

12VAC5-371-191. Electronic Monitoring in Resident Rooms.

- A. All requests for electronic monitoring shall be made in writing and signed by the resident or the resident's responsible party if the resident has been properly assessed incapable of requesting and authorizing the monitoring.
- B. Only electronic monitoring in accordance with this section is permitted.
- C. A facility shall not refuse to admit an individual and shall not discharge or transfer a resident due to a request to conduct authorized electronic monitoring.
- D. Family members cannot obtain electronic monitoring over the objections of the resident, the resident's roommate, or the resident's responsible party. No equipment may be installed pursuant to subsection Q of this section over the objections of the resident, or if the resident is incapable, the resident's responsible party. Facilities shall not use monitoring equipment in violation of the law based solely on a family member's request or approval.
- E. Consent for electronic monitoring shall be kept in the resident's medical record.
- F. Facilities shall designate one staff person to be responsible for managing the electronic monitoring program.
- G. Facilities may designate custodial ownership of any recordings from monitoring devices to the resident or the resident's responsible party. Facility retained recordings shall be considered part of the resident's medical record and shall be retained for no less than two years or as required by state and federal laws.
- H. If a facility chooses to retain ownership of recordings, the facility shall not permit viewings of recordings without consent of the resident or the resident's responsible party except to the extent that disclosure is required by law through a court order or pursuant to a lawful subpoena duces tecum. Should a resident or a resident's responsible party approve viewing, the facility shall accommodate viewing of any recordings in a timely manner, including providing:
1. Appropriate playing or viewing equipment;
 2. Privacy during viewing; and
 3. Viewing times convenient to the resident or the resident's responsible party.
- If unauthorized viewing is discovered, the facility shall report any such violation to the Office of Long-Term Care Ombudsman and to OLC.
- I. A facility shall require its staff to report any incidents regarding safety or quality of care

discovered as a result of viewing a recording immediately to the facility administrator and to the OLC. Facilities shall instruct the resident or the resident's responsible party of this reporting requirement and shall provide the resident or the resident's responsible party with the OLC's complaint hotline telephone number.

J. A facility shall have no obligation to seek access to a recording in its possession or to have knowledge of a recording's content, unless the facility is aware of a recorded incident of suspected abuse, neglect, accident, or injury, or the resident, the resident's responsible party, or a government agency seeks to use a recording. Facilities shall immediately report suspected abuse and neglect discovered as a result of using monitoring devices, as required by law.

K. A facility may require the resident or the resident's responsible party to be responsible for all aspects of the operation of the monitoring equipment, including the removal and replacement of recordings; adherence to local, state, and federal privacy laws; and for firewall protections to prevent images that would violate obscenity laws from being inadvertently shown on the Internet.

L. A facility shall prohibit assigned staff from refusing to enter a resident's room solely because of electronic monitoring.

M. Any electronic monitoring equipment shall be installed in a manner that is safe for residents, employees, or visitors who may be moving about the resident's room.

N. A facility shall make reasonable physical accommodation for monitoring equipment, including:

1. Providing a reasonably secure place to mount the device; and
2. Providing access to power sources for the device.

O. A facility may require a resident or a resident's responsible party to pay for all costs, other than the cost of electricity, associated with installing electronic monitoring equipment. Such costs shall be reasonable and may include equipment, recording media and installation, compliance with life safety and building and electrical codes, maintenance or removal of the equipment, posting and removal of any public notices, or structural repairs to the building resulting from the removal of the equipment. Facilities shall give 45 days' notice of an increase in monthly monitoring fees.

P. Any equipment installed for the purpose of monitoring a resident's room shall be fixed and unable to rotate.

Q. The informed consent of all residents, or if a resident is incapable, a resident's responsible party, assigned to the monitored room shall be obtained prior to any electronic monitoring equipment being installed.

R. A copy of any signed consent form shall be kept in the resident's medical record as well as on file with the facility's designated electronic monitoring coordinator.

S. Any resident or the resident's responsible party of a monitored room may condition

consent for use of monitoring devices. Such conditions may include pointing the camera away or limiting or prohibiting the use of certain devices. If conditions are placed on consent, then electronic monitoring shall be conducted according to those conditions.

T. The facility shall conspicuously post and maintain a notice at the entrance to the resident's room stating that an electronic monitoring device is in operation.

U. Facilities shall notify all staff and their OLC Long-Term Care Supervisor that electronic monitoring is in use.

V. A facility shall prohibit staff from covert monitoring in violation of this chapter. Facilities shall instruct the resident or the resident's responsible party of this prohibition and shall provide the resident or the resident's responsible party with the OLC's complaint hotline telephone number.

W. If covert monitoring is discovered, the facility shall report any such violation to the Office of Long-Term Care Ombudsman and OLC, and the facility may require a resident or a resident's responsible party to meet all the requirements for authorized monitoring, if permitted by the facility.

X. Each nursing facility, including those that choose not to offer electronic monitoring, shall adopt policies and procedures for electronic monitoring. These policies and procedures shall address all the elements of this section.

Y. A facility shall prohibit staff from tampering with electronic monitoring in violation of this chapter. Facilities shall instruct the resident or the resident's responsible party of this prohibition and shall provide the resident or the resident's responsible party with the OLC's complaint hotline telephone number.

Statutory Authority

§§ 32.1-12 and 32.1-127 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 35, Issue 5, eff. December 13, 2018.