

**REPORT OF THE VIRGINIA  
DEPARTMENT OF SOCIAL SERVICES**

**Audio-Visual Recording in  
Assisted Living Facilities  
(Chapter 848, 2020)**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 6**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2021**





COMMONWEALTH of VIRGINIA  
DEPARTMENT OF SOCIAL SERVICES  
*Office of the Commissioner*

S. Duke Storen  
Commissioner

May 28, 2021

**MEMORANDUM**

**TO:** The Honorable Ralph S. Northam  
Governor of Virginia

Members, Virginia General Assembly

Members, State Board of Social Services

**FROM:** S. Duke Storen *S. Duke Storen*

**SUBJECT:** Report on Audio-Visual Recording in Assisted Living Facilities

Pursuant to Chapter 848 of the 2020 Acts of Assembly, attached is the report from the workgroup charged with making recommendations on the audio-visual recording of residents in assisted living facilities. Please contact me with any questions.

SDS:kc  
Attachment



## **Preface**

This report is submitted pursuant to Chapter 848 of the 2020 Acts of Assembly (Appendix A), which directs the Board of Social Services to convene a workgroup to make recommendations regarding the adoption of regulations for audio-visual recording of residents in assisted living including provisions related to 1) resident privacy, 2) notice and disclosure, 3) liability, 4) ownership and maintenance of equipment, 5) cost, 6) recording and data security, and 7) assisted living facility options for both facility-managed recording and resident managed recording.

The report reviews preliminary research on laws and regulations in other states and offers recommendations to consider if assisted living facilities (ALFs) were to develop policies for electronic monitoring in resident rooms. The report was compiled with input from a workgroup comprised of relevant stakeholders. Staff from the Virginia Department of Social Services, Division of Licensing Programs provided assistance and support to the workgroup.

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## Executive Summary

This report is submitted pursuant to Chapter 848 of the 2020 Acts of Assembly (Appendix A), which directs the Board of Social Services to convene a workgroup to make recommendations regarding the adoption of regulations for audio-visual recording of residents in assisted living including provisions related to 1) resident privacy, 2) notice and disclosure, 3) liability, 4) ownership and maintenance of equipment, 5) cost, 6) recording and data security, and 7) assisted living facility options for both facility-managed recording and resident-managed recording.

### Recommendations

The following recommendations are the result of the research conducted and discussions with stakeholders that participated in the meetings, interviews, and conference calls. These recommendations contain definitions and provisions for assisted living facilities (ALFs) to develop a policy for authorized electronic monitoring (AEM).

### Definitions:

Facilities should use consistent definitions for developing policies and procedures for electronic monitoring. Definitions may include:

- a) *Authorized electronic monitoring (AEM)* means the placement of an electronic monitoring device in a resident's room after obtaining approval from the resident or the resident's legal representative and the facility to allow electronic monitoring.
- b) *Authorized electronic monitoring device* means video surveillance cameras, monitoring devices, web-based cameras, video phones, or audio recording or transmitting devices, or a combination of these devices, installed in the room of a resident which are designed to acquire, transmit, broadcast, interact, or record video, communications, or other sounds occurring in the room. The term does not include still cameras or devices used for the purpose of the resident having contact with another person but not for the purpose of electronically monitoring a resident.

Recognizing that technology related to electronic monitoring will continue to evolve, definitions and recommendations must be broad enough to encompass future technological innovation.

### Provision 1: Privacy and Consent

Resident privacy protections are paramount. The facility policy for electronic monitoring should ensure that:

- a) The informed consent of all residents, or if a resident is incapable, a resident's legal representative, is obtained prior to any authorized electronic monitoring device being installed or activated;
- b) Consent for electronic monitoring is kept in the resident's record; and,

- c) A resident is not discharged or transferred from the facility due to a request to conduct authorized electronic monitoring.

The workgroup identified the need to balance an individual's rights to privacy and self-determination with the need to protect vulnerable adults from maltreatment. The workgroup recognized that electronic monitoring can be especially beneficial to protect residents who may be unable to recognize, resist, or report maltreatment as a result of dementia or lack capacity for other reasons.

### **Provision 2: Notice and Disclosure**

The facility policy should ensure that staff, visitors, and residents are aware when monitoring is in effect. An AEM policy should communicate who can access and view recordings. The workgroup recommends the following:

- a) The facility must conspicuously post and maintain a notice at the entrance to the resident's room stating that an authorized electronic monitoring device is in operation.
- b) If a resident or a resident's legal representative wishes to view the recording, the facility should accommodate viewing 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 legal representative.

### **Provision 3: Liability**

An AEM policy needs to address the facility's liability and responsibilities for actions and claims that may arise out of the use of electronic monitoring.

### **Provision 4: Reporting**

The electronic monitoring policy and procedure must include the process for facilities to report allegations of abuse, neglect, or exploitation in accordance with mandated reporting requirements.

### **Provision 5: Ownership and Maintenance of Equipment**

The policy should protect the confidentiality and security of recordings.

For facility-managed authorized electronic monitoring:

- a) Facilities that monitor resident rooms should designate an individual to be responsible for the security of facility-managed recordings.
- b) Viewing facility-managed recordings without consent of the resident or the resident's authorized representative, except to the extent that disclosure is required by law or court order, should be prohibited.
- c) Clarify that the facility is not responsible for monitoring or viewing the contents of each recording unless an allegation of abuse, neglect, or injury is made.

For resident-managed authorized electronic monitoring:



Any action on the part of the facility to obstruct the resident-managed authorized electronic monitoring device (knowingly hampering, tampering with, or destroying) should be prohibited.

**Provision 6: Cost**

The workgroup recommends that the policy specify the party responsible for cost and that the facility communicate any cost increases associated with authorized electronic monitoring to the resident or the resident's legally authorized representative.

- a) The facility must give the resident or resident's legal representative advance notice of intent to increase fees associated with authorized electronic monitoring in compliance with the resident agreement with the facility (22VAC40-73-390. A.1 e.).
- b) For facility-managed authorized electronic monitoring, costs that are the resident's responsibility should be reasonable and may include equipment, recording media and installation, monitoring fees, 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 device and equipment.
- c) For resident-managed authorized electronic monitoring, a facility may require a resident or a resident's legal representative to pay for all costs, other than the cost of electricity, associated with installing the device and equipment.



# Assisted Living Facility Electronic Monitoring Study

## Introduction

This report is submitted pursuant to Chapter 848 of the 2020 Acts of Assembly (Appendix A), which directs the Board of Social Services to convene a workgroup to make recommendations regarding adoption of regulations for audio-visual recording of residents in assisted living including provisions related to 1) resident privacy, 2) notice and disclosure, 3) liability, 4) ownership and maintenance of equipment, 5) cost, 6) recording and data security, and, 7) assisted living facility options for both facility-managed recording and resident-managed recording.

The Virginia Department of Social Services (VDSS) is tasked with protecting vulnerable populations, which includes ensuring the safety of adults in licensed assisted living facilities (ALFs). Reports of suspected abuse of vulnerable adults are made by the public and mandated reporters to local department of social services, Adult Protective Services (APS). In State Fiscal Year 2020, APS reported that of the approximately 37,398 reports of adult abuse, neglect or exploitation, 1,729 involved residents of ALFs ([Department for Aging and Rehabilitative Services, APS Division, 2020 Annual Report](#)).

The ALF audio-visual recording workgroup was established to provide recommendations related to the adoption of regulations for audio-visual recording of residents of ALFs. Relevant stakeholders involved in preparing this report are listed in Appendix B.

The workgroup examined existing legislation and regulations that authorize the use of voluntary electronic monitoring to protect vulnerable adults and hold accountable perpetrators of abuse in the ALF setting. Members of the workgroup are familiar with the assisted living population and understand the work required to regulate facility compliance with the standards. The workgroup's broad representation, with varying viewpoints, allowed for a robust discussion of the issues researched and analyzed.

The use of electronic recording/cameras in assisted living facility residents' rooms involves many important and complex policy issues, including privacy, consent, conditions or limitations, notification, and technology. The current *Standards for Licensed Assisted Living Facilities*, 22VAC40-73, effective October 17, 2019, are silent on the issue of electronic recording/cameras in resident rooms. Upon admission, residents agree to follow the facility's policies, including any policy for electronic monitoring. Currently, facilities choose to allow or prohibit the use of cameras in resident rooms as a business decision. If electronic monitoring is an available option, the facility's policy should address the terms and conditions recommended in this report.

Preliminary research on current laws in Virginia, laws in other states, and recommendations around key issues identified by the workgroup provide an overview of the issues

surrounding the use of authorized electronic monitoring in resident rooms. The report offers recommendations regarding adoption of regulations for audio-visual recording of residents in assisted living, including provisions related to 1) resident privacy, 2) notice and disclosure, 3) liability, 4) ownership and maintenance of equipment, 5) cost, 6) recording and data security, and 7) assisted living facility options for both facility-managed recording and resident-managed recording.

## **Challenges and Considerations**

The challenges faced by other states are well documented. Some states allow electronic monitoring in resident rooms, require facilities to notify residents of their right to use electronic monitoring, and do not allow facilities to prohibit use of electronic monitoring when certain terms and conditions are met. Other states provide guidance and sample forms for facilities to use when developing a response tailored to their needs. There are also states that do not address the issue of electronic monitoring in laws or regulations.

The workgroup explored multiple issues regarding the application of audio-visual recording technology in the ALF setting. There is an expectation of privacy in the ALF setting where delivery of personal care is routine. Questions about privacy, dignity, and misuse of electronic monitoring emerged while the group simultaneously acknowledged the potential for monitoring to help ensure safety and quality care.

The workgroup discussed identification of potential advantages of electronic monitoring, such as the ability for a family to observe the care a loved one receives even if they cannot be present. While not a substitute for physical involvement in a loved one's care, electronic monitoring can offer some reassurance regarding the care being provided. Any kind of abuse, neglect, theft, or other behavior would be recorded, as would the observation of compassionate care. Staff awareness of cameras could reduce the likelihood of mistreatment and could protect the professionals who are providing hands-on care. Even the most attentive caregivers have had falls and injuries occur, and the ability to confirm that a mishap was an accident could help prevent the unnecessary departure of an excellent, well-intentioned caregiver.

The workgroup also discussed potential drawbacks of using electronic monitoring in ALF resident rooms. Some professional caregivers may fully understand and agree with the decision to allow audio-visual monitoring, while others may resent entering a work environment where they are automatically met with distrust. The genuine friendship between caregivers and care receivers could be compromised. Constant supervision through electronic monitoring may discourage care providers from getting to know their residents through smiling, joking when appropriate, or diffusing tension and embarrassment through physical gestures like holding hands or giving hugs. Caregivers could be concerned that conversations or gestures could be misinterpreted or taken out of context. Caregivers may be concerned about performing duties in an official manner to avoid criticism. This type of formal demeanor can deter creativity in how they provide care, preventing the formation of positive interaction, friendships, and the

respectful, relaxed intimacy that characterizes quality care.

Regarding privacy, some residents (or their decision-makers) may prefer the added security electronic monitoring can provide, and most would not appreciate their intimate care monitored by family or anyone else. The loss of dignity associated with receiving care for incontinence or bathing may already be difficult for residents to accept without the process being recorded and reviewed. Additionally, constant monitoring can lead to scrutinizing all aspects of a caregiver's performance. While electronic monitoring or use of cameras offers the viewer reassurance about the care a resident receives, the workgroup recognized this monitoring is no substitute for personal visits and respite time with the resident, or communicating directly with the facility and caregiver to provide advocacy and build the kind of trust that supports quality relationships.

There are legitimate reasons a resident or legal representative may opt to utilize AEM. Examples include times when facility visitation is restricted for extended periods (such as the COVID-19 pandemic) or when typically involved, conscientious family members cannot be physically present to observe a loved one's care due to their own circumstances, such as extended illness and recovery or physical distance. The need to balance an individual's right to self-determination and privacy while exploring ways to protect vulnerable adults must be considered.

The workgroup looked at legal aspects to consider, including state and federal laws for audio and video recording and applicable privacy and consent laws. The group's consensus is that the best guidance is to avoid being deceitful or infringing on anyone's rights; therefore, facilities should obtain the consent of everyone who may be recorded. Deciding whether to install electronic monitoring devices is a very personal, individualized decision that involves balancing a resident's safety, privacy, and dignity.

## Research

### Existing Laws and Regulations for Electronic Monitoring

The workgroup identified 11 states that have enacted specific legislation or issued formal agency rules to authorize and regulate electronic monitoring in older adult services settings, such as nursing homes, assisted living, or other facility types.<sup>1</sup> Also, the Virginia Department of Health (VDH) promulgated regulations governing the implementation of voluntary electronic monitoring in the rooms of residents of nursing homes (*Regulations for the Licensure of Skilled Nursing Facilities*, [12VAC5-371-10](#), and [12VAC5-371-191](#), effective 12/13/18).

A table summarizing the laws, rules, and guidance materials from the 11 states mentioned above and Virginia is included with this report as Appendix C. The table shows the laws of other states that address similar issues (informed consent, for example) but vary in their approaches

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<sup>1</sup> Louisiana, Illinois, Washington, Utah, Minnesota, Texas, Missouri, South Dakota, North Dakota, Oklahoma, and New Mexico.

to those issues. While this list is not inclusive of all states where electronic monitoring occurs, it presents a group of states that took specific action concerning electronic monitoring in older adult service settings. The workgroup reviewed the laws in other states to identify definitions and policy considerations applicable to electronic monitoring. The experience other states have had since enacting their laws was not part of this research, and some states may have proposals to amend their existing laws or rules underway.

In Virginia, the State Board of Health adopted regulations that went into effect December 13, 2018, governing the implementation of voluntary electronic monitoring in nursing home residents' rooms. The amendments and subsequent regulations were developed cooperatively with the assistance of a workgroup convened pursuant to Chapter 600 and relied heavily on language included in a VDH guidance document in use since 2004.

The workgroup contacted the Virginia Department of Health (VDH), Office of Licensure and Certification to learn of any issues or concerns that have emerged since regulatory requirements regarding electronic monitoring in resident rooms went into effect.<sup>2</sup> VDH responded that no issues or gaps in this new regulation have been identified, and no facilities have been cited for noncompliance with the regulation since it went into effect.

Some states have taken an interest in electronic monitoring and established electronic monitoring equipment lending programs or educational campaigns. For example, New Jersey operates a "Safe Care Cam" program. Under this program the New Jersey Attorney General's Office will lend micro-surveillance cameras, designed to be embedded in household objects, to a person who suspects someone receiving in-home care might be experiencing abuse. Alternately, a Minnesota study on the issue of electronic monitoring in 2017 recommended the creation of an educational guide for residents, families, facilities, and advocates to clarify what is allowed under the law related to electronic monitoring. The report suggests such a guide could outline the responsibilities of anyone wishing to install an electronic monitoring device, as well as some best-use practices, information on how to address concerns related to maltreatment, reporting suspected abuse, and information about long-term care services.

The 11 states that allow electronic monitoring in resident rooms require that residents be informed of their right to do so and that the use of electronic monitoring cannot be prohibited if the terms and requirements are met. Facilities may not retaliate if AEM is utilized.

The workgroup examined various ways that states define electronic monitoring. All states present slight differences when defining electronic monitoring and electronic monitoring devices. The most common denominator is that the device records audio, video, or both.

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<sup>2</sup> *Regulations for the Licensure of Nursing Facilities* [12VAC5-371-10](#) and [12VAC5-371-191](#)

## Recommendations

The following recommendations are the result of the research conducted and discussions with stakeholders that participated in the meetings, interviews, and conference calls. These recommendations contain definitions and provisions for assisted living facilities (ALFs) to develop a policy for authorized electronic monitoring (AEM).

Although the focus of this report is not to develop regulations, the workgroup identified places where the use of the concepts contained in the *Regulations for the Licensure of Nursing Facilities*, [12VAC5-371-10](#), and [12VAC5-371-191](#), are found to be both practical and effective.

### Definitions:

The workgroup recommends the use of consistent definitions for developing policies and procedures for electronic monitoring. Uniform definitions will help ALFs develop practical policies, aid regulators in monitoring facilities, and help residents and families understand the parameters and requirements of electronic monitoring in the ALF setting. Recognizing that technology related to electronic monitoring will continue to evolve, the workgroup recommends definitions provide clarification while remaining broad enough to encompass future technological innovation.

- a) *Authorized electronic monitoring (AEM)* means the placement of an electronic monitoring device in a resident's room after obtaining approval from the resident or the resident's legal representative and the facility to allow electronic monitoring.
- b) *Authorized electronic monitoring device* means video surveillance cameras, monitoring devices, web-based cameras, video phones, or audio recording or transmitting devices, or a combination of these devices, installed in the room of a resident which is designed to acquire, transmit, broadcast, interact, or record video, communications, or other sounds occurring in the room. The term does not include still cameras or devices used for the purpose of the resident having contact with another person but not to electronically monitor a resident.

### Provision 1: Privacy and Consent

The workgroup consistently recognized that resident privacy protections are paramount. There was an acknowledgment of the need to balance an individual's rights to privacy and self-determination with the need to protect vulnerable adults from maltreatment. Electronic monitoring can be especially beneficial to protect residents who may be unable to recognize, resist, or report maltreatment as a result of dementia and those who lack capacity for other reasons. If such a person does not have a legal representative, it is especially important to know who can consent to electronic monitoring on behalf of the resident to prevent maltreatment.

In situations where living space is shared, a roommate's right to privacy and self-determination must be addressed. If a roommate is unable to provide consent due to incapacity or

incompetence, the facility must ensure consent is obtained from the roommate's legal representative using the same process described in obtaining consent on behalf of a resident.

The facility policy for electronic monitoring should ensure that:

- a) The informed consent of all residents, or if a resident is incapable, a resident's legal representative, is obtained prior to any authorized electronic monitoring device being installed or activated;
- b) Consent for electronic monitoring is kept in the resident's record; and,
- c) A resident is not discharged or transferred from the facility due to a request to conduct authorized electronic monitoring.

Other states have similar requirements in that residents and/or their legal representative, as well as roommates and/or their legal representative, must provide consent, and consent must be documented in writing prior to any electronic monitoring activity. Details and requirements vary. For example, while some states require the use of specific forms, others do not. Some states outline a detailed hierarchy to determine the decision-maker.

### **Provision 2: Notice and Disclosure**

The facility policy should ensure that staff, visitors, and residents are aware when monitoring is in effect. An AEM policy should communicate who can access and view recordings. The workgroup recommends the following:

- a) The facility must conspicuously post and maintain a notice at the entrance to the resident's room stating that an authorized electronic monitoring device is in operation.
- b) If a resident or a resident's legal representative wishes to view the recording, the facility should accommodate viewing 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 legal representative.

### **Provision 3: Liability**

An AEM policy needs to address the facility's liability and responsibilities for actions and claims that may arise out of the use of electronic monitoring.

ALF regulations currently require a minimum amount of liability insurance coverage,<sup>3</sup> and the facility is required to disclose to residents in writing whether or not the minimum amount of liability coverage is in place.<sup>4</sup> The electronic monitoring policy should clarify the liability protection that is in place for electronic monitoring.

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<sup>3</sup> 22VAC40-73-45.

<sup>4</sup> 22VAC40-73-50.A.4.k.



#### **Provision 4: Reporting**

The workgroup recommends that the facility policy for AEM include the procedure for the facility reporting allegations of abuse, neglect, or exploitation in accordance with mandated reporting requirements. Current ALF regulations require that staff who are considered mandated reporters must report allegations according to Va. Code § 63.2-1606 and that employees must be trained on the policy for reporting.

#### **Provision 5: Ownership and Maintenance of Equipment**

Workgroup participants determined that a facility's electronic monitoring policy should describe the parameters of responsibility for protecting the confidentiality and security of recordings.

For facility-managed authorized electronic monitoring:

- a) Facilities that monitor resident rooms should designate an individual to be responsible for security of facility-managed recordings.
- b) Viewing facility-managed recordings without consent of the resident or the resident's authorized representative, except to the extent that disclosure is required by law or court order, should be prohibited.
- c) Clarify that the facility is not responsible for monitoring or viewing the contents of each recording unless an allegation of abuse, neglect, or injury is made.

For resident-managed authorized electronic monitoring:

Any action on the part of the facility to obstruct the resident-managed authorized electronic monitoring device (knowingly hampering, tampering with, or destroying) should be prohibited.

#### **Provision 6: Cost**

The workgroup recommends that the policy indicates that the party responsible for the cost and that the facility communicate any cost increases associated with authorized electronic monitoring to residents.

- a) The facility must give the resident or resident's legal representative advance notice of intent to increase fees associated with authorized electronic monitoring in compliance with the resident agreement with the facility.<sup>5</sup>
- b) For facility-managed authorized electronic monitoring, costs that are the resident's responsibility should be reasonable and may include equipment, recording media and installation, monitoring fees, compliance with life safety and building and electrical codes, maintenance or removal of equipment, posting and removal of any public notices, or structural repairs to the building resulting from removal of the device and equipment.
- c) For resident-managed authorized electronic monitoring, a facility may require a resident or a resident's legal representative to pay for all costs, other than the cost of electricity, associated with installing the device and equipment.

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<sup>5</sup> 22VAC40-73-390. A.1 e.

**Additional Consideration:**

Workgroup discussions about residents having the option to obtain electronic monitoring focused on the important expectation of privacy in the ALF setting, where delivery of personal care is routine. The workgroup acknowledged that the use of AEM can help protect vulnerable adults. Deciding whether to install electronic monitoring devices is a very personal, individualized decision that involves balancing a resident's safety, privacy, and dignity.

## References

Commonwealth of Virginia, Department of Social Services, Standards for Licensed Assisted Living Facilities, 22VAC40-22-73. Retrieved from [https://www.dss.virginia.gov/files/division/licensing/alf/intro\\_page/code\\_regulations/regulations/final\\_alf\\_reg.pdf](https://www.dss.virginia.gov/files/division/licensing/alf/intro_page/code_regulations/regulations/final_alf_reg.pdf).

Virginia Department for Aging and Rehabilitative Services, Adult Protective Services Division, State Fiscal Year 2020, Annual Report. Retrieved from [https://www.vadars.org/downloads/publications/SFY%202020\\_Report\\_FINAL.pdf](https://www.vadars.org/downloads/publications/SFY%202020_Report_FINAL.pdf)

New Jersey Division of Consumer Affairs, Safe Care Cam Initiative. (Last modified 7/6/2020). Retrieved from <https://www.njconsumeraffairs.gov/SCC>

Minnesota Elder Justice Center, Residential Care and Electronic Monitoring Report. (1/17/2017). Retrieved from <https://www.health.state.mn.us/facilities/regulation/rcworkgroup/finalreport.pdf>

Appendix A  
Senate Bill 355

ENROLLED

2020 SESSION

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to require the Department of Social Services to convene a work group to provide*  
3 *recommendations related to regulations for the audio-visual recording of residents in assisted living*  
4 *facilities.*

5 [S 355]  
6 Approved

7 **Be it enacted by the General Assembly of Virginia:**

8 **1. § 1.** *The Department of Social Services shall convene a work group that includes representatives of*  
9 *assisted living facilities, advocates for residents of assisted living facilities, and other stakeholders to*  
10 *make recommendations to the Board regarding adoption of regulations for the audio-visual recording of*  
11 *residents in assisted living facilities, as defined in § 63.2-100 of the Code of Virginia, including*  
12 *provisions related to (i) resident privacy, (ii) notice and disclosure, (iii) liability, (iv) ownership and*  
13 *maintenance of equipment, (v) cost, (vi) recording and data security, and (vii) assisted living facility*  
14 *options for both assisted living facility-managed recording and resident-managed recording. The work*  
15 *group shall report its recommendations to the Governor, the Board of Social Services, and the General*  
16 *Assembly by December 1, 2020.*

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## Appendix B Workgroup Participants

Workgroup Participant and Organization
Alicia Cundiff, Spotts Fain PC
Doug Fraser, Smith/Packett
Judy Hackler, Virginia Assisted Living Association
Joani Latimer, Office of the State Long-Term Care Ombudsman
Jennifer McGarry-Hayes, Pheasant Ridge Senior Living
April Payne, Virginia Center for Assisted Living/Virginia Health Care Association
Dana Parsons, LeadingAge Virginia
Judy Raymond, Lake Prince Woods
Meade Spotts, Spotts Fain PC
Gail Thompson, Office of the State Long-Term Care Ombudsman
Susan P.D. Whyte, Office of the Attorney General

Tara L. Ragland, Director, Division of Licensing Programs at the Virginia Department of Social Services, organized this workgroup with support and assistance from home office staff Cynthia Carneal Heflin, Sharon Lindsay, Edward Richardson and Sharon Stroble, with input from field inspectors Willie Barnes, Laura Lunsford, Susan Mallory and Lynette Storr.

## Appendix C

### Audio Visual Recording Laws and Regulations

#### Audio Visual Recording- SB355 Laws and Regulations

State/ Bill or Regulation	Link	Summary
Virginia/ Virginia Depart- ment of Health	<a href="#">12VAC5-371-10</a> and <a href="#">12VAC5-371-191</a>  Effective 12/13/18	<p><b>Applies to Skilled Nursing Facilities/Nursing Homes:</b></p> <p><b><u>Regulations for the Licensure of Nursing Facilities (12VAC5-371):</u></b></p> <p>Section 10 provides definitions and Section 191 outlines basic requirements and responsibilities for implementation of voluntary electronic monitoring in the rooms of residents of nursing homes. A summary is below:</p> <p>“Electronic monitoring” means an unmanned video recording system with or without audio capability installed in the room of a resident.</p> <p>Regulation requires:</p> <ul style="list-style-type: none"> <li>• Requests for electronic monitoring must be made in writing and signed by resident/responsible party;</li> <li>• Admission cannot be refused solely because a resident requests to conduct authorized electronic monitoring;</li> <li>• Family cannot obtain electronic monitoring over the objection of the resident;</li> <li>• All residents sharing the room must consent to electronic monitoring;</li> <li>• Assigned staff cannot refuse to enter the resident’s room just because electronic monitoring is in use;</li> <li>• Consent shall be kept in the resident’s medical record;</li> <li>• 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;</li> <li>• If a facility chooses to retain ownership of recordings, the facility shall not permit viewings of recordings without consent of the resident or the</li> </ul>

		<p>resident's responsible party except to the extent that disclosure is required by law;</p> <ul style="list-style-type: none"> <li>• Any resident/resident's responsible party of a monitored room may <b>condition</b> consent (i.e. pointing the camera away from certain areas, limiting use of certain devices);</li> <li>• Unauthorized viewing by facility staff, covert monitoring, and tampering with the electronic monitoring device are prohibited. These actions are reportable to the administrator, Office of Long-Term Care Ombudsman and Office of Licensure and Certification; and</li> <li>• Facilities shall immediately report suspected abuse and neglect discovered as a result of using monitoring devices, as required by law.</li> </ul> <p>Resident/responsible party responsible for all aspects of operation, installation, removal, adherence to privacy laws, costs with the exception of electricity. Equipment must be fixed/unable to rotate.</p> <p>Each facility including those that choose not to offer electronic monitoring, shall adopt policies and procedures addressing all elements. Facilities shall designate one staff person to be responsible for managing the electronic monitoring program.</p>
<p>Louisiana Nursing Home Virtual Visitation Act (Act 596 /2018) – Effective -8/1/18</p>	<p><a href="http://www.legis.la.gov/Legis/ViewDocument.aspx?d=1107824">http://www.legis.la.gov/Legis/ViewDocument.aspx?d=1107824</a> Effective 8/1/18</p>	<p><b>NURSING HOME VIRTUAL VISITATION ACT, (Act 596 of the 2018 Regular Session) Applies to Nursing Homes/Skilled Nursing Facilities:</b></p> <p>This act requires that on or before Jan. 1, 2019, each licensed nursing home in Louisiana shall provide to each nursing home resident or, if applicable, the legal guardian or legally appointed substitute decision-maker authorized to act on behalf of the resident, a form prescribed by Louisiana Department of Health (LDH) explaining the provisions of new law and <b>giving each resident or legal representative a choice to have a monitoring device installed in the room of the resident.</b> Requires nursing homes to retain a copy of each such form and make the completed forms accessible to the state long-term care ombudsman.</p>
<p>Louisiana LDH “Notice of Right to install and use a monitoring device in your room at a Nursing Home”</p>	<p><a href="https://ldh.la.gov/assets/medicaid/hss/docs/NH/NF_VirtualVisitationAct596_12142018.pdf">https://ldh.la.gov/assets/medicaid/hss/docs/NH/NF_VirtualVisitationAct596_12142018.pdf</a></p>	<p>Allows resident family/legal representative/guardian to monitor and visually record resident in their room. The decision whether to monitor is up to the resident or representative, not the facility.</p> <p>Summary:</p> <ul style="list-style-type: none"> <li>• Resident (or legal representative) must give notice of the installation of a monitoring device to the nursing home by submitting a completed authorization form to the nursing home. The facility must allow recording device if the resident/representative requests.</li> <li>• The recordings of the monitoring device, if it records activity visually, must include a record of the date and time of the recording.</li> <li>• Resident is responsible for all costs. (They pay for the monitoring device, and for all installation, operation, maintenance, and removal costs associated with the device. If any alterations to the structure of the room are necessary to accommodate the monitoring device; the changes must</li> </ul>

		<p>be done by a licensed contractor, subject to approval of the nursing home. The monitoring device must be in compliance with National Fire Protection Life Safety regulations.</p> <ul style="list-style-type: none"> <li>• Any roommate must give written consent for monitoring; resident can consent if they have capacity, or legal representative can do so. They can refuse to allow consent. If roommate refuses consent, the facility must offer another shared room if one is available. Devices must be fixed (cannot move around) and monitor only the resident who gave consent.</li> <li>• If resident in a private room wants monitoring, they pay the private rate. If no private room is available, their request must be re-evaluated every two weeks until available.</li> <li>• Nursing Home must inform the resident/resident representative of the right to install or remove monitors. Facility retains this record.</li> <li>• If the device is installed according to the rules, the facility is not held liable for violating privacy.</li> <li>• Retaliation is not allowed against residents who desire monitoring.</li> <li>• The facility may not tamper with or disable authorized devices.</li> <li>• Notices must be posted at building entrances AND resident rooms where recording is done.</li> <li>• If any person views what they suspect is abuse or neglect, they shall report this the nursing home, and provide a copy of the recording. If the recording must be transferred to a different format to be viewed, the transfer shall be done at the expense of the nursing home by a qualified professional who can certify that the contents of the recording were not altered.</li> </ul> <p>Provisions of this law/regulation are added to the Louisiana equivalent of ALF "Resident Rights".</p>
<p>Washington HB 2173</p>	<p><a href="https://app.leg.wa.gov/WAc/default.aspx?cite=388-97-0400">https://app.leg.wa.gov/WAc/default.aspx?cite=388-97-0400</a>  Effective 11/1/08</p>	<p><b>Applies to Skilled Nursing Facilities:</b></p> <p>No audio or video monitoring equipment to monitor any resident unless:</p> <ul style="list-style-type: none"> <li>• A resident has requested the monitoring;</li> <li>• Only in the sleeping room;</li> <li>• The resident has identified a threat to their health safety or personal property;</li> <li>• Any roommate provides written permission;</li> <li>• Consent by resident or roommate may be withdrawn at any time.</li> </ul> <p>The resident and the nursing home have agreed upon a time frame and the need for continued monitoring is reevaluated quarterly in writing.</p>
<p>South Dakota HB 1056</p>	<p><a href="https://sdlegislature.gov/legislative_session/bills/Bill.aspx?Bill=1056&amp;Session=2020">https://sdlegislature.gov/legislative_session/bills/Bill.aspx?Bill=1056&amp;Session=2020</a></p>	<p><b>Applies to Skilled Nursing Facilities and Assisted Living Facilities:</b></p> <p>"Video monitoring device" means a camera or other device, which captures, records or broadcasts video and which is placed in a resident's room and used to monitor the resident or activities in the room.</p>



	<p>Passed 4/4/20</p>	<ul style="list-style-type: none"> <li>• Before initiating video monitoring, a resident shall complete and submit to the facility a notice and consent form;</li> <li>• Roommate, if any, must provide written consent prior to any monitoring;</li> <li>• The resident is responsible for the installation, operation, maintenance, and removal of the video monitoring device;</li> <li>• A resident may not use a facility's local area network to connect the video monitoring device to the internet, unless the facility provides written consent;</li> <li>• The resident shall place the video monitoring device in a conspicuously visible location in the resident's room.</li> </ul> <p>If a resident is conducting video monitoring, the facility shall post conspicuous signage at the entrance to the resident's room indicating that the room is being monitored by means of a video monitoring device.</p> <p>Lists requirements of consent agreement and requires consent of all roommates.</p> <p><a href="https://www.agrusslawfirm.com/news/south-dakota-considers-joining-illinois-and-others-in-allowing-cameras-in-assisted-living-facilities">https://www.agrusslawfirm.com/news/south-dakota-considers-joining-illinois-and-others-in-allowing-cameras-in-assisted-living-facilities</a></p>
<p>Utah HB 124</p>	<p><a href="https://le.utah.gov/~2016/bills/static/HB0124.html">https://le.utah.gov/~2016/bills/static/HB0124.html</a></p> <p>Assisted Living Facility Surveillance Act</p> <p>Effective 5/10/16</p>	<p><b>Applies to Assisted Living Facilities:</b></p> <p>The "Assisted Living Facility Surveillance Act" allows a monitoring device in a resident's private or shared living space. No regulations for use in a SNF at this time. Language as it appears: Utah Administrative Code Rule R432-270. Assisted Living Facilities</p> <p><b><u>R432-270-3. Definitions.</u></b></p> <p>"Monitoring device": (i) means a video surveillance camera or a microphone or other device that captures audio; and (ii) does not include: (A) a device that is specifically intended to intercept wire, electronic, or oral communication without notice to or the consent of a party to the communication; or (B) a device that is connected to the Internet or that is set up to transmit data via an electronic communication</p> <p>Type I and Type II assisted living facilities shall not deny an individual admission to the facility for the sole reason that the individual or the individual's legal representative requests to install or operate a monitoring device in the individual's room in accordance with UCA Section 26-21-304.</p> <p>The facility may not discharge a resident for the sole reason that the resident or the resident's legal representative requests to install or operate a monitoring device in the individual's room in accordance with UCA Section 26-21-304.</p> <p>This Act:</p>

		<ul style="list-style-type: none"> <li>• Allows a resident of an assisted living facility to install a video or audio monitoring device in the resident's room under certain conditions;</li> <li>• provides certain liability protections related to operating or installing a monitoring device;</li> <li>• Requires consent from each roommate;</li> <li>• Cost and installation liability rests with the resident or legal representative, and they must consent to a waiver agreement if required by the facility;</li> </ul> <p>*** Regulation addresses the AFL's liability (none- unless the claim is caused by the acts or omissions of an employee or agent of the facility).</p>
<p>West Virginia</p>	<p><a href="#">Title 64, Legislative Rule, Bureau for Public Health, Series 14, Assisted Living Residences:</a></p> <p>Effective 5/1/06</p> <p><a href="http://www.wvlegislature.gov/bill_status/bills_text.cfm?billdoc=hb2272%20intr.htm&amp;yr=2005&amp;sesstype=RS&amp;i=2272">http://www.wvlegislature.gov/bill_status/bills_text.cfm?billdoc=hb2272%20intr.htm&amp;yr=2005&amp;sesstype=RS&amp;i=2272</a></p>	<p><b>Restricted to common areas of Assisted Living Facilities:</b></p> <p>There are no regulations available for review at this time. Language as it appears: <b>§64-14-6. Resident Rights.</b></p> <p><b>6.2.k Treatment.</b> The use of visual and auditory devices to monitor areas of the assisted living residence is <b>restricted to common areas only</b>. The licensee shall provide written notice to the resident or his or her legal representative of the use of these devices at the time of admission and also post a notice about their use in a prominent place in the residence.</p> <p><b>For Nursing Homes:</b></p> <p>The purpose of the bill is to require a nursing home to permit a resident or the legal representative of the resident to monitor the resident through the use of electronic monitoring devices. It establishes the responsibilities of the resident, the legal representative of the resident and the nursing home. It establishes penalties for noncompliance.</p> <p>"Electronic monitoring device" includes a video surveillance camera, an audio device, a video telephone or an internet video surveillance device.</p> <p>A nursing home or facility shall permit a resident or legal representative of the resident to monitor the resident through the use of an electronic monitoring device. Monitoring under this section shall:</p> <ul style="list-style-type: none"> <li>• Be optional and at the <u>written</u> request of the resident or legal representative of the resident;</li> <li>• The resident is responsible for the cost;</li> <li>• A nursing home or facility shall make reasonable physical accommodations for electronic monitoring by providing a reasonable secure place to mount the device, access to a power source and provide written notice to resident or legal representative of the resident's right to electronic monitoring</li> </ul>

		<ul style="list-style-type: none"> <li>• A nursing home or facility may request a resident or a resident's personal representative to conduct electronic monitoring within plain view.</li> </ul> <p>Subject to the West Virginia rules of evidence, a tape created through the use of electronic monitoring shall be admissible in either a civil or criminal action brought in a West Virginia court or administrative hearing.</p> <p>Penalties for noncompliance:</p> <p>Any person who operates a nursing home or facility in violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, may be fined not more than two thousand dollars or confined in jail for not more than one year, or both.</p> <p>Any person who willfully and without the consent of a resident hampers, obstructs, tampers with or destroys an electronic monitoring device or tape is guilty of a misdemeanor and, upon conviction thereof, may be fined not more than two thousand dollars or confined in jail for not more than ninety days, or both fined and confined.</p>
Minnesota	<p><a href="#">144.6502 Electronic Monitoring in Certain Facilities</a></p> <p>Effective 1/1/20</p>	<p><b>Applies to Assisted Living Facilities:</b></p> <p><b>Effective 8/1/21:</b></p> <p>"Electronic monitoring device" means a camera or other device that captures, records, or broadcasts audio, video, or both, that is placed in a resident's room or private living unit and is used to monitor the resident or activities in the room or private living unit.</p> <p>"Resident representative" means one of the following in the order of priority listed, to the extent the person may reasonably be identified and located: (1) a court-appointed guardian; (2) a health care agent as defined in section <a href="#">145C.01, subdivision 2</a>; or (3) a person who is not an agent of a facility or of a home care provider designated in writing by the resident and maintained in the resident's records on file with the facility.</p> <p>Electronic monitoring authorized. (a) A resident or a resident representative <b>may conduct electronic monitoring of the resident's room or private living unit through the use of electronic monitoring devices placed in the resident's room or private living unit</b> as provided in this section.</p> <p>Defines reasonable accommodation is for a resident who desires electronic monitoring when their roommate refuses consent (offer to move them to another shared room, etc.). Addresses change in roommates.</p> <p>Cost and installation at the resident expense.</p>

		<p>Does not require that anyone review the recordings, but states that any video or audio recording created through electronic monitoring under this section may be admitted into evidence in a civil, criminal, or administrative proceeding.</p> <p>Very specific form requirements: Consent forms for various parties posted.</p> <p>Does not address facility managed electronic monitoring.</p>
<p>ND</p>	<p><a href="#">North Dakota Enrolled Bill</a></p> <p><a href="#">ND Notice of Right to Place Electronic Equipment</a></p> <p>Effective 8/1/19</p>	<p><b>Applies to Skilled Nursing Facilities and Assisted Living Facilities:</b></p> <p>"Authorized electronic monitoring" means the placement and use of an authorized electronic monitoring device, by a resident or resident representative, in the resident's room.</p> <p>"Authorized electronic monitoring device" means video surveillance cameras, monitoring devices, web-based cameras, video phones, or audio recording or transmitting devices, or a combination of these devices, installed in the room of a resident which are designed to acquire, transmit, broadcast, interact, or record video, communications, or other sounds occurring in the room. The term does not include still cameras or devices used for the purpose of the resident having contact with another person but not for the purpose of electronically monitoring a resident.</p> <p>A facility shall permit a resident or the resident representative to conduct authorized electronic monitoring of the resident's room through an authorized electronic monitoring device if:</p> <ul style="list-style-type: none"> <li>• The authorized electronic monitoring device is placed in the resident's room;</li> <li>• The electronic monitoring device is placed in a fixed, stationary position; monitors only the area occupied by the resident and not the area occupied by the resident's roommate; and protects the privacy and dignity of the resident;</li> <li>• The facility is given written notice of the placement and use which must include an installation plan in compliance with the facility's standards and regulations the facility provides to the resident;</li> <li>• A video tape or recording created using an authorized electronic monitoring device records the date and time;</li> <li>• All costs, except for electricity, associated with the authorized electronic monitoring device, including installation, operation, removal, repairs, room damage, and maintenance, are paid by the resident or resident representative who initiated the use of the authorized electronic monitoring device; and</li> <li>• A signed authorization for the disclosure of protected health information, as defined by title 45, Code of Federal Regulations, part 160, section 103, compliant with the federal Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.] and consenting to the use of the device is given by each resident occupying the same room, or by that resident's resident representative in accordance with subsection 4.</li> </ul>

<p>Texas</p>	<p>§92.129 Authorized Electronic Monitoring(AEM)  Effective 2017</p> <p><a href="https://www.argentum.org/wp-content/uploads/2017/01/Texas-Regulation.pdf">https://www.argentum.org/wp-content/uploads/2017/01/Texas-Regulation.pdf</a> &amp; <a href="https://www.argentum.org/wp-content/uploads/2017/01/Texas-Authorized-Electronic-Monitoring-Form.pdf">https://www.argentum.org/wp-content/uploads/2017/01/Texas-Authorized-Electronic-Monitoring-Form.pdf</a></p> <p>Standards - <a href="http://tala.org/wp-content/uploads/2018/07/ALF-Regs-June-2018.pdf">http://tala.org/wp-content/uploads/2018/07/ALF-Regs-June-2018.pdf</a> &amp; Information Regarding Authorized Electronic Monitoring for ALFs <a href="https://hhs.texas.gov/sites/default/files/documents/laws-regulations/forms/3100/3100.pdf">https://hhs.texas.gov/sites/default/files/documents/laws-regulations/forms/3100/3100.pdf</a></p>	<p><b>Applies to Assisted Living Facilities:</b></p> <p>A resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring (AEM) under Chapter 242 and 247 of the Health and Safety Code.</p> <p>Authorized Electronic Monitoring (AEM) requires that a facility must permit a resident, or the resident's guardian or legal representative, to monitor the resident's room through the use of electronic monitoring devices. A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct authorized electronic monitoring.</p> <p>The Texas Department of Human Services (DHS) "Information Regarding Authorized Electronic Monitoring" form must be signed by or on behalf of all new residents upon admission. A copy of the form must be maintained in the active portion of the resident's clinical record.</p> <p>Texas has very specific guidelines regarding consent for AEM:</p> <ul style="list-style-type: none"> <li>• If a resident has the capacity to request AEM and has not been judicially declared to lack the required capacity, only the resident may request AEM, notwithstanding the terms of any durable power of attorney or similar instrument.</li> <li>• If a resident has been judicially declared to lack the capacity required to request AEM, only the guardian of the resident may request AEM.</li> <li>• If a resident does not have the capacity to request AEM and has not been judicially declared to lack the required capacity, only the legal representative may request it.</li> </ul> <p>A resident's physician makes the determination regarding the capacity to request AEM. Documentation of the determination must be made in the resident's clinical record. When a resident's physician determines the resident lacks the capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:</p> <ol style="list-style-type: none"> <li>(i) a person named in the resident's medical power of attorney or other advance directive;</li> <li>(ii) the resident's spouse;</li> <li>(iii) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decisionmaker;</li> <li>(iv) a majority of the resident's reasonably available adult children;</li> <li>(v) the resident's parents; or</li> <li>(vi) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.</li> </ol>
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		<p>The same level of consent authorization is required for any roommate of the person requesting AEM. Another resident in the room may condition consent on the camera being pointed away from the roommate and limit or prohibit audio electronic monitoring.</p> <p>Texas, as do the other states, requires signage be posted at the entrance to the room stating the room is being monitored by an electronic monitoring device. The resident, or legal representative must pay all costs, other than the cost of electricity.</p> <p>Texas requires all facilities, regardless of whether AEM is being conducted, post an 8 1/2-inch by 11-inch notice at the main facility entrance entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."</p> <p>Note: A facility may not discharge a resident because <u>covert</u> electronic monitoring is being conducted by or on behalf of a resident. if a facility discovers a covert electronic monitoring device and it is no longer covert as defined in §92.3 of this chapter (relating to Definitions) , the resident must meet all the requirements for AEM before monitoring is allowed to continue.</p>
Missouri	<p>§198 Authorized Electronic Monitoring in Long-term Care Facilities Act</p> <p>Effective 8/28/20</p> <p><a href="https://www.house.mo.gov/billtracking/bills201/sumpdf/HB1482I.pdf">https://www.house.mo.gov/billtracking/bills201/sumpdf/HB1482I.pdf</a></p>	<p><b>Applies to Skilled Nursing Facilities and Assisted Living Facilities:</b></p> <p>"Authorized electronic monitoring", the placement and use of an electronic monitoring device by a resident in his or her room in accordance with the provisions of sections <a href="#">198.610 to 198.632</a>;</p> <p>"Electronic monitoring device" means a surveillance instrument capable of recording or transmitting audio or video footage of any activity occurring in a resident's room;</p> <p>"Legal representative", a person authorized under a durable power of attorney that complies with sections <a href="#">404.700 to 404.737</a> to act on behalf of a resident of a facility;</p> <p>Residents of long-term care facilities in Missouri shall have the right to place in the resident's room an authorized electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative. The resident is responsible for all costs, except the cost of electricity.</p> <p>The facility shall require a resident who conducts authorized electronic monitoring, or the resident's guardian or legal representative, to post and maintain a conspicuous notice at the entrance to the resident's room. The notice shall state that the room is being monitored by an electronic monitoring device. A facility shall not refuse to admit an individual to residency in the facility and shall not remove a resident from the facility because of a request to conduct authorized electronic monitoring. A facility shall not remove a resident from the facility</p>

		<p>because unauthorized electronic monitoring is being conducted by or on behalf of a resident.</p> <p>A facility shall make reasonable physical accommodation for authorized electronic monitoring, including:</p> <ul style="list-style-type: none"> <li>• Providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and</li> <li>• Providing access to power sources for the video surveillance camera or other electronic monitoring device.</li> <li>• A facility shall require an electronic monitoring device to be installed, in plain view, in a manner that is safe for residents, employees, or visitors who may be moving about the room. The department shall adopt rules regarding the safe placement of an electronic monitoring device.</li> <li>• A facility shall not be required to provide internet service or network access to any electronic monitoring device. Any internet service for an electronic monitoring device shall be the sole responsibility of the resident or the resident's guardian or legal representative.</li> <li>• A facility may move a resident to a comparable room to accommodate a request to conduct authorized electronic monitoring.</li> </ul>
<p>New Mexico</p>	<p><a href="#">New Mexico Patient Care Monitoring Act</a></p>	<p><b>Applies to Skilled Nursing Facilities and Assisted Living Facilities:</b></p> <p>"Monitoring device" means a surveillance instrument that broadcasts or records activity, but does not include a still camera.</p> <p>AUTHORIZATION AND USE.</p> <p>A patient/resident or a surrogate may authorize installation and use of a monitoring device in a facility provided that:</p> <ul style="list-style-type: none"> <li>• The facility is given notice of the installation;</li> <li>• If the monitoring device records activity visually, such recording shall include a record of the date and time;</li> <li>• The monitoring device and all installation and maintenance costs are paid for by the patient; and</li> <li>• Written consent is given by each patient or surrogate of each patient occupying the same room.</li> <li>• The patient/resident may establish and the facility shall accommodate limits on the use, including the time of operation, direction, focus or volume, of a monitoring device.</li> </ul> <p>At the time of admission to a facility, a patient/resident shall be offered the option to have a monitoring device, and a record of the authorization or choice not to have a monitoring device shall be kept by the facility and shall be made accessible to the program.</p> <p>After authorization, consent and notice, a patient/resident or surrogate may install, operate and maintain a monitoring device in the room at the individual's expense. The facility shall cooperate to accommodate the installation of the monitoring device, provided the installation does not place undue burden on the facility.</p>

		<p>CONSENT:</p> <p>Consent to the authorization for the installation and use of a monitoring device may be given only by the patient/resident or the surrogate and shall include a release of liability for the facility for a violation of the patient's/resident's right to privacy insofar as the use of the monitoring device is concerned. A patient/resident or the surrogate may reverse a choice to have or not have a monitoring device installed and used at any time, after notice to the facility and to the program upon a form prescribed by the agency.</p> <p>IMMUNITY—Facility protections regarding unauthorized use.</p> <p>In any civil action against the facility, material obtained through the use of a monitoring device may not be used if the monitoring device was installed or used without the knowledge of the facility or without the prescribed form. Compliance with the provisions of the Patient Care Monitoring Act shall be a complete defense against any civil or criminal action brought against the patient/resident, surrogate or facility for the use or presence of a monitoring device.</p> <p>PENALTY:</p> <p>Any person other than a patient/resident or surrogate found guilty of intentionally hampering, obstructing, tampering with or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.</p>
Oklahoma	<p><a href="#">SB 1739 (enrolled)</a></p> <p>Effective 11/1/20</p>	<p><b>Applies to Skilled Nursing Facilities and Assisted Living Facilities: Consent must be on prescribed forms from the Oklahoma Department of Health.</b></p> <p>“Authorized electronic monitoring” means the placement of electronic monitoring devices in the common areas or room of a resident of a nursing facility, assisted living center or continuum of care facility and the tapes or recordings from such devices pursuant to the provisions of Section 1-1953.1 et seq. of this title;</p> <p>“Authorized electronic monitoring devices” means:</p> <ul style="list-style-type: none"> <li>• video surveillance cameras installed in the common areas or resident’s room under the provisions of Section 1-1953.1 et seq. of this title, or</li> <li>• audio devices installed in the room of a resident under the provisions of Section 1-1953.1 et seq. of this title that are designed to acquire communications or other sounds occurring in the room;</li> </ul> <p>“Representative of a resident” a court-appointed guardian or, if there is no court-appointed guardian, the parent of a minor, a relative or other person, designated in writing by the resident; provided, that any owner, operator, administrator or employee of a facility subject to the provisions of the Nursing Home Care Act, the Continuum of Care and Assisted Living Act, the Residential Care Act or the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act</p>



		<p>shall not be appointed guardian or limited guardian of a resident of the nursing facility, assisted living center or continuum of care facility unless the owner, operator, administrator or employee is the spouse of the resident or a relative of the resident within the second degree of consanguinity and is otherwise eligible for appointment;</p> <p>“Unauthorized electronic monitoring” means electronic, mechanical, or other devices that do not meet the provisions of Section 1-1953.1 et seq. of this title and that are specifically used for the nonconsensual interception of wire or electronic communications.</p> <p>Oklahoma requires that a facility shall provide written notice to each resident, or to the representative of a resident, that authorized electronic monitoring of a resident’s room is not compulsory and shall only be conducted with the written consent of the resident or the representative of the resident. The facility shall not refuse to admit an individual to residency in the facility and shall not remove a resident from a facility because of authorized electronic monitoring of a resident’s room. Each facility shall post at or near its main entrances a sign that clearly states that electronic monitoring and audio devices may be in use in the facility or center.</p> <p>A resident or the representative of a resident may conduct authorized electronic monitoring of the resident’s room through the use of authorized devices placed in the room at their own expense and with the written consent of any other resident living in the room. The resident who conducts authorized electronic monitoring or the representative <u>may</u> post and maintain a notice at the entrance to the resident’s room stating that the room is being monitored by an electronic monitoring device. Consent must be obtained from any other residents of the room and the roommate may condition consent on the camera being directed away from them and condition if audio is limited or prohibited.</p>
<p>Illinois HB 2462</p>	<p><a href="https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3673&amp;ChapterID=21">https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3673&amp;ChapterID=21</a></p> <p>Effective 1/1/16</p> <p><a href="#">Justia US Law-IL-2016-chapte 210</a></p>	<p><b>Applies to Nursing Homes and other programs serving dementia residents: Authorized Electronic Monitoring in Long-Term Care Facilities Act.</b></p> <p>Illinois law is specific to facilities that house dementia residents. The facility may allow electronic monitoring devices only in rooms: (1) that are located in a building that is entirely dedicated to dementia care; or (2) that are located in a building wing that is solely dedicated to dementia care.</p> <p>Also of note: Illinois makes funds available to assist residents receiving medical assistance under Article V of the Illinois Public Aid Code in accessing authorized electronic monitoring.</p> <p>“Authorized electronic monitoring” means the placement and use of an electronic monitoring device by a resident in his or her room in accordance with this Act.</p> <p>The Act requires that documented consent of resident/representative and any roommates must be obtained on a Department form developed for this purpose, specifying the type of device to be used, and the standard conditions that may be</p>

	<p>placed on use of the device. Consent may be withdrawn at any time by the resident or the roommate.</p> <p>Detailed consent explained including a specific list of persons who may consent on an individual's behalf:</p> <ul style="list-style-type: none"><li>• Except as otherwise provided in this subsection, a resident, a resident's plenary guardian of the person, or the parent of a resident under the age of 18 must consent in writing on a notification and consent form prescribed by the Department to the authorized electronic monitoring in the resident's room. If the resident has not affirmatively objected to the authorized electronic monitoring and the resident's physician determines that the resident lacks the ability to understand and appreciate the nature and consequences of electronic monitoring, the following individuals may consent on behalf of the resident, in order of priority:<ul style="list-style-type: none"><li>• a health care agent named under the Illinois Power of Attorney Act;</li><li>• a resident's representative, as defined in Section 5 of this Act;</li><li>• the resident's spouse;</li><li>• the resident's parent;</li><li>• the resident's adult child who has the written consent of the other adult children of the resident to act as the sole decision maker regarding authorized electronic monitoring; or</li><li>• the resident's adult brother or sister who has the written consent of the other adult siblings of the resident to act as the sole decision maker regarding authorized electronic monitoring.</li></ul></li></ul> <p>A resident or roommate may consent to authorized electronic monitoring with any conditions of the resident's choosing, including, but not limited to, the list of standard conditions provided in paragraph (7) of subsection (b) of Section 20. A resident or roommate may request that the electronic monitoring device be turned off or the visual recording component of the electronic monitoring device be blocked at any time.</p> <p>Any resident previously conducting authorized electronic monitoring must obtain consent from any new roommate before the resident may resume authorized electronic monitoring. If a new roommate does not consent to authorized electronic monitoring and the resident conducting the authorized electronic monitoring does not remove or disable the electronic monitoring device, the facility shall turn off the device. Consent may be withdrawn at any time.</p> <p>If a resident who is residing in a shared room wants to conduct authorized electronic monitoring and another resident living in or moving into the same shared room refuses to consent to the use of an electronic monitoring device, the facility shall make a reasonable attempt to accommodate the resident who wants to conduct authorized electronic monitoring. A facility has met the requirement to make a reasonable attempt to accommodate a resident who wants to conduct authorized electronic monitoring when, upon notification that a roommate has not consented to the use of an electronic monitoring device in his or her room, the</p>
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The 11 states that allow electronic monitoring in resident rooms are required to inform residents of their right do so. Use of electronic monitoring cannot be prohibited if the terms and requirements are met. (**Skilled Nursing Facilities or Nursing Homes:** Louisiana, Illinois, Washington, and Utah; **Assisted Living Facilities** in Minnesota and Texas; and **both** in Missouri, South Dakota, North Dakota, Oklahoma and New Mexico).

In a search for audio visual monitoring in areas surrounding Virginia, the work group did not find any information for Kentucky, Tennessee, or the District of Columbia.

