



**Rules of
Department of Health and
Senior Services**

**Division 30—Division of Regulation and Licensure
Chapter 91—Authorized Electronic Monitoring in
Long-Term Care Facilities**

Title	Page
19 CSR 30-91.010 Authorized Electronic Monitoring	3



**Title 19—DEPARTMENT OF
HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and
Licensure**

**Chapter 91—Authorized Electronic
Monitoring in Long-Term Care Facilities**

**19 CSR 30-91.010 Authorized Electronic
Monitoring**

PURPOSE: The proposed rule sets forth requirements regarding the use of an electronic monitoring device in long-term care facilities.

AGENCY NOTE: All rules relating to long-term care facilities licensed by the department are followed by a Roman Numeral notation which refers to the class (either Class I, II, or III) of standard as designated in section 198.085 RSMo.

(1) Definitions. For the purposes of this rule the following terms shall apply:

(A) Authorized electronic monitoring means the placement and use of an electronic monitoring device by a resident in his or her room in accordance with the provisions of sections 198.610 to 198.632, RSMo;

(B) Electronic monitoring device means a surveillance instrument capable of recording or transmitting audio or video footage of any activity occurring in a resident's room;

(C) Facility or long-term care facility means any residential care facility, assisted living facility, intermediate care facility, or skilled nursing facility, as such terms are defined under section 198.006, RSMo;

(D) Guardian means the same as defined under section 475.010, RSMo; and

(E) Legal representative means a person authorized under a durable power of attorney that complies with sections 404.700 to 404.737, RSMo, to act on behalf of a resident of a facility.

(2) A resident shall be permitted to place in the resident's room an authorized electronic monitoring (AEM) device that is owned and operated by the resident or provided by the resident's guardian or legal representative consistent with sections 198.610 to 198.632, RSMo and this regulation. II/III

(3) A facility shall offer the DHSS-DRL-107 (08-20), Electronic Monitoring Device Acknowledgment and Request Form, included herein, to any resident or resident's guardian or legal representative upon request and utilize this form to document consent and use of an electronic monitoring device. II/III

(4) AEM shall not begin nor an electronic monitoring device(s) be installed until the Electronic Monitoring Device Acknowledgment and Request Form has been completed and returned to the facility. The facility at its option may disable or remove the unauthorized electronic monitoring device or may require the resident or the resident's guardian or legal representative to remove or disable the electronic monitoring device. II/III

(5) AEM shall be conducted in accordance with consent and limitations provided in the Electronic Monitoring Device Acknowledgment and Request Form. II/III

(6) If AEM is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, AEM shall cease until the new resident has consented through the Electronic Monitoring Device Acknowledgment and Request Form. The facility may require the resident or the resident's guardian or legal representative to remove or disable the electronic monitoring device. II/III

(7) The placement and use of the AEM device shall be open and obvious.

(8) If a resident installs and uses an electronic monitoring device, a notice to alert and inform visitors shall be posted at the entrance of the facility and resident's room.

(A) The facility shall post a notice at the main entrance of the facility in large, legible type and font and display the words "Electronic Monitoring" and state: "The rooms of some residents may be monitored electronically by, or on behalf of, the residents and monitoring is not necessarily open or obvious." III

(B) The facility shall require the resident to post and maintain a conspicuous notice at the entrance of the resident's room stating: "This room is being monitored by an electronic monitoring device." III

(9) The facility shall require an electronic monitoring device to be installed as follows:

(A) In plain view;

(B) Mounted in a fixed, stationary position;

(C) Directed only on the resident who initiated the installation and use of AEM device;

(D) Placed for maximum protection of the privacy and dignity of the resident and the roommate; and

(E) In a manner that is safe for residents, employees, or visitors who may be moving about the room. II/III

(10) The facility shall not refuse to admit an individual or discharge a resident because of a request to conduct AEM. II

(11) The facility shall not discharge a resident because unauthorized electronic monitoring is being conducted by or on behalf of a resident. II

(12) The facility shall make reasonable physical accommodation for AEM, including:

(A) Provide a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(B) Provide access to power sources for the video surveillance camera or other electronic monitoring device. II

(13) The facility shall ensure all staff are knowledgeable of the applicable laws and rules regarding AEM, sections 198.610 to 198.632, RSMo, including the consequences of hampering, obstructing, tampering with, or destroying an electronic monitoring device without the consent of the resident or resident's guardian or legal representative. III

(14) The facility shall ensure the Electronic Monitoring Device Acknowledgment and Request Form is maintained in the clinical records of the residents using AEM devices. The roommate's consent to the AEM device shall be maintained in his or her clinical record. These forms shall be retained for a period of five (5) years from the date of discharge. III



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE
SECTION FOR LONG-TERM CARE REGULATION

ELECTRONIC MONITORING DEVICE ACKNOWLEDGMENT AND REQUEST FORM

FORMS AND INSTRUCTIONS

Important Information

A resident or the resident's guardian or legal representative has the right to conduct authorized electronic monitoring (AEM) under sections 198.610 to 198.632, RSMo.

Written notice must be given to the long-term care facility.

The resident or the resident's guardian or legal representative shall complete and give notice via the consent form to the facility of your intent to place and use an AEM device.

To request AEM, the resident or the resident's guardian or legal representative shall:

- Complete this DHSS-DRL-107 (08-20), Electronic Monitoring Device Acknowledgment and Request Form.
- Obtain consent from other residents, if any in your room, using this DHSS-DRL-107 (08-20), Electronic Monitoring Device Acknowledgment and Request Form.
- Give the designated form(s) to the facility administrator/manager or his or her designee (facility representative).

NOTE: Authorized electronic monitoring shall not begin nor an electronic monitoring device be installed until this Electronic Monitoring Device Acknowledgment and Request Form has been completed, signed, and returned to the facility representative.

Complete Applicable Parts of this Form

There are options for who can complete an Electronic Monitoring Device Acknowledgment and Request Form. The requirements and instructions are different for each part. Make sure you choose the part(s) that fits your situation. For example, if you are a resident and have a roommate, you complete the resident's consent to electronic monitoring (Part I) and your roommate completes the roommate's consent to electronic monitoring (Part II).

The three (3) parts of this form are:

- **Part I** Resident's Request and Consent to Electronic Monitoring: *used when a resident consents for him or herself or the resident's guardian or legal representative gives consent.*
- **Part II** Roommate's Consent to Electronic Monitoring: *when the resident shares a room with another person and the roommate is consenting for him or herself or the roommate's guardian or legal representative gives consent.*

NOTE: If a new roommate has moved into the room the authorized electronic monitoring device cannot be used until Part II is completed, signed, and returned by the new roommate to the facility representative.

- **Part III** Revocation of Consent for the Placement and Use of Authorized Electronic Monitoring Device.**

****Part III - Optional.** A resident or a resident's roommate may withdraw AEM consent to electronic monitoring at any time. You may use Part III of this form to communicate to the facility your decision to no longer authorize electronic monitoring in your room.

Installation and Costs

The resident or the resident's guardian or legal representative shall pay for all costs associated with conducting electronic monitoring, except for the costs of electricity. The resident or the resident's guardian or legal representative shall be solely responsible for:

1. All costs associated with installation or removal of equipment incurred by the resident or the facility;
2. Maintaining the equipment; and
3. Internet service or network access to any electronic monitoring device.

Monitoring Device

An electronic monitoring device to be installed as follows:

1. In plain view;
2. Mounted in a fixed, stationary position;
3. Directed only on the resident who initiated the installation and use of AEM device and not the area(s) occupied by the roommate;
4. Placed for maximum protection of the privacy and dignity of the resident and the roommate; and
5. In a manner that is safe for residents, employees, or visitors who may be moving about the room.

Monitoring Device Recordings

1. If the footage is a videotape or recording, the footage MUST show the date and time that the events acquired on the footage occurred.
2. Contents of the tape or recording cannot have been edited or artificially enhanced.
3. If contents of the footage have been transferred from the original format to another technological format, you shall ensure the transfer is done by a qualified professional and that the contents are not altered.



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE
SECTION FOR LONG-TERM CARE REGULATION

ELECTRONIC MONITORING DEVICE ACKNOWLEDGMENT AND REQUEST FORM

Signage

If a resident installs and uses an electronic monitoring device, a notice to alert and inform visitors shall be posted.

1. The facility shall clearly and conspicuously post a notice at the main entrance of the facility in large, clearly legible type and font and display the words "Electronic Monitoring" and state: "The rooms of some residents may be monitored electronically by, or on behalf of, the residents and monitoring is not necessarily open or obvious."
2. A resident shall be required to post and maintain a conspicuous notice at the entrance of the resident's room stating: "The room is being monitored by an electronic monitoring device."

Immunity

- No facility shall be civilly or criminally liable for activity or action arising out of the use by any resident or any resident's guardian or legal representative of any electronic monitoring device, including the facility's inadvertent or intentional disclosure of a recording made by a resident, or by a person who consents on behalf of the resident, for any purpose not authorized under sections 198.610 to 198.632, RSMo.
- No facility shall be civilly or criminally liable for a violation of the Health Insurance Portability and Accountability Act (HIPAA) or any resident's right to privacy arising out of any electronic monitoring conducted under sections 198.610 to 198.632, RSMo.
- The department and the facility shall be immune from civil liability in connection with the unauthorized placement or use of an electronic monitoring device in the room of a resident.

FREQUENTLY ASKED QUESTIONS:

WHO may request AEM?

- The resident, if the resident has the capacity to request AEM and has not been judicially declared to lack the required capacity, notwithstanding the terms of any durable power of attorney, general power of attorney, or similar instrument.
- If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian may request AEM.
- If a resident has been determined by a physician to lack capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request AEM.

WHO may consent to AEM?

- Any resident and his or her roommate(s).
- A resident's guardian or legal representative.

Can you change your mind about the installation and use of an electronic monitoring device in your room?

Yes. You or your guardian or legal representative may **REVOKE** a choice to have or not have a monitoring device installed and used. You may revoke your choice at any time and can give notice of such revocation to the facility. You can use Part III of the attached form, *Revocation of Consent for the Placement and Use of Authorized Electronic Monitoring Device*.

Whose choice is it to have a monitoring device installed and used in your room?

This is a choice that **ONLY** you and, if applicable, your guardian or legal representative can make.

NOTE: If there is audio recording used it will likely record conversations with staff, other health care providers, family and friends, and other parties in the facility. This may mean private information about finances, family relationships, and protected health information may be recorded.

Can a person/resident be refused admittance or discharged for requesting AEM?

A facility **CANNOT** deny a person/resident admission to a facility or be discharged just because the person/resident chooses to authorize the installation and use of an electronic monitoring device.

What happens if you want a monitoring device in your room, but your roommate does not want one?

A facility may move a resident requesting AEM to a comparable room to accommodate the request to conduct AEM.

How does AEM affect the reporting of abuse and neglect?

If abuse or neglect is suspected the most important thing is to report it immediately. Abuse and neglect cannot be addressed unless reported.

Adult Abuse and Neglect Hotline: 1-800-392-0210 or https://apps4.mo.gov/APS_Portal/

1. A person is required to report abuse based on that person's viewing of, or listening to footage only if the incident of abuse is acquired on the footage.
2. A person is required to report neglect based on that person's viewing of, or listening to footage only if it is clear from viewing or listening to the footage that neglect has occurred.
3. If abuse or neglect of the resident is reported to the facility, and the facility requests a copy of any relevant footage made by an electronic monitoring device, the person who possesses such footage shall provide the facility with a copy at the facility's expense.



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE
SECTION FOR LONG-TERM CARE REGULATION

ELECTRONIC MONITORING DEVICE ACKNOWLEDGMENT AND REQUEST FORM

Authorized Electronic Monitoring in Long-Term Care Facilities Act (sections 198.610 to 198.632, RSMo) permits a resident of a long-term care facility to conduct authorized electronic monitoring of his or her room through the use of an electronic monitoring device.

If a resident wants to conduct electronic monitoring in her or his room, the resident, the resident's guardian, or the resident's legal representative shall complete and sign Part I of this form. If the resident has a roommate or roommates, each roommate shall complete and sign Part II to document his or her consent before an electronic monitoring device can be installed in the resident's room.

PART I - RESIDENT'S REQUEST AND CONSENT FOR ELECTRONIC MONITORING

This form shall be completed and signed by or on behalf of the resident and given to a facility representative prior to the installation of, or any use of, an electronic monitoring device in the facility.

NAME OF RESIDENT ROOM NUMBER

NAME OF RESIDENT'S GUARDIAN OR LEGAL REPRESENTATIVE (IF RESIDENT DOES NOT HAVE CAPACITY TO CONSENT)

This serves as notice to (NAME AND LOCATION OF FACILITY)

that I have chosen to place and use an authorized electronic monitoring device in the resident room indicated above in accordance with the Authorized Electronic Monitoring in Long-Term Care Facilities Act.

The date I would like the electronic monitoring device installed is

Type of electronic monitoring device I am planning to install (check any that apply):

- audio only
video only
audio and video

Upon installation, an authorized electronic monitoring device shall adhere to the following:

- The placement and use shall be open and obvious.
Mounted in a fixed, stationary position.
Directed only on the resident who initiated the installation and use of the authorized electronic monitoring device.
Placed for maximum protection of the privacy and dignity of the resident and the roommate.
Placed in a manner that is safe for residents, employees, or visitors who may be moving about the room.

I understand that I may place conditions or restrictions on the electronic monitoring device. The conditions or restrictions I want to place on the electronic monitoring are (check any that apply):

- Prohibit audio recording;
Prohibit broadcasting of audio or video;
Turn off the electronic monitoring device or block the visual recording component of the electronic monitoring device for the duration of an exam or procedure by a health care professional;
Turn off the electronic monitoring device or block the visual recording component of the electronic monitoring device while dressing, bathing, or toileting is performed;
Turn the electronic monitoring device off for the duration of a visit with a spiritual advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor;
Other

I understand that the resident or the resident's guardian or legal representative shall pay for all costs associated with conducting electronic monitoring, except for the costs of electricity. The resident or the resident's guardian or legal representative shall be responsible for all costs associated with installation of equipment incurred by the resident or the facility and maintaining the equipment.

I understand that a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
 DIVISION OF REGULATION AND LICENSURE
 SECTION FOR LONG-TERM CARE REGULATION

ELECTRONIC MONITORING DEVICE ACKNOWLEDGMENT AND REQUEST FORM

recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another.

I understand that a person, who, without authorization, places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the unauthorized placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device.

I understand that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring, and that if the facility refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring, the person should contact the Department at 1-800-392-0210 or https://apps4mo.gov/APS_Portal/.

I understand that a person is required to report abuse based on the person's viewing of, or listening to, footage only if the incident of abuse is acquired on the footage. A person is required to report neglect based on the person's viewing of, or listening to, footage only if it is clear from viewing or listening to the footage that neglect has occurred. If abuse or neglect of the resident is reported to the facility, and the facility requests a copy of any relevant footage made by an electronic monitoring device, the person who possesses the footage shall provide the facility with a copy at the facility's expense.

I understand that I am required by law to post and maintain a notice at the entrance of the resident's room to signify that the resident's room is being monitored by an electronic monitoring device.

I hereby release the facility from any civil liability for a violation of my/resident's privacy rights in connection with the use of the electronic monitoring device.

I hereby request and consent to the placement and use of an electronic monitoring device in my room in accordance with Chapter 198, RSMo.

Does the resident have a roommate? Yes* No

*If yes, Part II Roommate's Consent to Allow Electronic Monitoring form shall be completed and signed before an electronic monitoring device can be placed and used in the resident's room.

A person may be subject to a Class B misdemeanor if he or she:

- Intentionally hamper, obstruct, tamper with or destroy a recording or an authorized electronic monitoring device placed in a resident's room without the consent of the resident or the resident's guardian or legal representative.

A person may be civilly liable if he or she:

- Unlawfully violate the privacy rights of another by placing an electronic monitoring device in the room of a resident or by using or disclosing a tape or other recording made by the device.

By signing this form, you attest that you understand and consent to electronic monitoring under terms and conditions provided above and in accordance with the Authorized Electronic Monitoring in Long-Term Care Facilities Act (sections 198.610 to 198.632, RSMo).

(This form may be signed only by the resident or the resident's guardian or legal representative.)

SIGNATURE OF RESIDENT OR RESIDENT'S GUARDIAN OR LEGAL REPRESENTATIVE	DATE
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MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE
SECTION FOR LONG-TERM CARE REGULATION

ELECTRONIC MONITORING DEVICE ACKNOWLEDGMENT AND REQUEST FORM

PART II - ROOMMATE'S CONSENT TO ALLOW ELECTRONIC MONITORING

If the resident has a roommate, Part II shall be completed, signed and given to a facility representative before an authorized electronic monitoring device can be placed and used in the resident's room. If a new roommate has moved into the room who has not yet consented to the electronic monitoring, the authorized electronic monitoring device shall cease until the new resident has consented.

I, (ROOMMATE NAME) live in the same room as (RESIDENT NAME), room number (RESIDENT NAME) at (NAME AND LOCATION OF FACILITY)

I understand that (RESIDENT NAME) wants to place and use an authorized electronic monitoring device in the room.

NAME OF ROOMMATE'S GUARDIAN OR LEGAL REPRESENTATIVE (IF ROOMMATE DOES NOT HAVE CAPACITY TO CONSENT)

- Yes, I consent to the placement and use of an authorized electronic monitoring device in the room. I understand that:
a. The placement and use shall be open and obvious.
b. The authorized electronic monitoring device shall be in a fixed, stationary position.
c. The authorized electronic monitoring device shall be directed only on the resident who initiated the installation and use of the authorized electronic monitoring device.
d. The authorized electronic monitoring device shall be placed for maximum protection of the privacy and dignity of the resident and the roommate.
e. The authorized electronic monitoring device shall be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room.

No, I do not consent to the placement and use of an authorized electronic monitoring device in the room.

**If you do not consent to the placement and use of an authorized electronic monitoring device, return this to the facility representative. You do not need to complete the remainder of the form.



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
 DIVISION OF REGULATION AND LICENSURE
 SECTION FOR LONG-TERM CARE REGULATION

ELECTRONIC MONITORING DEVICE ACKNOWLEDGMENT AND REQUEST FORM

Condition Consent:

1) When the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident.

- Yes, I want the camera pointed away from my side of the room.
- No, I have no condition on placement.

2) Condition consent on the use of an audio electronic monitoring device being limited or prohibited.

Yes, I want limitations noted below:

Yes, I want to prohibit audio surveillance in my room.

No, I have no condition on placement.

3) I hereby release the facility from any civil liability for a violation of my right to privacy in connection with the use of the electronic monitoring device.

A person may be subject to a Class B misdemeanor if he or she:

- Intentionally hamper, obstruct, tamper with or destroy a recording or an authorized electronic monitoring device placed in a resident's room without the express written consent of the resident or the resident's guardian or legal representative.

A person may be civilly liable if he or she:

- Unlawfully violate the privacy rights of another by placing an electronic monitoring device in the room of a resident or by using or disclosing a tape or other recording made by the device.

By signing this form, you attest that you understand and consent to electronic monitoring under terms and conditions provided above and in accordance with the Authorized Electronic Monitoring in Long-Term Care Facilities Act (sections 198.610 to 198.632, RSMo).

SIGNATURE OF ROOMMATE OR ROOMMATE'S GUARDIAN OR LEGAL REPRESENTATIVE

DATE



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF REGULATION AND LICENSURE
SECTION FOR LONG-TERM CARE REGULATION

ELECTRONIC MONITORING DEVICE ACKNOWLEDGMENT AND REQUEST FORM

PART III – REVOCATION OF CONSENT FOR THE PLACEMENT AND USE OF AN AUTHORIZED ELECTRONIC MONITORING DEVICE

I, _____
(NAME OF RESIDENT OR RESIDENT'S GUARDIAN OR LEGAL REPRESENTATIVE)

OR

I, _____
(NAME OF ROOMMATE OR ROOMMATE'S GUARDIAN OR LEGAL REPRESENTATIVE)

hereby revoke my consent for an authorized electronic monitoring device to be placed and used in the room. The authorized electronic monitoring device must be disabled in compliance with the facility's standards upon receipt of this written revocation notice of the consent.

SIGNATURE OF RESIDENT OR RESIDENT'S GUARDIAN OR LEGAL REPRESENTATIVE	DATE
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OR

SIGNATURE OF ROOMMATE OR ROOMMATE'S GUARDIAN OR LEGAL REPRESENTATIVE	DATE
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Large empty rectangular area for additional notes or signatures.



AUTHORITY: sections 198.612, 198.616, 198.620, 198.622, and 198.626, RSMo Supp. 2020. Emergency rule filed Aug. 20, 2020, effective Sept. 3, 2020, expired March 1, 2021. Original rule filed Aug. 20, 2020, effective Feb. 28, 2021.*

**Original authority: 198.612, RSMo 2020; 198.616, RSMo 2020; 198.620, RSMo 2020; 198.622, RSMo 2020; 198.626, RSMo 2020.*