TITLE 6. ECONOMIC SECURITY

CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY

DEVELOPMENTAL DISABILITIES

ARTICLE 14. ELECTRONIC MONITORING OF GROUP HOMES, NURSING-SUPPORTED GROUP HOMES, AND INTERMEDIATE CARE FACILITIES

Section

R6-6-1401. Definitions and Location of Definitions

R6-6-1402. Applicability

R6-6-1403. Permissibility

R6-6-1404. Notification of Electronic Monitoring

R6-6-1405. Disclosure and Confidentiality

R6-6-1406. Maintenance of Records

R6-6-1407. Monitoring and Training

R6-6-1408. Financial Responsibility
ARTICLE 14. ELECTRONIC MONITORING OF GROUP HOMES, NURSING-SUPPORTED GROUP HOMES, AND INTERMEDIATE CARE FACILITIES

R6-6-1401. Definitions and Location of Definitions

A. Location of definitions. The following definitions applicable to this Article are found in the following Section or Citation:

“Business Day” R6-6-1401(B)
“Common Area” R6-6-1401(B)
“Department” A.R.S. § 36-551
“Division” A.R.S. § 36-551
“Electronic Monitoring Device” A.R.S. § 36-568(E)
“Group Home” A.R.S. § 36-551
“Intermediate Care Facility” R6-6-1401(B)
"Nursing-supported Group Home" A.R.S. § 36-401
“Operator” R6-6-1401(B)
“Resident’s Representative” R6-6-1401(B)
“Service Provider” A.R.S. § 36-551

B. In addition to the terms defined in A.R.S. § 36-551 and A.R.S. § 36-568, the following definitions apply to this Article:

1. “Business Day” means Monday through Friday, excluding holidays listed in A.R.S. § 1-301.

2. “Common Area” means a room, including a hallway, in a Group Home, Nursing-supported Group Home, or Intermediate Care Facility, that is designed for use by multiple individuals, including residents. Bedrooms, toileting areas,
and bathing areas are excluded from this definition, regardless of the number of individuals for which the area is designed.


4. “Operator” means a Service Provider who administers a Group Home, Nursing-supported Group Home, or Intermediate Care Facility.

5. “Resident’s Representative” means either an individual who is the legal guardian of a resident of a Group Home, Nursing-supported Group Home, or Intermediate Care Facility, or who has otherwise been designated in writing by the resident to make requests on the resident’s behalf.

R6-6-1402. Applicability

This Article applies to all Operators of Group Homes, Nursing-supported Group Homes, or Intermediate Care Facilities.

R6-6-1403. Permissibility

A. An Operator may install Electronic Monitoring Devices in a Group Home, Nursing-supported Group Home, or Intermediate Care Facility unless a resident or a Resident’s Representative of the Group Home, Nursing-supported Group Home, or Intermediate Care Facility objects to the installation.

1. An Operator that has installed an Electronic Monitoring Device shall oversee and monitor that device.

2. An Operator shall discontinue use of an already installed Electronic Monitoring Device if a resident or Resident’s Representative objects to continued use of the Electronic Monitoring Device.
B. An Operator shall only install and monitor an Electronic Monitoring Device in a Common Area of a Group Home, Nursing-supported Group Home, or Intermediate Care Facility.

C. An Operator shall require in all agreements with any third party engaged to install, oversee, or monitor Electronic Monitoring Devices that the third party comply with the requirements of this Article.

D. When a resident of a Group Home, Nursing-supported Group Home, or Intermediate Care Facility, or a Resident’s Representative, requests that an Electronic Monitoring Device be installed in the facility in which the resident resides, the Operator shall provide a written response to the resident or the Resident’s Representative as to whether the Operator agrees to install Electronic Monitoring Devices. The Operator shall provide the written response to the resident or the Resident’s Representative within 20 business days of receipt of the request.

1. If the Operator denies the request, the written response shall include the reason for denial.

2. If the Operator approves the request, the written response shall include a time frame for the installation and the extent of the installation, including the location of all Electronic Monitoring Devices to be installed.

E. The Operator may require the resident or the Resident’s Representative to provide compensation for installation or monitoring of an Electronic Monitoring Device if the Electronic Monitoring Device is being installed at the request of the resident or Resident’s Representative.
If an Operator denies a request under to install an Electronic Monitoring Device but all residents or Resident’s Representatives of the Group Home, Nursing-supported Group Home, or Intermediate Care Facility agree to install an Electronic Monitoring Device, the Operator shall allow the residents or the Resident’s Representatives to pay for, install, or contract for installation of an Electronic Monitoring Device.

Electronic Monitoring Devices installed under subsection (F) shall:

1. Not be subject to the requirements of this Article.
2. Not be accessed by the Operator or the Division without the express written permission of all residents or the Residents’ Representatives.
3. Be deactivated and removed if any resident or Resident’s’ Representative at any time disagrees with continued use of the Electronic Monitoring Device.

Notification of Electronic Monitoring

All Electronic Monitoring Devices shall be clearly visible and identifiable as an Electronic Monitoring Device.

An Operator that chooses to install an Electronic Monitoring Device shall post signs at every entrance to the premises and structures associated with the Group Home, Nursing-supported Group Home, or Intermediate Care Facility. Each sign shall:

1. Reference A.R.S. § 36-568 and these rules or the rules’ successors;
2. Clearly state that Electronic Monitoring Devices are in use on the premises;
3. Be displayed in an unobscured manner; and
4. Be printed with a size and font that is easily readable from a reasonable distance.

An Operator that installs, oversees, or monitors an Electronic Monitoring Device shall notify all residents, Resident’s Representatives, and the Operator’s personnel in writing
that the facility has an Electronic Monitoring Device in Common Areas, the location of the Electronic Monitoring Device, and specify the confidentiality and privacy requirements regarding the Electronic Monitoring Device and any associated records, including 45 CFR 164, A.R.S. § 36-568.01, and exceptions to the confidentiality requirements in accordance with R6-6-1405.

1. The Operator shall request that this notification be signed by the resident or the Resident’s Representative.

2. The Operator shall maintain a copy of all signed notifications.

3. If a resident or Resident’s Representative refuses to sign the notification, the Operator shall not use an Electronic Monitoring Device.

**D. When an Operator decides to discontinue the use of an Electronic Monitoring Device, the Operator shall:**

1. Notify residents, Resident’s Representatives, and the Operator’s personnel in writing in advance of the planned discontinuation.
   a. The Operator shall request that this notification be signed by the resident or the Resident’s Representative.
   b. TheOperator shall maintain a copy of all signed notifications.
   c. This notification is not a method for the resident or Resident’s Representative to approve or disapprove discontinuing the use of Electronic Monitoring Devices.
   d. A resident’s or a Resident’s Representative’s refusal to sign does not preclude the Operator from discontinuing use of the Electronic Monitoring Device.
2. Remove signage.

3. Disable the Electronic Monitoring Device and either remove the Electronic Monitoring Device or ensure that a person is able to readily discern that the Electronic Monitoring Device has been disabled.

R6-6-1405. Disclosure and Confidentiality

A. An Operator who installs, oversees, or monitors an Electronic Monitoring Device shall:

1. Comply with the Health Insurance Portability and Accountability Act ("HIPAA") Privacy Rule (45 CFR 164) and other applicable state and federal law addressing confidentiality; and

2. Specify in policy how Electronic Monitoring Device recordings, regardless of format, are secured to protect the confidentiality of residents, including:
   a. The Operator’s personnel who have access to the Electronic Monitoring Device recordings; and
   b. Under what circumstances the Operator’s personnel are permitted access to the Electronic Monitoring Device recordings.

B. Release of Recordings

1. An Operator shall release Electronic Monitoring Device recordings of a resident to the resident or the Resident’s Representative upon reasonable request only when expressly permitted by law.

2. If an Electronic Monitoring Device recording contains images of more than one resident, the Operator shall not release the Electronic Monitoring Device recording to the resident or Resident’s Representative unless:
   a. the images of the non-requesting resident is de-identified; or
b. the Operator receives a signed, informed consent for the release of the recording from all other residents or the Resident’s Representative who appear in the Electronic Monitoring Device recording.

**R6-6-1406. Maintenance of Records**

**A.** An Operator that uses an Electronic Monitoring Device subject to this Article shall retain and have accessible any Electronic Monitoring Device recordings, regardless of format, generated by the Electronic Monitoring Device for a minimum of 14 calendar days.

**B.** An Operator shall retain the records in R6-6-1406(A) longer than 14 calendar days if:

1. The Operator is required to do so by a contractual obligation;
2. The Operator's policy specifies that the Operator shall maintain the records beyond 14 calendar days;
3. The Operator reasonably anticipates that litigation may be pursued for which the records may be relevant;
4. A court order or other legal process requires the retention of all or some of the records for a longer period of time; or
5. A law or regulation that supersedes this Article requires a longer period of record maintenance.

**R6-6-1407. Monitoring, Training, and Policy**

**A.** An Operator who installs or engages for the installation of an Electronic Monitoring Device in a Group Home, Nursing-supported Group Home, or Intermediate Care Facility shall:
1. Evaluate all Electronic Monitoring Devices at least quarterly to ensure the Electronic Monitoring Devices are properly functioning, secure from access by unauthorized persons, and are being used in compliance with this Article.

2. Ensure that the Operator’s personnel adhere to policies and promptly address non-compliance.

3. Maintain a log of all monitoring of Electronic Monitoring Devices that includes:
   a. The date of the monitoring;
   b. The name of the individual who performed the monitoring;
   c. Deficiencies identified during the monitoring; and
   d. The method and date by which identified deficiencies were remedied and by whom the deficiencies were remedied if deficiencies were identified during monitoring.

4. Develop and provide training to all of the Operator’s personnel who have access to the records in R6-6-1406(A). Training shall include:
   a. The requirements of this Article related to disclosure of records;
   b. The requirements of HIPAA and all other applicable confidentiality and privacy laws related to the record;
   c. The maintenance and operation of the Electronic Monitoring Device and any associated storage devices;
   d. The methods used to secure the record;
   e. A list of all individuals the Operator may allow to access the records;
   f. The reporting method required in the event of any breach in the security of the record or misuse of the Electronic Monitoring Device; and
g. All policy related to the installation and use of Electronic Monitoring Devices.

5. Provide the training described in subsection (4) to all of the Operator’s personnel who have access to the records created by the Electronic Monitoring Devices:
   a. Prior to the Operator’s personnel being provided access to the records; and
   b. Annually following the initial training.

6. Require all of the Operator’s personnel who receive the training described in subsection (4) to sign an acknowledgment of completion of the training. This acknowledgment shall be maintained as a portion of the Operator’s personnel’s official training file.

7. Develop and implement for the Operator’s personnel, policies that:
   a. Implement the disclosure, confidentiality, maintenance, monitoring, and training provisions of this Article;
   b. Identify training that shall be provided to ensure that the Operator’s personnel use Electronic Monitoring Devices appropriately;
   c. Explain how the maintenance and distribution of records shall comply with this Article; and
   d. Detail how, at least quarterly, the Operator or the Operator’s designee shall evaluate Electronic Monitoring Devices.

8. Make policies, training records, training acknowledgments, evaluations, and monitoring logs available to the Division in compliance with the Operator’s contracts and regular Division monitoring schedules.
B. The Division shall ensure that an Operator that uses an Electronic Monitoring Device is in compliance with all requirements of this Article during all routine compliance monitoring.