

1 **3008 ELECTRONIC MONITORING**

2 **REVISION DATE: XX/XX/2024**

3 **REVIEW DATE: 1/22/2024**

4 EFFECTIVE DATE: December 27, 2023

5 REFERENCES: 45 CFR Part 164, A.R.S. §12-2297, A.R.S. §36-551.01, A.R.S.
6 §36.568

7 **PURPOSE**

8 This policy outlines the Division's oversight and monitoring of Qualified
9 Vendors and the use of Electronic Monitoring Devices in service [settingsites](#)
10 funded by the Division.

11 **DEFINITIONS**

- 12 1. "Common Area" means areas inside and outside the home
13 designed for use by multiple individuals, including residents.
14 Bedrooms, toileting areas, and bathing areas are excluded from
15 this definition, regardless of the number of individuals for which
16 the area is designed.
- 17 2. "Electronic Monitoring Device" means the same as defined in
18 A.R.S. § 36-568(E).
- 19 3. "Health Insurance Portability and Accountability Act (HIPAA)"
20 means the Health Insurance Portability and Accountability Act;

21 also known as the Kennedy-Kassebaum Act, signed August 21,
22 1996 as amended and as reflected in the implementing
23 regulations at 45 CFR Parts 160, 162, and 164.

24 4. "Member" means the same as "Client" as defined in A.R.S. § 36-
25 551.

26 5. "Private Spaces" means the Member's private bedroom, toileting
27 area, or bathing area. Bedrooms occupied by more than one
28 Member are not included in this definition.

29 6. "Qualified Vendor" means a provider of community
30 developmental disability services that has applied for Qualified
31 Vendor status, meets the criteria for Qualified Vendor status,
32 and has entered into a Qualified Vendor Agreement with the
33 Department.

34 ~~6.7.~~ "Responsible Person" means the parent or guardian of a minor
35 with a developmental disability, the guardian of an adult with a
36 developmental disability or an adult with a developmental
37 disability who is a Member or an applicant for whom no guardian
38 has been appointed.

39 **POLICY**

40 **A. ELECTRONIC MONITORING DEVICES INSTALLED BY QUALIFIED**
41 **VENDORS**

42 1. The Division shall review and approve the Qualified Vendor's
43 policies, procedures, and notices prior to the installation of the
44 Electronic Monitoring Devices in the Common Areas of a group
45 home, behavioral-supported group home, nursing supported
46 group home, day servicetreatment, or employment service
47 settingsite, or a vehicle used for transportation.

48 2. The Division shall ensure Qualified Vendors only install Electronic
49 Monitoring Devices in Common Areas.

50 3. The Division, for members who receive services in a group
51 home, behavioral-supported group home, nursing supported
52 group home, and a vehicle used for transportation shall ensure
53 the Qualified Vendor obtains written consent from each
54 Responsible Person for Members who receive services at the
55 service site prior to installing Electronic Monitoring Devices.

56 2.4. The Division, for Members who receive services in day service, or
57 employment service setting, or a vehicle used for transportation,
58 shall ensure the Qualified Vendor notifies the Responsible Person

59 in writing that Electronic Monitoring Devices are in use in
60 Common Areas of the service setting. (Site 13-3019).

61 3.5. Prior to installing or using Electronic Monitoring Devices in either
62 a service site or a vehicle used for transportation, the Division
63 shall ensure the Qualified Vendor:

64 a. Notifies the Division of the intent to install devices;

65 b. Complies with federal regulations for the Security and
66 Privacy of Protected Health Information found at 45 CFR
67 Part 164 (HIPAA) and other applicable state and federal
68 law addressing confidentiality;

69 c. Develop and implement internal policies pertaining to
70 Electronic Monitoring Devices that:

71 i. ~~Specify in policy how~~ Electronic Monitoring Device
72 recordings, regardless of format, are secured to
73 protect the confidentiality of the Members; ~~Obtains~~

74 ~~written consent from each Responsible Person for~~
75 ~~Members who receive services at the service site;~~

76 d.ii. Specify in policy how Electronic Monitoring Device
77 recordings in -group home, behavioral-supported
78 group home, nursing supported group home, and a

79 vehicle used for transportation regardless of format,
80 are shared with the Responsible
81 Person(s)~~Determines in what circumstances access~~
82 ~~to the Electronic Monitoring Device recordings may~~
83 ~~be allowed;~~
84 e.d. Train ~~Determines which staff members/personnel who~~ may
85 have access to the Electronic Monitoring Device
86 recordings;~~Provides training to staff members who will~~
87 ~~have access to the Electronic Monitoring Devices;~~ and
88 f.e. Posts signs at each service settingsite entrance and in a
89 conspicuous place in the common area and in the vehicle
90 that is being monitored which indicates the days and hours
91 of monitoring.
92 4.6. When the Division has approved the Qualified Vendor to use
93 Electronic Monitoring Devices in either a service settingsite or a
94 vehicle used for transportation, the Division shall ensure the
95 Qualified Vendor:
96 a. Maintains and retains records created by Electronic
97 Monitoring Devices in accordance with A.R.S. §12.2297
98 that:

99 i. Are accessible regardless of format, and monitored
100 by the Qualified Vendor for a minimum of 30
101 calendar days.

102 a.ii. ~~Can be produced upon request by~~ the Division,
103 law enforcement, protective agencies, and other
104 persons and entities entitled to access public records
105 under the law unless otherwise restricted.;

106 ~~b. Retains and has accessible any Electronic Monitoring Device~~
107 ~~recordings, regardless of format, generated by the Electronic Monitoring~~
108 ~~Devices installed and monitored by the Qualified Vendor for a minimum of~~
109 ~~30 calendar days.~~

110 e.b. Evaluates and monitor all Electronic Monitoring Devices at
111 least quarterly to ensure the Electronic Monitoring Devices
112 are functioning properly, secure from access by
113 unauthorized personnel, and are being used in compliance
114 with this Policy.;

115 ~~d. Monitors adherence to policies and promptly addresses non-~~
116 ~~compliance;~~

117 c. Maintains a log of all monitoring of Electronic Monitoring
118 Devices to include.;

- 119 i. The date of the monitoring;
- 120 ii. The name of the individual who performed the
- 121 monitoring;
- 122 e.iii. Any deficiencies identified during the monitoring.
- 123 d. Monitors adherence to policies and promptly addresses
- 124 non-compliance;
- 125 f.e. Makes policies, training records, training
- 126 acknowledgments, evaluations, and monitoring logs
- 127 available to the Division as requested.

128 7. The Division shall ensure Qualified Vendors do not require

129 Members to pay restitution costs when a Member damages

130 Electronic Monitoring Devices or associated equipment unless the

131 approval requirements are met as outlined in Division Behavior

132 Supports Manual 600.

133 5.8. The Division shall ensure the Qualified Vendor takes action when

134 a Responsible Person notifies the Qualified Vendor they are no

135 longer in agreement with the use of the Electronic Monitoring

136 Devices in a group home, behavioral-supported group home, or

137 nursing supported group home or a vehicle used for

138 transportation by requiring the Qualified Vendor to:

- 139 a. Immediately ~~stop using~~ ~~turn off~~ the Electronic Monitoring
140 Devices;
- 141 b. Notify all Responsible Persons of the discontinuation of
142 electronic monitoring in the setting;
- 143 c. Remove the Electronic Monitoring Devices ~~or ensure the~~
144 ~~Electronic Monitoring Device has clearly been disabled~~
145 within two business days.

146 6-9. The Division shall ensure that Members, living in a group home,
147 behavioral-supported group home, or nursing supported group
148 home or a vehicle used for transportation, are informed that a
149 Qualified Vendor may ~~request~~ allow the Responsible Persons to
150 share in the costs of the installation, oversight, and monitoring
151 of Electronic Monitoring Devices maintained by the Qualified
152 Vendor when the Responsible Person agrees to the arrangement.

153 **B. RESPONSIBLE PERSON INSTALLATION IN COMMON AREAS**~~In~~
154 ~~Common areas~~

- 155 1. The Division shall ensure Qualified Vendors permit installation of
156 Electronic Monitoring Devices, ~~at the expense of the Responsible~~
157 ~~Person~~, in Common Areas of a group home, behavioral-

158 [supported group home](#), nursing supported group home, or a
159 vehicle used for transportation.

160 2. The Division shall require the Qualified Vendor to include in their
161 Electronic Monitoring Devices policy the Responsible Person's
162 responsibilities pertaining to the Electronic Monitoring Devices.

163 1.3. The Division shall ensure the Qualified Vendor permits
164 installation of the Electronic Monitoring Devices once after all of
165 the Responsible Persons, [at that service site or using the vehicle,](#)
166 provide consent to the use of Electronic Monitoring Devices.

167 2.4. The Division shall not permit Qualified Vendors to:

- 168 a. Turn off or on the Electronic Monitoring Device;
- 169 b. Cover up or in any way obscure the ability of the Electronic
170 Monitoring Device to have full view of the area chosen by
171 the Responsible Person;
- 172 c. Move the Electronic Monitoring Device;
- 173 d. In any other way assist or hamper the operation of and
174 use of the Electronic Monitoring Device.

- 175 3-5. The Division shall ensure the Qualified Vendor takes action when
176 a Responsible Person notifies the Division or the Qualified Vendor
177 that they ~~are~~ no longer consent to~~in agreement with~~ the use of
178 Electronic Monitoring Devices by requiring the Qualified Vendor
179 to:
- 180 a. Immediately cease the use of the Electronic Monitoring
181 Devices~~Immediately stop using the Electronic Monitoring~~
182 ~~Devices~~;
 - 183 b. Notify all Responsible Persons and the Division in writing
184 ~~that~~ the use of the Electronic Monitoring Devices must
185 cease immediately~~discontinuation of Electronic Monitoring~~
186 ~~in the setting~~;
 - 187 c. Ensure the Responsible Person who installed the Electronic
188 Monitoring Device~~device~~ removes the Electronic Monitoring
189 Devices within two business days~~;~~ and
 - 190 d. Ensure the Responsible Person ~~M~~makes any necessary
191 repairs, at the time of removal, caused by the installation
192 and removal of the Electronic Monitoring Devices.

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

- 195 1. The Division shall ensure Electronic Monitoring Devices ~~installed~~
196 ~~by the Responsible Person are only installed~~ in the Member's
197 private spaces are only installed by the Responsible Person ~~only~~.
- 198 2. The Division shall ensure Qualified Vendors do not prohibit the
199 Responsible Person from installing Electronic Monitoring Devices
200 in a Member's private bedroom, toileting area, and bathing area
201 in a group home, behavioral-supported group home, or nursing
202 supported group home.
- 203 3. The Division shall not be responsible or make a Qualified Vendor
204 ~~be~~ responsible for monitoring to monitor the data collected from
205 the Electronic Monitoring Devices including when the Responsible
206 Person shares the data from, or access to, the Electronic
207 Monitoring Devices ~~access with a third party~~.
- 208 4. The Division shall ensure the Qualified Vendor follows HIPAA as
209 outlined in 45 CFR Part 164 and other applicable state and
210 federal laws addressing confidentiality and other compliance
211 requirements when the Responsible Person shares the data from
212 the Electronic Monitoring Devices with the Qualified Vendor.

- 213 5. The Division shall ensure the Qualified Vendor takes action when
214 a Member moves out of the group home, behavioral-supported
215 group home, or nursing supported group home by requiring the
216 Qualified Vendor to ensure the Responsible Person:
- 217 a. ~~Ensure the Responsible Person r~~Removes the Electronic
218 Monitoring Devices from the Member's private spaces
219 within two business days, and
- 220 b. ~~Ensure the Responsible Person Mm~~Makes any necessary
221 repairs, at the time of removal, caused by the installation
222 and removal of the Electronic Monitoring Devices.
- 223 6. The Division shall ensure a Qualified Vendor does not utilize the
224 private space until the Electronic Monitoring Devices have been
225 removed and the criteria outlined above are met.

226 **D. SUPPLEMENTAL INFORMATION**

- 227 **1. The following items need to be considered and agreed**
228 **upon, between the Qualified Vendor and the Responsible**
229 **Person, prior to the installation of Electronic Monitoring**
230 **Devices by the Responsible Person:**
- 231 a. **The cost of the devices and who is responsible for**
232 **covering those costs;**

- 233 **b. The cost of the internet usage for the Electronic**
234 **Monitoring Device;**
235 **c. Installation, maintenance, and removal costs of the**
236 **Electronic Monitoring Device;**
237 **d. Subscription costs associated with using the**
238 **Electronic Monitoring Device;**
239 **e. Repairs, including when the devices malfunction or**
240 **are damaged by other Members or staff in the home;**
241 **b.a. Any other costs or responsibilities associated with**
242 **the Electronic Monitoring Devices**