

**NOTICE OF PROPOSED RULEMAKING**

**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**

**R6-6-1401. Definitions and Location of Definitions**

**A. Location of definitions. Definitions applicable to this Article are found in the following:**

<u>Definition</u>	<u>Section or Citation</u>
<u>“Business Day”</u>	<u>R6-6-1401(B)</u>
<u>“Common Area”</u>	<u>R6-6-1401(B)</u>
<u>“Department”</u>	<u>A.R.S. § 36-551</u>
<u>“Division”</u>	<u>A.R.S. § 36-551</u>
<u>“Electronic Monitoring Device”</u>	<u>A.R.S. § 36-568</u>
<u>“Electronic Monitoring Record”</u>	<u>R6-6-1401(B)</u>
<u>“Group Home”</u>	<u>A.R.S. § 36-551</u>
<u>“Health Insurance Portability and Accountability Act Privacy Rule” or “HIPAA Privacy Rule”</u>	<u>45 CFR 164</u>
<u>“Health Insurance Portability and Accountability Act Security Rule” or “HIPAA Security Rule”</u>	<u>45 CFR 164</u>
<u>“Intermediate Care Facility”</u>	<u>R6-6-1401(B)</u>
<u>“Member”</u>	<u>R6-6-1401(B)</u>
<u>“Nursing-supported Group Home”</u>	<u>A.R.S. § 36-401</u>
<u>“Operator”</u>	<u>R6-6-1401(B)</u>
<u>“Resident”</u>	<u>R6-6-1401(B)</u>
<u>“Responsible Person”</u>	<u>A.R.S. § 36-551</u>
<u>“Service Provider”</u>	<u>A.R.S. § 36-551</u>

**B. 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.
3. “Electronic Monitoring Record” means the data created by an Electronic Monitoring Device.
4. “Intermediate Care Facility” means the same as “Intermediate Care Facility for Persons with Intellectual Disabilities,” as defined in A.R.S. § 36-551.

5. “Member” means the same as “client,” as defined in A.R.S. § 36-551.
6. “Operator” means a Service Provider who administers a Group Home, Nursing-supported Group Home, or Intermediate Care Facility.
7. “Resident” means a Member who resides in a Group Home, Nursing-supported Group Home, or Intermediate Care Facility.

**R6-6-1402. Applicability**

This Article applies to all Operators of Group Homes, Nursing-supported Group Homes, or Intermediate Care Facilities. Unless expressly stated, this Article does not apply to an Electronic Monitoring Device installed by a Responsible Person as described under A.R.S. § 36-568(B).

**R6-6-1403. Permissibility**

- A. Prior to an Operator installing an Electronic Monitoring Device in a Group Home, Nursing-supported Group Home, or Intermediate Care Facility, the Operator shall obtain written consent from each Resident's Responsible Person. The Operator shall not install an Electronic Monitoring Device if any Resident's Responsible Person objects to the installation.
  1. An Operator that installs an Electronic Monitoring Device shall provide for the oversight and monitoring of that device as required under this Article.
  2. An Operator shall discontinue use of an already installed Electronic Monitoring Device if a Resident's Responsible Person objects to the use of the Electronic Monitoring Device.
- B. An Operator shall only install, oversee, 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 each agreement with any third party engaged to install, oversee, and monitor an Electronic Monitoring Device that the third party complies with the requirements of A.R.S. § 36-568 and this Article.
- D. When a Resident's Responsible Person requests that an Electronic Monitoring Device be installed in the facility in which a Resident resides, the Operator shall provide a written response to the Resident's Responsible Person within 20 Business Days of receipt of the request as to whether the Operator agrees to install, oversee, and monitor the Electronic Monitoring Device.
  1. If the Operator does not agree to install, oversee, and monitor an Electronic Monitoring Device, the Operator shall provide a written response to each Resident's Responsible Person that includes the reason for denial and shall inform each Resident's Responsible Person that an Electronic Monitoring Device may be installed, overseen, and monitored as described under A.R.S. § 36-568(B) at a Residents' Responsible Person's own expense as described in subsection F.
  2. If the Operator agrees to install, oversee, and monitor an Electronic Monitoring Device, the Operator shall provide a written response to the Resident's Responsible Person that includes a time frame for the installation, oversight, and monitoring of the Electronic Monitoring Device and the extent of the installation, oversight, and monitoring including the location of all Electronic Monitoring Devices to be installed, overseen, and monitored.
- E. The Operator may, with the consent of each Resident's Responsible Person, engage in cost-sharing with each Resident's Responsible Person for installation, oversight, and monitoring of an Electronic Monitoring Device if the Electronic Monitoring Device is being installed, overseen, and monitored at the request of each Resident's Responsible Person.
- F. If each Resident's Responsible Person in the Group Home, Nursing-supported Group Home, or Intermediate Care Facility agrees to install, oversee, and monitor an Electronic Monitoring Device as described under A.R.S. § 36-568(B) at their own expense because an Operator will not install, oversee, and monitor an Electronic Monitoring Device, each Residents' Responsible Persons shall:
  1. Pay to install, oversee, and monitor an Electronic Monitoring Device; or
  2. Contract with a third-party vendor to install, oversee, and monitor an Electronic Monitoring Device at each Responsible Person's expense.

G. An Operator shall not prevent a Resident's Responsible Person from paying to install, oversee, and monitor; or contracting with a third-party vendor to install, oversee, and monitor an Electronic Monitoring Device.

H. An Electronic Monitoring Device installed, overseen, and monitored by a Resident's Responsible Person under subsection F shall:

1. Be subject only to subsection H.
2. Not be accessed by the Operator or the Division without permission from each Resident's Responsible Person.
3. Be deactivated and removed if any Resident's Responsible Person does not consent to continued use of an Electronic Monitoring Device at any time.

**R6-6-1404. Notification and Consent of Electronic Monitoring**

A. An Electronic Monitoring Device shall be clearly visible and identifiable as an Electronic Monitoring Device.

B. An Operator who installs, oversees, and monitors an Electronic Monitoring Device shall post a sign at the main entrance of a Group Home, Nursing-supported Group Home, or Intermediate Care Facility that shall:

1. Reference A.R.S. § 36-568 and this Article as written or as amended;
2. Clearly state that an Electronic Monitoring Device is in use on the premises of the Group Home, Nursing-supported Group Home, or Intermediate Care Facility;
3. Be displayed in an unobscured manner; and
4. Be printed with a size and font that is easily readable from a reasonable distance.

C. An Operator who installs, oversees, and monitors an Electronic Monitoring Device shall seek each Resident's Responsible Person's consent prior to doing so. An Operator shall:

1. Provide a notice to each Resident, Resident's Responsible Person, and Operator's personnel in writing that the Group Home, Nursing-supported Group Home, or Intermediate Care Facility intends to install, oversee, and monitor an Electronic Monitoring Device in Common Areas. The notice shall:
  - a. Identify the location of the Electronic Monitoring Device; and
  - b. Specify the confidentiality and privacy requirements regarding the Electronic Monitoring Device and any associated Electronic Monitoring Records, including 45 CFR 164, A.R.S. § 36-568.01, and exceptions to the confidentiality requirements as described under A.R.S. § 36-568(D)(1) and R6-6-1405.
2. Request that each Resident's Responsible Person provide consent to the installation, oversight, and monitoring of the Electronic Monitoring Device by signing the notice.
  - a. If a Responsible Person consents to the Operator's installation, oversight, and monitoring of an Electronic Monitoring Device in a Common Area of a Group Home, Nursing-supported Group Home, or Intermediate Care Facility, the Responsible Person shall sign the notification and return the signed notification to the Operator.
  - b. If a Responsible Person does not consent to the Operator's installation, oversight, and monitoring of an Electronic Monitoring Device in a Common Area of a Group Home, Nursing-supported Group Home, or Intermediate Care Facility and declines or fails to sign the notice from the Operator, the Operator shall:
    - i. Not install, oversee, and monitor an Electronic Monitoring Device in the Group Home, Nursing-supported Group Home, or Intermediate Care Facility; or
    - ii. Uninstall and discontinue oversight and monitoring of an Electronic Monitoring Device in the Group Home, Nursing-supported Group Home, or Intermediate Care Facility if an Electronic Monitoring Device is already in use.

c. A Member's refusal to consent to a new Electronic Monitoring Device or if a Member revokes consent for an existing Electronic Monitoring Device shall not be grounds for an Operator to request release from authorization for that Member, as described under Article 21.

3. The Operator shall maintain a copy of the signed notice from the Resident's Responsible Person regarding the installation, oversight, and monitoring of an Electronic Monitoring Device as required under A.R.S. § 36-568(B) and provide a copy of the signed notice to each Resident's Responsible Person upon the Operator's receipt of Resident's Responsible Person's signed notice.

**D. When an Operator decides to discontinue using an Electronic Monitoring Device that was installed, overseen, and monitored by the Operator, the Operator shall notify each Resident, Resident's Responsible Person, and Operator's personnel in writing in advance of the planned discontinuation and request that each Resident's Responsible Person sign the notice and return the notice to the Operator.**

1. The written notice to each Resident's Responsible Person and Operator's personnel shall:

a. Identify the location of each Electronic Monitoring Device that will be discontinued;

b. Provide the date the Operator plans to discontinue use of an Electronic Monitoring Device; and

c. Include information that all Responsible Persons of Residents in the Group Home, Nursing-supported Group Home, or Intermediate Care Facility may agree to install an Electronic Monitoring Device as described in A.R.S. § 36-568(B) if the Responsible Persons pay for, install, or contract for the installation of an Electronic Monitoring Device.

2. The Operator shall maintain a copy of the signed notice from each Resident's Responsible Person regarding the Operator's decision to discontinue the use of an Electronic Monitoring Device installed, overseen, and monitored by the Operator and provide a copy of the signed notice to each Resident's Responsible Person upon the Operator's receipt of Resident's Responsible Person's signed notice.

3. The Operator's written notice to each Resident, Resident's Responsible Person, and Operator's personnel regarding the decision to discontinue the use of an Electronic Monitoring Device that was installed, overseen, or monitored by the Operator is not a method for the Resident's Responsible Person to approve or disapprove discontinuing the use of Electronic Monitoring Devices in the Group Home, Nursing-supported Group Home, or Intermediate Care Facility.

4. Refusal or failure by any Resident's Responsible Person to sign the notice regarding the Operator's decision to discontinue use of an Electronic Monitoring Device that was installed, overseen, or monitored by the Operator does not preclude the Operator from discontinuing use of the Electronic Monitoring Device.

5. On the date identified in the notice regarding the Operator's decision to discontinue the use of an Electronic Monitoring Device that was installed, overseen, and monitored by the Operator, the Operator shall:

a. Remove signage;

b. Disable the Electronic Monitoring Device and:

i. Remove the Electronic Monitoring Device; or

ii. Ensure that any person is able to easily see that the Electronic Monitoring Device has been disabled; and

c. Maintain all existing Electronic Monitoring recordings described under R6-6-1406.

6. A Resident's Responsible Person who does not agree with the Operator's discontinuation of using an Electronic Monitoring Device installed, overseen, and monitored by an Operator may seek to engage all Responsible Persons of Residents in the Group Home, Nursing-supported Group Home, or Intermediate Care Facility to install, oversee, and monitor an Electronic Monitoring Device at their expense as described in R6-4-1403(F).

**R6-6-1405. Disclosure and Confidentiality**

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

1. Comply with the HIPAA Privacy Rule, HIPAA Security Rule, A.R.S. § 36-568.01, and other applicable federal and state laws addressing confidentiality;
2. Allow access to an Electronic Monitoring Record only as permitted by the HIPAA Privacy Rule, HIPAA Security Rule, A.R.S. § 36-568.01, and other applicable federal and state laws addressing confidentiality; and
3. Specify in policy how an Electronic Monitoring Record, regardless of format, is secured to protect the confidentiality of each Resident, including:
  - a. Identifying the Operator's personnel who have access to the Electronic Monitoring Record allowed under the HIPAA Privacy Rule, HIPAA Security Rule, and other state and federal laws addressing confidentiality;
  - b. Listing the circumstances under which the Operator's personnel are permitted access to the Electronic Monitoring Record;
  - c. Addressing how the Operator will handle disclosures and privacy breaches;
  - d. Describing how a Resident may access an Electronic Monitoring Record; and
  - e. Any other information required by the HIPAA Privacy Rule, HIPAA Security Rule, or other applicable federal or state law.

**B. Release of an Electronic Monitoring Record**

1. Upon request, an Operator shall release an Electronic Monitoring Record to the Division unless the Electronic Monitoring Record contains evidence of a suspected criminal offense or is otherwise prohibited by law.
2. Upon request, an Operator shall release an Electronic Monitoring Record of a Resident to the Resident's Responsible Person unless the Electronic Monitoring Record contains evidence of a suspected criminal offense or is otherwise prohibited by law.
3. If an Electronic Monitoring Record does not contain evidence of a suspected criminal offense and is otherwise not prohibited by law, the Operator shall release the Electronic Monitoring Record to the Division or Responsible Person prior to or on the date stated in the request.
4. If an Electronic Monitoring Record contains images of more than one Resident, the Operator shall not release the Electronic Monitoring Record to the Resident's Responsible Person unless:
  - a. The images of the non-requesting Resident are de-identified; or
  - b. The Operator receives a signed, informed consent for the release of the Electronic Monitoring Record from all other Residents' Responsible Persons who appear in the Electronic Monitoring Record.

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

**A. An Operator shall retain an Electronic Monitoring Record in compliance with HIPAA Privacy Rule, A.R.S. § 36-568.01, and other applicable federal and state laws.**

**B. An Operator who uses an Electronic Monitoring Device subject to this Article shall retain, store, and ensure any Electronic Monitoring Record generated by an Electronic Monitoring Device, regardless of format, is accessible for a minimum of 30 calendar days.**

**C. An Operator shall retain an Electronic Monitoring Record subject to this Article longer than 30 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 30 calendar days;
3. The Operator reasonably anticipates that litigation may be pursued for which an Electronic Monitoring Record may be relevant;

4. When an Electronic Monitoring Record is subject to a litigation hold;
5. A court order or other legal process requires the retention of all or some of the Electronic Monitoring Records for a longer period of time; or
6. Another applicable law or regulation that supersedes this Article requires a longer period of maintaining an Electronic Monitoring Record.

**D.** Prior to the disposal of an Electronic Monitoring Record, an Operator shall determine if the Electronic Monitoring Record will be or has been used for Member diagnosis or treatment. If an Electronic Monitoring Record is identified to be used for Member diagnosis or treatment, the Electronic Monitoring Record shall be treated as a medical record and shall be maintained in compliance with the HIPAA Privacy Rule, HIPAA Security Rule, A.R.S. § 36-568.0, and any other applicable federal and state laws.

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

**A.** An Operator who installs, oversees, and monitors or engages with a third-party vendor to install, oversee, and monitor an Electronic Monitoring Device in a Group Home, Nursing-supported Group Home, or Intermediate Care Facility shall:

1. Monitor each Electronic Monitoring Device at least quarterly to ensure the Electronic Monitoring Device is:
  - a. Functioning properly;
  - b. Secure from access by unauthorized persons; and
  - c. Used in compliance with this Article.
2. Ensure that the Operator's personnel adhere to this Article and applicable policies and promptly address non-compliance.
3. Maintain a log of all monitoring of Electronic Monitoring Devices, including:
  - a. The date of the monitoring;
  - b. The name of the individual who performed the monitoring;
  - c. Each deficiency identified with the Electronic Monitoring Device during the monitoring; and
  - d. The method and date by which a deficiency identified during the monitoring was remedied and by whom the deficiency was remedied.
4. Respond immediately upon identifying any risk or breach involving an Electronic Monitoring Device or Electronic Monitoring Record.
5. Maintain a log of each identified risk or breach, which shall include:
  - a. The date of the identified risk or breach;
  - b. The name of the individual who identified the risk or breach;
  - c. Each risk or breach identified with the Electronic Monitoring Device or Electronic Monitoring Record;
  - d. Whether notice of the breach was provided to affected individuals; and
  - e. The method and date by which the risk or breach identified was remedied and by whom the risk or breach was remedied.
6. Report any data breach in compliance with the HIPAA Privacy Rule, HIPAA Security Rule, A.R.S. § 36-568.01, and other applicable federal and state laws addressing confidentiality.

**B.** The Operator shall develop and provide training to all Operator's personnel who have access to the Electronic Monitoring Records described in R6-6-1406(B) prior to the Operator's personnel being provided access to the Electronic Monitoring Records. Training shall include:

1. The requirements of this Article related to disclosure of Electronic Monitoring Records;

2. The requirements of the HIPAA Privacy Rule, HIPAA Security Rule, A.R.S. § 36-568.01, and all other applicable federal and state confidentiality and privacy laws related to the Electronic Monitoring Records;
  3. The maintenance and operation of the Electronic Monitoring Device and any associated storage devices;
  4. The methods used to secure the Electronic Monitoring Records;
  5. A list of all individuals the Operator may allow to access the Electronic Monitoring Records;
  6. The reporting method required in the event of any breach in the security of the Electronic Monitoring Records or misuse of the Electronic Monitoring Device; and
  7. All policies related to the installation, oversight, and monitoring of an Electronic Monitoring Device.
- C.** The Operator shall provide the training described in subsection B to all Operator's personnel who have access to Electronic Monitoring Records created by the Electronic Monitoring Devices on an annual basis.
- D.** The Operator shall require all of the Operator's personnel who receive the training described in subsection B to sign an acknowledgment of completion of the training, which shall be maintained in the official training file for each Operator's personnel who received the training.
- E.** The Operator shall develop and implement policies for the Operator's personnel who have access to an Electronic Monitoring Record that:
1. Include the topics of disclosure, confidentiality, maintenance, monitoring, and training provisions of this Article;
  2. Identify training the Operator shall provide to ensure that the Operator's personnel use Electronic Monitoring Devices as required under this Article and other applicable federal and state laws;
  3. Explain how the maintenance and disclosure of Electronic Monitoring Records shall comply with this Article; and
  4. Detail how the Operator or the Operator's designee shall monitor each Electronic Monitoring Device at least quarterly.
- F.** The Operator shall make all 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.
- G.** The Division shall ensure that an Operator who uses an Electronic Monitoring Device complies with all requirements of this Article during all routine monitoring inspections.