Legal Issues with Remote Supports for Individuals with Intellectual or Developmental Disabilities

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I. Introduction

The past decade has seen remarkable growth in the use of remote monitoring and support technologies—ranging from GPS trackers and wearable devices to in-home cameras, smart-home sensors, and mobile applications—to support individuals with intellectual and developmental disabilities (IDD). States were beginning to focus on technology solutions to caregiving when the COVID-19 pandemic, coupled with persistent shortages in direct support professionals, accelerated this shift toward technology-based supervision. Social isolation, already a problem for many folks in the I/DD system before the pandemic, became an enormous issue as day programs shut down and caregivers were lost. States were forced to re-evaluate their approaches to technology solutions for remote monitoring and supervision. For families and service providers, these tools offer the promise of enhanced safety, reduced staffing costs, and reassurance. For individuals with disabilities, they can promote autonomy, reduce the need for constant in-person staff, and allow greater participation in community life.

However, the use of surveillance technologies raises significant legal and ethical concerns. The monitoring of people with disabilities touches on constitutional rights, privacy protections, consent and capacity issues, disability law mandates, tort liability, and regulatory compliance. Without careful safeguards, the very technologies designed to empower people with disabilities risk becoming intrusive, paternalistic, or even discriminatory. This paper explores the legal landscape surrounding remote monitoring in the context of developmental disabilities and outlines best practices for its ethical and lawful implementation.

II. Privacy and Confidentiality

A. Constitutional and Federal Privacy Rights

At the constitutional level, the Fourth Amendment provides protections against unreasonable searches and seizures by government actors. When state-funded programs or publicly operated group homes employ remote monitoring, courts may construe continuous surveillance as a "search," particularly if individuals have not provided valid consent[1]. Landmark cases such as *Katz v. United States,* 389 U.S. 347 and *United States v. Karo*, 468 U.S. 705, established that individuals enjoy a reasonable expectation of privacy in their own homes, a principle that must extend to individuals with disabilities in residential or supported-living settings.

Federal statutory frameworks also apply. The Health Insurance Portability and Accountability Act (HIPAA) governs the collection, use, and disclosure of health-related data. Monitoring systems that record medical information—such as seizure activity, heart rate, or medication adherence—fall squarely within HIPAA's protections. Similarly, the Family Educational Rights and Privacy Act (FERPA) applies when monitoring occurs in educational environments, protecting the confidentiality of student information.

B. State Privacy Statutes and Ethical Dimensions

States vary widely in their treatment of electronic surveillance. Some require explicit written consent before installing cameras in private residences, while others impose heightened restrictions in long-term care facilities. In nearly all states that have adopted remote-support regulations, providers must document the impact of remote monitoring on the individual's privacy, communicate this information in an accessible manner, and obtain written consent from the individual or their legal representative.

Ohio's remote support regulations require that the individual receiving the services and each person who resides with the individual must consent in writing after being informed 1) that the

[1] *See Carpenter v. United States*, (prolonged tracking of a person's movements without a warrant invades a reasonable expectation of privacy, as the data provides a detailed and comprehensive record of a person's movements and associations). *See United States v. Katzin*, (surveillance of a vehicle for 24 hours a day over four weeks was a search. The surveillance revealed patterns of behavior and movement not exposed to the public, thereby invading a reasonable expectation of privacy).

remote support staff will observe their activities and/or listen to their conversations; 2) where in the residence the remote support will take place, and 3) whether or not recordings will be made. The signed consents must be retained with the Individual Service Plan (ISP.) O.A.C. 5123-9-35.

Ethically, providers must strike a delicate balance between safety and dignity. Remote monitoring should never serve as a punitive measure or function as a substitute for human interaction. Instead, it must be deployed in ways that maximize autonomy while minimizing unnecessary intrusion.

III. Consent and Capacity

Consent lies at the heart of lawful remote monitoring. Yet for adults with developmental disabilities, the ability to provide informed consent may be complicated by questions of legal capacity. In cases where guardianship, conservatorship, or powers of attorney are in place, these decision-makers may have authority to consent on behalf of the individual. Even so, best practice and emerging case law emphasize the importance of considering the expressed wishes of the person receiving services, even in circumstances where they lack full legal capacity.

Supported decision-making agreements, now recognized in states such as Texas, Delaware, and Wisconsin[2], provide an alternative framework for ensuring meaningful consent. These agreements allow individuals to choose trusted supporters to help them understand choices without surrendering decision-making authority, offering a promising model for decisions about monitoring.

Conflicts of interest often arise when families prioritize safety while individuals value privacy and independence. Courts or state agencies may be asked to resolve these disputes, applying

[2] *D.C. Code § 7-2133*, (permits adults with disabilities to enter into supported decision-making agreements, authorizing supporters to assist in decision-making, be present during the process, and help obtain and communicate information. Supporters may only act within the authority granted in the agreement); *Tex. Estates Code § 1357.055*, (Texas law requires supported decision-making agreements to be signed voluntarily by the adult with a disability and the supporter in the presence of two witnesses or a notary public); *Utah Code Ann § 75-5-704,* (allows individuals to enter into supported decision-making agreements voluntarily, provided they understand the nature and effect of the agreement. If the individual has a court-appointed guardian or conservator, that person must be notified and given an opportunity to review and participate in discussions about the agreement. In some cases, the guardian or conservator's signature is required for the agreement to be valid); *Rev. Code Wash (ARCW § 11.130.740)*, (requires supported decision-making agreements to be in writing, dated, and signed voluntarily by the adult with a disability and the supporter in the presence of two witnesses or a notary public.)

either a "best interest[3]" standard or, increasingly, a "substituted judgment[4]" approach that honors the individual's own values and preferences.

IV. Disability Rights and Anti-Discrimination

Remote monitoring must be evaluated in light of federal disability rights statutes. The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act prohibit discrimination and require that services be delivered in the most integrated, least restrictive manner possible. Technologies that restrict community access or function as a substitute for needed human supports may violate these laws.

The Supreme Court's decision in *Olmstead v. L.C. by Zimring* affirmed that individuals with disabilities have a right to receive services in the most integrated setting appropriate. Overreliance on surveillance in congregate or institutional settings could undermine this integration mandate by reinforcing segregation rather than promoting community inclusion[5].

Civil rights considerations also arise when monitoring limits freedom of movement or decision-making. In extreme cases, constant electronic surveillance may resemble a restraint[6], raising concerns analogous to seclusion or confinement. Thus, while remote monitoring can support independence, it must never cross the line into technological coercion.

V. Liability and Duty of Care

Once monitoring systems are implemented, providers may assume new legal duties. If an agency installs fall detectors, GPS trackers, or other alert systems, courts may find that the provider has

[3] The best interest standard requires the decision-maker to prioritize the welfare, well-being, and overall benefit of the disabled individual. This is an objective assessment of what would be most beneficial to the individual.
[4] The substituted judgment approach is when the decision-maker makes a determination based on what the individual would have chosen if they were competent. The decision-maker bases decisions on the known preferences, values, and beliefs of the individual.
[5] *See Olmstead v. L.C. by Zimring*, 527 U.S. 581 ("unjustified placement or retention of persons in institutions, severely limiting their exposure to the outside community, constitutes a form of discrimination based on disability prohibited by Title II" of the ADA).
[6] The seizure of a person can take the form of physical force or a show of authority that in some way restraints the liberty of the person.

an obligation to respond promptly when those systems detect a risk. Failure to act could give rise to negligence claims. This heightened standard of care mirrors principles developed in custodial contexts, where service providers bear responsibility for responding to foreseeable risks.

Institutional liability is a related concern. Group homes, service agencies, and schools must adopt clear protocols specifying who monitors, how often, and under what circumstances staff must intervene. Vendors providing remote-support services also face obligations to maintain HIPAA compliance, update technology, and safeguard data. Improper maintenance or system failures may expose providers to liability.

Ohio requires remote support be provided in real time, by awake staff with no duties other than remote monitoring. Remote support vendors are required to have a back-up power system in place, and must have an effective system to contacting backup support or emergency personnel as needed.

Product liability law also applies. Device manufacturers and software developers can be held responsible for defective products that cause harm. For example, a malfunctioning GPS tracker that fails to alert caregivers of elopement could expose the manufacturer to claims under theories of design defect, manufacturing defect, or failure to warn.

VI. Regulatory and Funding Considerations

Medicaid remains the dominant public funding source for long-term services and supports for individuals with developmental disabilities. Most states authorize the use of remote supports under Home and Community-Based Services (HCBS) waivers. Federal regulations governing HCBS require that services be person-centered, consent-based, and supportive of community integration. Yet, in practice, many waiver programs impose annual funding caps for technology that are insufficient to cover the cost of effective systems.

The American Rescue Plan Act of 2021 (ARPA) provided significant funds to states to improve their technology solutions. These funds were used for services not covered under other existing policies and programs, including training for providers, consumers and caregivers, smart home technologies, electronic or remote monitoring and supports, broadband or internet fees, digital

health sensors, trackers, video conferencing services and training, and smartphones and tablets. More than half the states used these funds to establish new technology pilot programs for individuals with I/DD. Most states quickly amended their waivers to include training as a waiver service.

States also regulate the use of monitoring through licensing requirements for group homes and residential facilities. These rules may restrict or condition the use of surveillance, particularly where it implicates resident privacy. Emerging state legislation reflects a growing commitment to the "Technology First" movement, which requires service systems to consider technological supports before defaulting to in-person staffing. Ohio and Missouri were early adopters of Technology First statutes[7], and by 2023, nearly half of states had taken steps toward adopting similar frameworks. Still, many jurisdictions lack comprehensive regulation, creating legal uncertainty.

VII. Best Practices for Implementation[8]

Given these legal complexities, best practices emphasize safeguards, transparency, and individual choice. The use of remote supports should be documented in detail in the Individual Service Plan (ISP). The ISP must demonstrate what is important to the individual to ensure the supports and services are delivered in a manner reflecting individual preferences and ensuring the individual's health, safety, and well-being. The ISP should also include documentation of the individual's consent.

States must have detailed licensing requirements for agencies providing remote supports. Agencies should develop written policies addressing consent procedures, data use, and response protocols. Data collected through monitoring must be encrypted, access-controlled, and subject to audit trails to ensure that access to information is limited to authorized persons. Providers should undergo licensing and training to ensure compliance with privacy and security requirements.

[7] The Technology-Related Assistance for Individuals with Disabilities Act of 1988, or the "Tech Act," was amended to the Assistive Technology Act of 2004. Assistive technology devices is any equipment used to increase, maintain, or improve the functional capabilities of individuals with disabilities.
[8] Adoption of uniform terms is important. See Appendix A – Glossary of Terms, from NASDDDS

Monitoring and support arrangements should be revisited periodically to confirm that they remain necessary, effective, and proportionate. Most importantly, the technology should be incorporated into a broader person-centered plan, with meaningful input from the individual being supported. This ensures that technology serves as a tool for empowerment rather than control.

VIII. Conclusion

Remote monitoring and support technologies offer great potential to enhance safety and independence for individuals with developmental disabilities, particularly in the face of staffing shortages and rising demand for community-based services. Yet their use implicates constitutional rights, federal and state privacy laws, disability rights protections, and tort liability. Without careful oversight, these tools risk eroding autonomy, dignity, and civil rights.

Policymakers, providers, and families must therefore approach remote monitoring and supports with caution, ensuring that implementation is rooted in informed consent, respect for privacy, and adherence to disability law mandates. When used appropriately, remote supports can expand independence and promote inclusion. But to achieve this promise, technology must always remain in service of human dignity, not a substitute for it.

GLOSSARY OF TERMS

Adaptive aids or equipment (EAA) - Adaptive aids or equipment are products, sytems, and/or machines used to help people perform activities of daily living (ADLs).

Assistive technology (AT) - Assistive technology is any item, piece of equipment, software program, or product system that is used to increase, maintain, or improve the functional capabilities of persons with disabilities.

Companion care - Companion care provides social and emotional supports to an individual through digital or technology platforms.

Durable medical equipment (DME) - Equipment and supplies ordered by a health care provider for everyday or extended use.

Electronic or remote monitoring/supports - Electronic equipment used to support a person from a distance for residential or in-home supports.

Enabling technology - Equipment and/or methodologies that, alone or in combination with associated technologies, provide the means to support individuals' increased independence in their homes, communities, and/or workplaces.

Environmental accessibility aids (EAA) - EAA are physical adaptations to a home that are necessary to ensure the health, welfare, and safety of the individual.

Personal emergency response system (PERS) - Personal emergency response systems or personal safety monitors directly connect an individual to an emergency responder or organization. These include life alerts, medical alerts, or fall monitors.

Smart home technology - Home equipped with network-connected products for controlling, automating, and optimizing functions such as temperature, lighting, security, etc., either remotely or by a separate system within the home.

Technology solution - Ideas, products, or services that are used to solve a problem or create something new. Advances a goal-oriented and self-directed approach to the development, acquisition, and utilization.

Technology First - Framework for systems change where technology is considered first in the discussion of support available to individuals and families through person-centered approaches to meaningful participation, social inclusion, self-determination, and quality of life.

Telehealth, telemedicine, or telecare - The use of telecommunications and information technology to provide access to health assessment, diagnosis intervention, consultation, supervision, and information across distance.

Video conferencing service or training - May be termed virtual delivery of service or teleservice. Service that provides real-time video communications, including audio, to enable users to share information of the user's choosing.

Wearable technology - Technology devices intended to remain on the user's body.

APPENDIX A