
Emergency Rule

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

EMERGENCY RULE

19 CSR 30-91.010 Authorized Electronic Monitoring

PURPOSE: The emergency rule sets forth requirements to implement legislation 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.

EMERGENCY STATEMENT: The Authorized Electronic Monitoring in Long-Term Care Facilities Act becomes law on August 28, 2020. Under this new law, the department is required to promulgate rules and to create a form in this rule that residents and roommates of residents can utilize to give his or her consent to have electronic monitoring devices placed in his or her room. Currently, families of residents in long-term care facilities utilize electronic monitoring devices based on their desire to monitor the care of residents when they can't be present and to communicate with residents. For families, the use of electronic monitoring devices to watch over a loved one brings them peace of mind and a higher level of involvement especially for family members far away. The Authorized Electronic Monitoring in Long-Term Care Facilities Act prohibits anyone in long-term care facilities from utilizing these electronic monitoring devices without completing a form created by the department that provides consent from residents and any roommates for the placement of the electronic monitoring device into the rooms. Without this form being available through the rule as close as possible to the time that the law becomes effective, then these families will be required to turn off and/or remove the electronic monitoring devices and not have such device to communicate and/or watch over the residents for an extended time period because the form will not be available for the residents and roommates to complete. Additionally, the placement of these devices, without the appropriate knowledge of and consent from the resident, resident's guardian or legal representative, or the resident's roommates, violates the resident's and his or her roommates' privacy and dignity. This would include privacy and Health Insurance Portability and Accountability Act (HIPAA) issues such as exams or procedures being conducted by a healthcare professional on residents, when the residents are dressing or bathing or during a visit (e.g., attorney, financial planner, intimate partner, etc.) occurring in the residents' room. This emergency rule implements the Authorized Electronic Monitoring in Long-Term Care Facilities Act. Thus, it is imperative that this rule become effective as close to the same time that the law becomes effective in order to allow families of residents currently utilizing electronic monitoring devices to continue to utilize these devices. As a result, the department finds a compelling governmental interest, which requires this emergency action. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The department believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 20, 2020, becomes effective September 3, 2020, and expires March 1, 2021.

- (1) For the purposes of this rule the following definitions 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 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;

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- (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

*AUTHORITY: sections 198.612, 198.616, 198.620, 198.622, and 198.626, HB 1387 and 1482, Second Regular Session, One Hundredth General Assembly, 2020. Emergency Rule filed Aug. 20, 2020, effective Sept. 3, 2020, expires March 1, 2021. A proposed rule and emergency rule covering this same material will be published in the Oct. 1, 2020 issue of the **Missouri Register**.*

PUBLIC COST: This emergency rule will cost state agencies or political subdivisions fifty-seven thousand three hundred fifty dollars (\$57,350) in the time the emergency is effective.

PRIVATE COST: This emergency rule will cost private entities one million two hundred ninety-six thousand two hundred forty-three dollars (\$1,296,243,) in the time the emergency is effective.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Department of Health and Senior Services
Division Title: Division of Regulation and Licensure
Chapter Title: 19 CSR 30-91.010 Authorized Electronic Monitoring in Long Term Care Facilities**

Rule Number and Title:	19 CSR 30-91.010 Authorized Electronic Monitoring in Long Term Care Facilities
Type of Rulemaking:	Emergency Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
(34) Skilled Nursing Facilities	\$50,161.50
(15) Residential Care Facilities and Assisted Living Facilities	\$7,188.75
TOTAL COSTS =	\$57,350.25

III. WORKSHEET

Designated facility staff person

Median wages were used to calculate the average pay per hour for a designated facility staff person:

- Manager/Administrator: \$47.26 per hour
- Licensed Practical Nurse (LPN): \$22.23 per hour
- Registered Nurse (RN): \$35.24 per hour.
- Social Services “designee”: \$23.07per hour

$\$47.26 + \$22.23 + \$35.24 + \$23.07/4 = \$31.95$ average pay per hour for a designated facility staff person.

34 SNFs with a combined total of 3,139 licensed beds (residents)/2= 1570 residents choosing to utilize electronic monitoring devices.

15 public RCFs and ALFs with a combined total of 449 licensed beds (residents)/2=225 residents choosing to utilize electronic monitoring devices.

Costs of a designed facility staff person on public SNFs

One (1) facility staff person @ \$31.95 per hour for one (1) hour x 1570 residents of 34 public owned SNFs = \$50,161.50.

Costs of a designated facility staff person on public RCF/ALFs

One (1) facility staff person @\$31.95 per hour for one (1) hour x 225 residents of 15 public owned RCFs/ALFs = \$7,188.75.

Total for costs for public entities (RCF/ALF/SNF) to designate a staff person for oversight/management to ensure appropriate placement of an electronic monitoring device and to ensure the required prescribed form is properly completed, signed, and placed in the resident's medical record: \$50,161.50 + \$ 7,188.75 = \$57,350.25

IV. ASSUMPTIONS

At least one (1) designated facility staff person will be needed for oversight/management to ensure appropriate placement of an electronic monitoring device and that the required prescribed form is properly completed, signed, and placed in the resident's medical record. The department assumes the facility may designate a manager/administrator, a licensed nurse, or a social services "designee" to complete this task. Furthermore, the department assumes it will take this designated staff person at least one (1) hour to review the prescribed form for completeness, file the form in the resident's medical record, and then work with the resident or their representative to determine appropriate placement of the electronic monitoring device.

The department is estimating during the emergency rule period between September 3, 2020 to March 1, 2021 the number of residents or the resident's guardian or legal representative requesting to place an electronic monitoring device in the resident's room and the number of required forms needing to be completed will initially be high. It is estimated at least fifty percent (50%) of residents will need to have the required form completed to install an electronic monitoring device. This number is initially high because those families currently utilizing electronic monitoring devices will need to complete forms to come into compliance with the law and regulation. Additionally, this number is high because the Department has received an overwhelming response from families asking questions about this new law and expressing a desire to place electronic monitoring devices into their loved ones' rooms. Finally, as residents move in and out of facilities, move rooms and roommates change, then forms will have to be completed based on the situation.

There are currently 34 public owned skilled nursing care facilities (SNFs) and 0 public owned intermediate care facilities that are licensed by the department:

Licensed ICFs = 0

Licensed SNFs = 34

There are currently 15 public owned residential care facilities (RCFs) and assisted living facilities (ALFs) that are licensed by the department:

Licensed RCFs/RCF IIs = 11

Licensed ALFs = 4

There are 0 public owned ICFs and 34 SNFs with a combined total of 3,139 licensed beds. The department estimates at least 50% of residents, the residents' guardians or legal representatives will request to place and use an electronic monitoring device in the residents' rooms which would be 1570 licensed beds/residents.

There are 15 public RCFs and ALFs with a combined total of 449 licensed beds. The department estimates at least 50% of residents, or the residents' guardians or legal representatives will request to place and use an electronic monitoring device in the residents' rooms which would be 225 licensed beds/residents.

The Department is not including the costs a facility may incur as a result of proper placement of residents' electronic monitoring devices because section 198.622, RSMo requires that the resident or the resident's guardian or legal representative is responsible to pay for all costs associated with conducting electronic monitoring, except for the costs of electricity.

The Department is also not including the costs of the facility to ensure all staff are knowledgeable of the applicable laws as this can be completed during in-service trainings that is already occurring or through other methods of training the facilities already utilize with their employees.

The Department is not including costs for the facility staff to help control (turn off and on) the electronic monitoring devices as indicated by the resident and any of the resident's roommates on their respective electronic monitoring forms. Any assistance that staff may provide to help control (turn off and on) the electronic monitoring devices will be part of the care already being given to the residents and roommates for activities of daily living. For example, a certified nurse assistant may turn off the electronic monitoring device before dressing a resident who has an electronic monitoring device pointed towards the resident because the resident checked the box on the resident's electronic monitoring device form electing to have the electronic monitoring device turned off when dressing.

Finally, the Department is not including costs to the facility or to the family to post electronic monitoring notices as these notices can be done on paper that the facility or families already have at their disposal.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Department of Health and Senior Services
Division Title: Division of Regulation and Licensure
Chapter Title: 19 CSR 30-91.010 Authorized Electronic Monitoring in Long Term Care Facilities**

Rule Number and Title:	19 CSR 30-91.010 Authorized Electronic Monitoring in Long Term Care Facilities
Type of Rulemaking:	Emergency Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
505	Intermediate Care Facilities and Skilled Nursing Facilities	\$861,403.95
636	Residential Care Facilities and Assisted Living Facilities	\$434,839.50
	TOTAL COSTS =	\$1,296,243.40

III. WORKSHEET

Designated facility staff person on private entities

Median wages were used to calculate the average pay per hour for a designated facility staff person:

Manager/Administrator: \$47.26 per hour
 Licensed Practical Nurse (LPN): \$22.23 per hour
 Registered Nurse (RN): \$35.24 per hour.
 Social Services "designee": \$23.07 per hour
 = $\$47.26 + \$22.23 + \$35.24 + \$23.07/4 = \$31.95$ per hour.

505 private ICFs and SNFs with a combined total of 53,922 licensed beds/2= 26,961 licensed beds/residents who will utilize electronic monitoring devices.

636 private RCFs and ALFs with a combined total of 27,220 licensed beds/2= 13,610 licensed beds/residents who will utilize electronic monitoring devices.

Costs of a designed facility staff person on private ICF/SNFs

One (1) facility staff person @\$31.95 per hour for one (1) hour x 26,961 residents = \$861,403.95

Costs of a designed facility staff person on private RCF/ALFs

One (1) facility staff person @\$31.95 per hour for one (1) hour x 13,610 residents = \$434,839.50

Total for costs for private (RCF/ALF/ICF/SNF) entities to designate a staff person for oversight/management to ensure appropriate placement of an electronic monitoring device and to ensure the required prescribed form is properly completed, signed, and placed in the resident's medical record: \$861,403.95+ \$434,839.50= \$1,296,243.40.

IV. ASSUMPTIONS

At least one (1) designated facility staff person will be needed for oversight/management to ensure appropriate placement of an electronic monitoring device and to ensure the required prescribed form is properly completed, signed, and placed in the resident's medical record. The department assumes the facility may designate a manager/administrator, a licensed nurse, or a social services "designee" to complete this task. Furthermore, the department assumes it will take this designated staff person at least one (1) hour to review the prescribed form for completeness, file the form in the resident's medical record, and then determine appropriate placement of the electronic monitoring device.

The department is estimating during the emergency rule period between September 3 2020 to March 1, 2021 the number of residents or the resident's guardian or legal representative requesting to place an electronic monitoring device in the resident's room and the number of required forms needing to be completed will initially be high. It is estimated at least fifty percent (50%) of residents will need to have the required form completed to install an electronic monitoring device. This number is initially high because those families currently utilizing electronic monitoring devices will need to complete forms to come into compliance with the law and regulation. Additionally, this number is high because the Department has received an overwhelming response from families asking questions about this new law and expressing a desire to place electronic monitoring devices into their loved ones' rooms. Finally, as residents move in and out of facilities, move rooms and roommates change, then forms will have to be completed based on the situation.

There are 505 private ICFs and SNFs with a combined total of 53,922 licensed beds. The department estimates at least 50% of residents, or the residents' guardians or legal representatives will request to place and use an electronic monitoring device in the residents' rooms which would be 26,961 licensed beds/residents.

There are 636 private RCFs and ALFs with a combined total of 27,220 licensed beds. The department estimates at least 50% of residents, or the residents' guardians or legal representatives will request to place and use an electronic monitoring device in the residents' rooms which would be 13,610 licensed beds/residents.

This fiscal note does not include costs a facility may incur as a result of proper placement of a residents electronic monitoring device because section 198.622, RSMo requires that the resident or the resident's guardian or legal representative is responsible to pay for all costs associated with conducting electronic monitoring, except for the costs of electricity.

The Department is also not including the costs of the facility to ensure all staff are knowledgeable of the applicable laws as this can be completed during in-service trainings already occurring or through other methods of training the facilities already utilize with their employees.

The Department is not including costs for the facility staff to help control (turn off and on) the electronic monitoring devices as indicated by the resident and any of the resident's roommates on their respective electronic monitoring forms. Any assistance that staff may provide to help control (turn off and on) the electronic monitoring devices will be part of the care already being given to the residents and roommates for activities of daily living. For example, a certified nurse assistant may turn off the electronic monitoring device before dressing a resident who has an electronic monitoring device pointed towards the resident because the resident checked the box on the resident's electronic monitoring device form electing to have the electronic monitoring device turned off when dressing.

Finally, the Department is not including costs to the facilities to post electronic monitoring notices as these notices can be done on paper that the facilities already have at their disposal.