



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

Developmental Disabilities Administration

Frank W. Kirkland, Executive Director

EDUCATIONAL ALERT

TO: DDA Licensed Service Providers
All Concerned

FROM: Frank W. Kirkland, Executive Director, Developmental Disabilities Administration *JK*
Dr. Tricia Nay, Acting Executive Director, Medical Director, Office of Health Care Quality
Tricia Nay, MD

DATE: February 22, 2013

RE: **Use of Cameras and Other Monitoring Devices**

In the past few weeks, the Office of Health Care Quality (OHCQ) and Developmental Disabilities Administration (DDA) were made aware of a situation in which the abuse of a vulnerable adult was documented by a video recorder and then uploaded to YouTube. The incident is being investigated by the local police as well as the Office of Health Care Quality. In addition to the obvious atrocity of the abuse and the reckless endangerment of the individual, the incident highlights the issue of violating an individual's right to confidentiality by the use of the recorder.

Providers should ensure that staff receives training in the fundamental rights of individuals with developmental disabilities. Providers should also ensure that staff understands that the videotaping or photographing of people without their consent is a violation of their rights.

People with intellectual and developmental disabilities have "the same rights and protections as all other citizens under the laws and Constitution of Maryland and the United States."
COMAR10.22.04.02B (1). "Each individual is entitled to the basic rights set forth in Health-General Article, 7-1002 -7-1004, Annotated Code of Maryland, unless the person's team decides it is necessary to restrict a right." COMAR10.22.04.03A. This means that recording activities of people in the agency's care without their consents is prohibited.

If the person's interdisciplinary team decides that this restriction is necessary and is in the best interest of the person, the agency must comply with the following prior to implementation:

- 1 Explain the rationale and procedures of the restriction to the person and/or legal guardian and obtain the person's and/or legal guardian's informed consent for its implementation;
- 2 Document in the person's IP the:
 - a Right being restricted,
 - b Reason for the restriction,
 - c Conditions under which the video is used,
 - d Efforts to restore the right to the person, and
 - e Conditions under which the use of video monitoring will no longer be needed;
- 3 The restriction must be reviewed by the person's interdisciplinary team and the agency's standing committee at least annually;
- 4 If a device such as a video camera or audio recording equipment is used in the areas where people other than the person/legal guardian may visit, a posting is needed to notify the visitors of the recording and/or taping.

This educational alert does not relieve the licensee of its responsibility to be familiar with and to implement the following regulations, which provide additional guidance:

COMAR 10.22.02.14E (d) (e);
COMAR 10.22.04.02A(3)(6),B(1)(4)(5)(7),D(1)(5)
COMAR 10.22.04.03A, B, C
COMAR 10.22.05
COMAR 10.22.10.06D, E

Thank you for your attention to this important issue. If you have questions, please contact Janet Furman, Acting Chief of Quality Assurance, DDA, at janet.furman@maryland.gov or 410-767-5929; or Jennifer Baker, DD Program Manager, OHCQ, at jennifer.baker@maryland.gov or 410-402-8100.