

TO BE RESCINDED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

This rule defines remote monitoring and remote monitoring equipment and sets 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 remote monitoring 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 remote monitoring 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 directly employs at least one person in addition to the chief executive officer for the purpose of providing services for which the entity must be certified in accordance with rule 5123:2-2-01 of the Administrative Code.
- (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. When backup support is provided on a paid basis by an agency provider, the agency provider shall be the primary contact for the remote monitoring vendor.

- (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" has the same meaning as in rule 5123:2-9-06 of the Administrative Code.
- (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) "Hourly billing unit" means a billing unit and corresponding payment rate that shall be used when forty-five to sixty minutes of remote monitoring are provided by the same provider to the same individual during one calendar day.
- (17) "Independent provider" means a self-employed person who provides services for which he or she must be certified in accordance with rule 5123:2-2-01 of the Administrative Code and does not employ, either directly or through contract, anyone else to provide the services.
- (18) "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.

- (19) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (20) "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.
- (21) "Monitoring base" means the location from which the remote monitoring staff monitor an individual.
- (22) "Ohio developmental disabilities profile" has the same meaning as in rule 5123:2-9-06 of the Administrative Code.
- (23) "Personal emergency response systems" has the same meaning as in rule 5123:2-9-26 of the Administrative Code.
- (24) "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 that meets the requirements set forth in this rule. The system shall include devices to engage in live two-way communication with the individual being monitored as described in the individual service plan.
- (25) "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 that meets the requirements set forth in this rule. It also means the equipment used to engage in live two-way communication with the individual being monitored.
- (26) "Remote monitoring provider" means the agency provider identified in the individual service plan as the provider of remote monitoring. The remote monitoring provider may be either:
- (a) A remote monitoring vendor with unpaid backup support; or
 - (b) A provider of homemaker/personal care or community inclusion who also acts as a remote monitoring vendor or maintains a contract with a remote monitoring vendor to provide paid backup support.

- (27) "Remote monitoring vendor" means the agency provider that supplies the monitoring base, the remote monitoring staff who monitor an individual from the monitoring base, and the remote monitoring equipment used in the delivery of remote monitoring.
- (28) "Residential respite" has the same meaning as in rule 5123:2-9-34 of the Administrative Code.
- (29) "Sensor" means equipment used to notify the remote monitoring staff or other persons designated in the individual service plan of a situation that requires attention or activity at the residence which may indicate deviations from routine activity and/or future needs. Examples include, but are not limited to, seizure mats, door sensors, floor sensors, motion detectors, heat detectors, and smoke detectors.
- (30) "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.
- (31) "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 paragraph (D)(3) or (E)(3) of this rule, as applicable, to validate payment for medicaid services.
- (32) "Specialized medical equipment and supplies" has the same meaning as in rule 5123:2-9-25 of the Administrative Code.
- (33) "Team" has the same meaning as in rule 5123:2-1-11 of the Administrative Code.
- (34) "Three-year period" means the three-year period beginning with the individual's initial waiver 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.
- (35) "Useful life" means two years.
- (36) "Waiver eligibility span" means the twelve-month period following either an individual's initial waiver 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 complete and submit an application through the department's website (<http://dodd.ohio.gov/>) and adhere to the requirements of rule 5123:2-2-01 or Chapter 5123:2-3 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 rule 5123:2-1-11 of the Administrative Code.

(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) 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 (D)(17)(g) of rule 5123:2-2-01 of the Administrative Code.

(2) Requirements for service delivery

- (a) Remote monitoring is intended to address an individual's assessed needs in a manner that promotes autonomy and minimizes dependence on paid support staff and should be explored prior to authorizing services that may be more intrusive, including homemaker/personal care or community inclusion, as applicable.
- (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 remote monitoring provider shall provide initial and ongoing training to its staff to ensure they know how to use the monitoring base system.
- (f) The remote monitoring provider 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 monitoring base system stops working for any reason.
- (g) The remote monitoring provider 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 remote monitoring provider shall have an effective system for notifying emergency personnel such as police, fire, emergency medical services, and psychiatric crisis response entities.
- (i) The remote monitoring provider 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) If a known or reported 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.
- (k) 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.
- (l) 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, including contact information for the backup support person to provide assistance at the individual's residence when necessary. The individual service plan shall set forth the protocol to be followed should the individual request that the remote monitoring equipment be turned off.
- (m) A monitoring base shall not be located at the residence of an individual who receives remote monitoring.
- (n) 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.
- (o) 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 per calendar day.
- (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.

(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 a remote monitoring provider 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 paid backup support person's time shall be billed as homemaker/personal care or community inclusion, as applicable. The remote monitoring vendor will continue to bill at the unpaid backup support rate until the backup support person has arrived and agreed to take over the care of the individual.
- (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.

(E) Specific provisions for remote monitoring equipment

(1) Provider qualifications

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.

(2) Requirements for service delivery

- (a) Remote monitoring equipment shall be designed so that it can be turned off by the remote monitoring vendor when requested by a person indicated in the individual service plan.
- (b) 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 existing equipment to ensure ongoing operation;
- (iv) Maintenance and necessary repairs to the equipment; and
- (v) 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) Name of individual receiving service.
- (c) Medicaid identification number of individual receiving service.
- (d) Name of provider.
- (e) Provider identifier/contract number.
- (f) Address where remote monitoring equipment is installed.
- (g) List of installed devices that make up remote monitoring equipment.
- (h) Date remote monitoring equipment is installed.
- (i) Indication of whether remote monitoring equipment is purchased or leased.
- (j) Cost for purchase or lease of each installed device that makes up remote monitoring equipment as evidenced by receipt for purchased equipment or contract for leased equipment.
- (k) Modifications made to remote monitoring equipment including:
 - (i) Date of modification;
 - (ii) Devices added, removed, repaired, or replaced;
 - (iii) Adjustments in monthly average lease cost due to modification; and
 - (iv) Reason for modification.

(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)(b) 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 (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)(b) of this rule.
- (c) When two or more individuals share the remote monitoring 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 remote monitoring 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, when the monthly equipment lease amount paid by the remote monitoring vendor changes, when equipment is relocated within the residence or to a new residence, and when existing equipment is eliminated.
- (e) Payment for an item of remote monitoring equipment includes the manufacturer's and seller's warranties.
- (f) Payment for an item of remote monitoring 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 remote monitoring equipment as specified in his or her individual service plan.

- (g) Payment in full (minus pro rated use) shall be made for damaged remote monitoring equipment when remote monitoring services are terminated prior to the equipment's useful life.

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Certification

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