Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 91—Authorized Electronic Monitoring in Long-Term Care Facilities

PROPOSED RULE

19 CSR 30-91.010 Authorized Electronic Monitoring.

PURPOSE: The proposed rule sets forth requirements regarding the use of an electronic monitoring device in long-term care facilities.

AGENCY NOTE: All rules relating to long-term care facilities licensed by the department are followed by a Roman Numeral notation which refers to the class (either Class I, II or III) of standard as designated in section 198.085 RSMo.

(1) Definitions. For the purposes of this rule the following terms shall apply:
(A) Authorized electronic monitoring means the placement and use of an electronic monitoring device by a resident in his or her room in accordance with the provisions of sections 198.610 to 198.632, RSMo;
(B) 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;
(C) Facility or long-term care facility means any residential care facility, assisted living facility, intermediate care facility, or skilled nursing facility, as such terms are defined under section 198.006, RSMo;
(D) Guardian means the same as defined under section 475.010, RSMo; and
(E) Legal representative means a person authorized under a durable power of attorney that complies with sections 404.700 to 404.737, RSMo, to act on behalf of a resident of a facility.

(2) A resident shall be permitted to place in the resident’s room an authorized electronic monitoring (AEM) device that is owned and operated by the resident or provided by the resident's guardian or legal representative consistent with sections 198.610 to 198.632, RSMo and this regulation. II/III

(3) A facility shall offer the DHSS-DRL-107 (08-20), Electronic Monitoring Device Acknowledgment and Request Form, included herein to any resident or resident’s guardian or legal representative upon request and utilize this form to document consent and use of an electronic monitoring device. II/III

(4) AEM shall not begin nor an electronic monitoring device(s) be installed until the Electronic Monitoring Device Acknowledgment and Request Form has been completed and returned to the facility. The facility may require the resident or the resident’s guardian or legal representative to remove or disable the electronic monitoring device. II/III

(5) AEM shall be conducted in accordance with consent and limitations provided in the Electronic Monitoring Device Acknowledgment and Request Form. II/III

(6) If AEM is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, AEM shall cease until the new resident has consented through the Electronic Monitoring Device Acknowledgment and Request Form. The facility may require the resident or the resident’s guardian or legal representative to remove or disable the electronic monitoring device. II/III

(7) The placement and use of the AEM device shall be open and obvious.

(8) If a resident installs and uses an electronic monitoring device, a notice to alert and inform visitors shall be posted at the entrance of the facility and resident's room.

(A) The facility shall post a notice at the main entrance of the facility in large, legible type and font and display the words "Electronic Monitoring" and state: "The rooms of some residents may be monitored electronically by, or on behalf of, the residents and monitoring is not necessarily open or obvious." III

(B) The facility shall require the resident to post and maintain a conspicuous notice at the entrance of the resident's room stating: "This room is being monitored by an electronic monitoring device." III

(9) The facility shall require an electronic monitoring device to be installed as follows:

(A) In plain view;

(B) Mounted in a fixed, stationary position;

(C) Directed only on the resident who initiated the installation and use of AEM device;

(D) Placed for maximum protection of the privacy and dignity of the resident and the roommate; and

(E) In a manner that is safe for residents, employees, or visitors who may be moving about the room. II/III

(10) The facility shall not refuse to admit an individual or discharge a resident because of a request to conduct AEM. II

(11) The facility shall not discharge a resident because unauthorized electronic monitoring is being conducted by or on behalf of a resident. II

(12) The facility shall make reasonable physical accommodation for AEM, including:

(A) Provide a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(B) Provide access to power sources for the video surveillance camera or other electronic monitoring device. II

(13) The facility shall ensure all staff are knowledgeable of the applicable laws and rules regarding AEM, sections 198.610 to 198.632, RSMo, including the consequences of hampering, obstructing, tampering with, or destroying an electronic monitoring device without the consent of the resident or resident's guardian or legal representative. III

(14) The facility shall ensure the Electronic Monitoring Device Acknowledgment and Request Form is maintained in the clinical records of the residents using AEM devices. The roommate's consent to the AEM device shall be maintained in his or her clinical record. These forms shall be retained for a period of five (5) years from the date of discharge. III

AUTHORITY: sections 198.612, 198.616, 198.620, 198.622, and 198.626, RSMo 2020. Emergency Rule filed August 20, 2020, effective September 3, 2020, expires March 1, 2021.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions forty-five thousand eight hundred eighty dollars ($45,880) in the aggregate.

PRIVATE COST: This proposed rule will cost private entities one million thirty-seven thousand one dollars ($1,037,001) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Craig Schnieders, Interim Director of the Division of Regulation and Licensure, PO Box 570, Jefferson City, MO 65102-0570 or at Terri.Bass@health.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*