

## **CHAPTER 42 – ELECTRONIC MONITORING IN PROGRAM SITES**

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REFERENCES: A.R.S. §12-2297, A.R.S. §36-551.01, A.R.S. §36.568

### **PURPOSE**

To distinguish the circumstances under which on-site and remote electronic monitoring may be conducted in programs and services funded by the Division.

### **DEFINITIONS**

1. “Common Area” means a room, including a hallway 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.
2. “Electronic Monitoring Device” means the same as defined in A.R.S. § 36-568(E).
3. “Member” means the same as “Client” as defined in A.R.S. § 36-551.
4. “Responsible Person” means the same as defined in A.R.S. § 36-551.

### **POLICY**

#### **A. Day Program and Employment Services**

1. Prior to installing or using Electronic Monitoring Devices in either a service site or a vehicle used for transportation during the provision of services, the Qualified Vendor must notify the Division’s Provider Network Support

Unit at [providernetworksupport@azdes.gov](mailto:providernetworksupport@azdes.gov) and provide a copy of the policy, procedures, and notices for approval.

2. The Qualified Vendor shall only use Electronic Device in Common Areas of the service site.
3. The Qualified Vendor shall post a sign in a conspicuous place in each Common Area and vehicle that is under surveillance which indicates the days and hours of surveillance.
4. The Qualified Vendor shall:
  - a. Ensure records created by Electronic Monitoring Devices are maintained in accordance with A.R.S. §12.2297.
  - b. Produce records upon request of a Responsible Person, the Division, law enforcement, protective agencies, and other persons and entities entitled to access public records under the law.

**B. Group Homes and Nursing Supported Group Homes**

1. Qualified Vendors of Group Homes, or Nursing Supported Group Homes may only install, oversee, and monitor Electronic Monitoring Devices in Common Areas of the home and then only if written agreement is received from each Responsible Person for Members who live in the home:
  - i. To install the Electronic Monitoring Devices in Common Areas, and

- ii. To release HIPAA protected information in the form of live stream and recorded information from the Electronic Monitoring Devices to all Responsible Parties for Members who live in the home .
2. The Qualified Vendor may contract with a third party to install, oversee, and monitor Electronic Monitoring Devices.
3. The Division shall consider actions under (2) to be overseen and monitored by the Qualified Vendor for the purposes of this policy.
4. A Qualified Vendor may allow Responsible Persons of Members who live in the home to share in the cost of the installation, oversight, and monitoring of Electronic Monitoring maintained by the Qualified Vendor if the Responsible Party agrees to the arrangement.
5. If all Responsible Persons for Members who live in the home agree, a Qualified Vendor must permit installation of Electronic Monitoring Devices in Common Areas of the setting at the expense of the Responsible Persons.
  - a. The Qualified Vendor is not responsible for the installation, maintenance, or monitoring of the Electronic Monitoring Device installed at the expense of the Responsible Persons.

- b. The Qualified Vendor may not access the live stream or recordings generated at the expense of the Responsible Persons without the written permission of all Responsible Persons for Members who live in the home.
- c. For Electronic Monitoring Device installed at the expense of the Responsible Persons the Qualified Vendor shall not:
  - i. Turn off or on the Electronic Monitoring Device.
  - ii. 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.
  - iii. Move the Electronic Monitoring Device.
  - iv. In any other way assist or hamper the operation of and use of the Electronic Monitoring Device.
- 6. If, after the installation of an Electronic Monitoring Device, any Responsible Person notifies the Qualified Vendor in writing that they are no longer in agreement with use of Electronic Monitoring Devices in Common Areas of the setting, the Qualified Vendor shall:
  - a. If the Electronic Monitoring Device is maintained and monitored by the Qualified Vendor :
    - i. Stop using the Electronic Monitoring Devices;

- ii. Notify all Responsible Persons of the discontinuation of Electronic Monitoring in the setting;
    - iii. Remove the Electronic Monitoring Devices or ensure the Electronic Monitoring Device has clearly been disabled.
  - b. If the Electronic Monitoring Device is maintained and monitored by the Responsible Persons, notify the Responsible Persons in writing that:
    - i. Use of the Electronic Monitoring Devices must cease immediately;
    - ii. The Electronic Monitoring Devices must be removed from the setting by the Responsible Persons; and
    - iii. Any damage caused by the installation or removal of the Electronic Monitoring Device must be repaired by the Responsible Persons at the time of removal.
- 7. The Qualified Vendor shall post a clearly legible sign at each entrance to the premises and ensure the sign:
  - a. Reference A.R.S. § 36-568;
  - b. States that Electronic Monitoring Devices are in use on the premises;
  - c. Is clearly visible ; and

- d. Is printed with a size and font that is easily readable from a reasonable distance.
8. An Qualified Vendor shall:
  - a. Comply with Health Insurance Portability and Accountability Act (“HIPAA”) and other applicable state and federal law addressing confidentiality; and
  - b. Specify in policy how Electronic Monitoring Device recordings, regardless of format, will be secured to protect the confidentiality of residents, including:
    - i. Which personnel may have access to the Electronic Monitoring Device recordings; and
    - ii. Under what circumstances access to the Electronic Monitoring Device recordings may be allowed.
9. The Qualified Vendor shall retain and have 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.
10. The Qualified Vendor shall retain the records longer than 30 calendar days if:
  - a. Required to do so by a contractual obligation;

- b. The Qualified Vendor's policy specifies that the Qualified Vendor maintain the records beyond 30 calendar days;
  - c. The Qualified Vendor reasonably anticipates legal actions for which the records may be relevant;
  - d. A court order or other legal process requires the retention of all or some of the records for a longer period of time; or
  - e. A law or regulation that supersedes this policy requires a longer period of record maintenance.
11. A Qualified Vendor who installs an Electronic Monitoring Device shall:
- a. Evaluate all Electronic Monitoring Devices at least quarterly to ensure the Electronic Monitoring Devices are properly functioning, secure from access by unauthorized personnel, and are being used in compliance with this Section.
  - b. Monitor adherence to policies and promptly address non-compliance.
  - c. Maintain a log of all monitoring of Electronic Monitoring Devices that includes:
    - i. The date of the monitoring;
    - ii. The name of the individual who performed the monitoring;
    - iii. Any deficiencies identified during the monitoring; and

- iv. The method, date, and who remediated any deficiencies.
- d. Develop and provide training to all personnel who have access to the record that details:
  - i. The requirements related to disclosure of the record;
  - ii. HIPAA and all other applicable laws related to confidentiality and privacy;
  - iii. The maintenance and operation of the Electronic Monitoring Devices and any associated storage devices;
  - iv. The methods that shall be used to secure the record;
  - v. A list of all individuals allowed access to the records
  - vi. The reporting method to be used in the event of any breach in the security of the record or misuse of the Electronic Monitoring Device; and
  - vii. All policy related to the installation and use of Electronic Monitoring Devices.
- e. Provide the training to all personnel who have access to the record.
  - i. Prior to the personnel being provided access to the record; and
  - ii. Annually following the initial training.



- f. Develop and implement policies for the Qualified Vendor's personnel that:
    - i. Address disclosure, confidentiality, maintenance, monitoring, and training provisions of this policy;
    - ii. Outline training that will be provided to ensure that personnel use Electronic Monitoring Devices appropriately;
    - iii. Outline the maintenance and distribution of records and
    - iv. Outline how the Qualified Vendor will ensure quarterly monitoring occurs.
  - g. Make policies, training records, training acknowledgments, evaluations, and monitoring logs available to the Division as requested..
12. Qualified Vendors shall not interfere with or assist in the use of an Electronic Monitoring Device by a Responsible Person in the private bedroom of a Member including:
- a. Turning the device on or off.
  - b. Covering up or in any way obscuring the ability of the device to have a full view of the area chosen by the Responsible Person.
  - c. Moving the device.

13. The Responsible Persons shall repair any damage caused by the installation of or removal of any Electronic Monitoring Device installed in the home.
14. The Qualified Vendor shall:
  - a. Ensure records created by Electronic Monitoring Devices are maintained in accordance with A.R.S. §12.2297.
  - b. Produce records upon request of a Responsible Person, the Division, law enforcement, protective agencies, and other persons and entities entitled to access public records under the law.