

3008 ELECTRONIC MONITORING

REVIEW DATE:

EFFECTIVE DATE: December 27, 2023

REFERENCES: 45 CFR Part 164, A.R.S. §12-2297, A.R.S. §36-551.01, A.R.S. §36.568

PURPOSE

This policy outlines the Division's oversight and monitoring of Qualified Vendors and the use of Electronic Monitoring Devices in service sites funded by the Division.

DEFINITIONS

1. "Common Area" means areas inside and outside the home 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.
2. "Electronic Monitoring Device" means the same as defined in A.R.S. § 36-568(E).
3. "Health Insurance Portability and Accountability Act (HIPAA)" means the Health Insurance Portability and Accountability Act; also known as the Kennedy-Kassebaum Act, signed August 21,

1996 as amended and as reflected in the implementing regulations at 45 CFR Parts 160, 162, and 164.

4. "Member" means the same as "Client" as defined in A.R.S. § 36-551.
5. "Responsible Person" means the parent or guardian of a minor with a developmental disability, the guardian of an adult with a developmental disability or an adult with a developmental disability who is a Member or an applicant for whom no guardian has been appointed.

POLICY

A. ELECTRONIC MONITORING DEVICES INSTALLED BY QUALIFIED VENDORS

1. The Division shall review and approve the Qualified Vendor's policies, procedures, and notices prior to the installation of the Electronic Monitoring Devices in the Common Areas of a group home, nursing supported group home, day treatment, or employment service site or a vehicle used for transportation.
2. The Division shall ensure Qualified Vendors only install Electronic Monitoring Devices in Common Areas.

3. Prior to installing or using Electronic Monitoring Devices in either a service site or a vehicle used for transportation, the Division shall ensure the Qualified Vendor:
 - a. Notifies the Division of the intent to install devices.
 - b. Complies with federal regulations for the Security and Privacy of Protected Health Information found at 45 CFR Part 164 (HIPAA) and other applicable state and federal law addressing confidentiality;
 - c. Specifies in policy how Electronic Monitoring Device recordings, regardless of format, are secured to protect the confidentiality of the Members;
 - d. Obtains written consent from each Responsible Person for Members who receive services at the service site;
 - e. Determines in what circumstances access to the Electronic Monitoring Device recordings may be allowed;
 - f. Determines which personnel may have access to the Electronic Monitoring Device recordings;
 - g. Provides training to staff members who will have access to the Electronic Monitoring Devices; and

- h. Posts signs at each service site entrance and in a conspicuous place in the common area and in the vehicle that is being monitored which indicates the days and hours of monitoring.
- 4. When the Division has approved the Qualified Vendor to use Electronic Monitoring Devices in either a service site or a vehicle used for transportation, the Division shall ensure the Qualified Vendor:
 - a. Maintains records created by Electronic Monitoring Devices in accordance with A.R.S. §12.2297 that can be produced upon request of the Division, law enforcement, protective agencies, and other persons and entities entitled to access public records under the law unless otherwise restricted.
 - b. Retains and has accessible any Electronic Monitoring Device recordings, regardless of format, generated by the Electronic Monitoring Devices installed and monitored by the Qualified Vendor for a minimum of 30 calendar days.
 - c. Evaluates all Electronic Monitoring Devices at least quarterly to ensure the Electronic Monitoring Devices are functioning properly, secure from access by unauthorized

- personnel, and are being used in compliance with this Policy.
- d. Monitors adherence to policies and promptly addresses non-compliance.
 - e. Maintains a log of all monitoring of Electronic Monitoring Devices.
 - f. Makes policies, training records, training acknowledgments, evaluations, and monitoring logs available to the Division as requested
5. The Division shall ensure the Qualified Vendor takes action when a Responsible Person notifies the Qualified Vendor they are no longer in agreement with the use of the Electronic Monitoring Devices by requiring the Qualified Vendor to:
- a. Immediately turn off the Electronic Monitoring Devices;
 - b. Notify all Responsible Persons of the discontinuation of electronic monitoring in the setting;
 - c. Remove the Electronic Monitoring Devices within two business days.

6. The Division shall ensure that Members, living in a group home or nursing supported group home, are informed that a Qualified Vendor may allow the Responsible Persons to share in the costs of the installation, oversight, and monitoring of Electronic Monitoring Devices maintained by the Qualified Vendor when the Responsible Person agrees to the arrangement.

B. RESPONSIBLE PERSON INSTALLATION

1. The Division shall ensure Qualified Vendors permit installation of Electronic Monitoring Devices, at the expense of the Responsible Person, in Common Areas of a group home, nursing supported group home, or a vehicle used for transportation after all of the Responsible Persons consent to the use of Electronic Monitoring Devices.
2. The Division shall not permit Qualified Vendors to:
 - a. Turn off or on the Electronic Monitoring Device;
 - b. Cover up or in any way obscure the ability of the Electronic Monitoring Device to have full view of the area chosen by the Responsible Person;

- c. Move the Electronic Monitoring Device;
 - d. In any other way assist or hamper the operation of and use of the Electronic Monitoring Device.
- 3. The Division shall ensure the Qualified Vendor takes action when a Responsible Person notifies the Division or the Qualified Vendor that they are no longer in agreement with the use of Electronic Monitoring Devices by requiring the Qualified Vendor to:
 - a. Immediately Stop using the Electronic Monitoring Devices;
 - b. Notify all Responsible Persons and the Division in writing of the discontinuation of Electronic Monitoring in the setting;
 - c. Ensure the Responsible Person removes the Electronic Monitoring Devices within two business days, and
 - d. Make any necessary repairs, at the time of removal, caused by the installation and removal of the Electronic Monitoring Devices.

**C. ELECTRONIC MONITORING DEVICES IN PRIVATE SPACES
INSTALLED BY THE RESPONSIBLE PERSONS**

1. The Division shall ensure Electronic Monitoring Devices installed by the Responsible Person are only installed in the Member's private spaces.
2. The Division shall ensure Qualified Vendors do not prohibit the Responsible Person from installing Electronic Monitoring Devices in a Member's private bedroom, toileting area, and bathing area in a group home or nursing supported group home.
3. The Division shall not be responsible or make a Qualified Vendor be responsible to monitor the data collected from the Electronic Monitoring Devices including when the Responsible Person shares the data from the Electronic Monitoring Devices access with a third party..
4. The Division shall ensure the Qualified Vendor follows HIPAA as outlined in 45 CFR Part 164 and other compliance requirements when the Responsible Person shares the data from the Electronic Monitoring Devices with the Qualified Vendor.
5. The Division shall ensure the Qualified Vendor takes action when a Member moves out of the group home or nursing supported group home by requiring the Qualified Vendor to:

- a. Ensure the Responsible Person removes the Electronic Monitoring Devices from the Member's private spaces within two business days, and
- b. Makes any necessary repairs, at the time of removal, caused by the installation and removal of the Electronic Monitoring Devices.