remote monitoring shall include each of the following to validate payment for medicaid services:

- (a) Type of service.
- (b) Date of service.
- (c) Place of service.
- (d) Name of individual receiving service.
- (e) Medicaid identification number of individual receiving service.
- (f) Name of provider.
- (g) Provider identifier/contract number.
- (h) Begin and end time of the remote monitoring service when the backup support person is needed on site.
- (i) Written or electronic signature of the person delivering the service, or

initials of the person delivering the service if a signature and corresponding initials are on file with the provider.

- (j) Number of units of the delivered service.
- (k) Group size in which the service was provided.
- (l) Description and details of the services delivered that directly relate to the services specified in the approved individual service plan as the services to be provided.
- (m) A notation made at least monthly indicating the individual's response to services delivered.

(4) Payment standards

- (a) The payment rates for remote monitoring are intended as payment for providing remote monitoring for all individuals in the residence who receive the service.
- (b) There are two payment rates for remote monitoring, which differ depending on whether an individual is receiving remote monitoring with unpaid backup support or paid backup support.
- (c) When an individual receives remote monitoring with unpaid backup support, the agency provider of the remote monitoring shall bill for the remote monitoring. When two or more individuals share remote monitoring with unpaid backup support, the rate shall be divided equally among those sharing the service, regardless of funding source.
- (d) When an individual receives remote monitoring with paid backup support, the homemaker/personal care or community inclusion provider, as applicable, that is providing the backup support shall bill for the remote monitoring and provide the remote monitoring directly or through a contract with an agency provider of remote monitoring that meets the requirements of this rule. When two or more individuals share remote monitoring with paid backup support, the rate shall be divided equally among those sharing the service, regardless of funding source.
- (e) The homemaker/personal care or community inclusion provider, as applicable, shall be paid for backup support until the remote monitoring staff contacts the backup support person and requests emergency or

in-person assistance. Once contact is made, the backup support person's time shall be billed as homemaker/personal care or community inclusion, as applicable.

- (f) Under the level one waiver, payment for environmental accessibility adaptations, home-delivered meals, personal emergency response systems, remote monitoring, remote monitoring equipment, and specialized medical equipment and supplies, alone or in combination, shall not exceed seven thousand five hundred dollars within a three-year period.
- (g) Under the self-empowered life funding waiver, payment for community inclusion, community respite, remote monitoring, and residential respite, alone or in combination, shall not exceed twenty-five thousand dollars per waiver eligibility span.

(E) Specific provisions for remote monitoring equipment

(1) Provider qualifications

- (a) Remote monitoring equipment shall be provided by an independent provider or an agency provider that meets the requirements of this rule and that has a medicaid provider agreement with the Ohio department of medicaid.
- (b) The requirements of paragraphs (C)(3)(a), (C)(3)(b), (C)(3)(c), and (K) of rule 5123:2-2-01 of the Administrative Code do not apply to an applicant for certification to provide remote monitoring equipment.

(2) Requirements for service delivery

- (a) Remote monitoring equipment shall include an indicator to the individual being monitored that the equipment is on and operating. The indicator shall be appropriate to meet the individual's needs.
- (b) Remote monitoring equipment shall be designed so that it can be turned off only by the person(s) indicated in the individual service plan.
- (c) The provider of remote monitoring equipment shall be responsible for all of the following:

- (i) Delivery of the equipment to the individual's residence and, when necessary, to the room or area of the home in which the equipment will be used;
- (ii) Installation of the equipment, including assembling the equipment or parts used for the assembly of the equipment;
- (iii) Adjustments and/or modifications of the equipment;
- (iv) Conducting monthly testing of the equipment to ensure proper operation;
- (v) Maintenance and necessary repairs to the equipment; and
- (vi) Replacing equipment that needs to be replaced prior to the expiration of the equipment's useful life for any reason other than misuse or damage by an individual.

(3) Documentation of services

Service documentation for remote monitoring equipment shall include each of the following to validate payment for medicaid services:

- (a) Type of service.
- (b) Date of service.
- (c) Place of service.
- (d) Name of individual receiving service.
- (e) Medicaid identification number of individual receiving service.
- (f) Name of provider.
- (g) Provider identifier/contract number.
- (h) Written or electronic signature of the person delivering the service, or initials of the person delivering the service if a signature and

corresponding initials are on file with the provider.

- (i) Number of units of the delivered service or continuous amount of uninterrupted time during which the service was provided.
- (j) Group size in which the service was provided.

(4) Payment standards

- (a) If the provider of remote monitoring equipment purchases the equipment, the monthly rate billed to the department for the item of equipment shall be the lesser of the provider's usual and customary charge or the actual price plus acquisition costs of the item both of which shall be pro rated over the useful life of the equipment plus a reasonable percentage adequate to cover the cost of the provider's responsibilities as set forth in paragraph (E)(2)(c) of this rule.
- (b) If the provider of remote monitoring equipment leases or manufactures the equipment, the monthly rate billed to the department for the item of equipment shall be the lesser of the provider's usual and customary charge or the manufacturer's suggested retail price pro rated over the useful life of the equipment plus a reasonable percentage adequate to cover the cost of the provider's responsibilities as set forth in paragraph (E)(2)(c) of this rule.
- (c) When two or more individuals share the equipment, the rate shall be divided equally among those sharing the equipment, regardless of funding source.
- (d) The monthly rate shall be recalculated in accordance with paragraph (E)(4)(a) or (E)(4)(b) of this rule, as applicable, when an item of equipment needs to be replaced after the expiration of the equipment's useful life or due to misuse or damage by an individual, when additional equipment is added, and when existing equipment is eliminated.
- (e) Payment for an item of equipment includes the manufacturer's and seller's warranties.
- (f) Payment for an item of equipment shall start at the beginning of the month in which an individual at the residence begins using the equipment as specified in his or her individual service plan. Payment shall stop at the

end of the month in which no individual in the residence is using the equipment as specified in his or her individual service plan.

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Certification

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