

**ELECTRONIC MONITORING
DRAFT PROPOSED POLICY**

Adopted on: , 2019	Approved by:
Last Reviewed by:	Last Reviewed on and Updated:

Purpose: To establish guidelines with North Dakota Century Code §50-10.2-01 and North Dakota Administrative Rule §75-03-40 as residents or their representatives request electronic monitoring of the personal area of their room. This policy provides guidance on the installation and operation of devices, completion of necessary forms, consents and signage required for electronic monitoring.

Non-Retaliation or Discrimination Provision

At no time will any staff refuse to admit a resident, remove a resident, retaliate or discriminate against any resident or resident's representative for authorizing electronic monitoring. Facility will cooperate to accommodate the placement of the electronic monitoring device unless doing so would place an undue burden on the facility. A resident must have the consent of any and all residents occupying the same room prior to installation and operation of an electronic monitoring device. Consent from a new resident moving into a room is required for continued operation of an electronic monitoring device. Facility will make reasonable attempts to accommodate a resident if others sharing the room refuse to consent to the use of an electronic monitoring device. However, if appropriate consents for shared rooms cannot be obtained, the resident or resident's representative requesting the electronic monitoring device will be responsible for any additional costs for a single room if available.

Request for Electronic Monitoring and Consent

Every resident is presumed to have capacity to consent to electronic monitoring and to

execute the required forms if the resident understands and appreciates the nature and consequences of their decision. If a resident has capacity to consent only the resident may authorize electronic monitoring in the resident's room. If it is unclear whether a resident has the capacity to consent to electronic monitoring, the resident's representative must obtain written certification from the resident's attending physician, that the resident lacks capacity to consent to electronic monitoring. If a resident clearly does not have capacity to consent or the resident's attending physician certifies in writing the resident lacks capacity to consent to electronic monitoring, the resident representative's with authority to consent to electronic monitoring may consent or not consent to electronic monitoring.

A resident's representative for purposes of consent to electronic monitoring is limited to the following individuals in the following order of priority:

1. A guardian appointed by the court; or
2. An agent or alternative agent (if applicable) named in power of attorney for healthcare.

No other individuals, other than listed above have the authority to act as the resident's representative with regard to consent for electronic monitoring.

Any resident representative must make decisions in accordance with the resident's wishes, values, preferences, or directions. If the facility has reason to believe that a resident representative is making decisions or taking actions that are not in the best interests of a resident regarding the authorization or use of electronic monitoring, the facility shall report this concern in the manner required to the Department of Human Services.

Process Prior to Installation

A resident or the resident's representative may install and use an electronic monitoring device only after all necessary forms have been completed. The resident or the resident's representative must complete the following forms:

1. SFN ____ Authorization and Consent Form for Electronic Monitoring;
2. SFN ____ HIPAA (Health Insurance Portability and Accountability Act) Release of Information Form signed by any and all residents occupying the same room as the resident requesting electronic monitoring;
3. Form ____ Installation Plan (compliant with facility's standards and regulations).

A new SFN ____ and SFN ____ must be completed every time a new resident moves into a room where the current resident has an electronic monitoring device. The electronic monitoring device must be disabled until the new resident or resident's representative consents to its operation with or without restrictions.

Installation of the Electronic Monitoring Device

The Electronic Monitoring Device must comply with the following:

1. Electronic Monitoring Device is limited to the following:
 - a. Video Surveillance Camera;
 - b. Monitoring Devices;
 - c. Web-based Cameras;
 - d. Video phones;
 - e. Audio recording or transmitting devices or a combination of these devices.

An Electric Monitoring Device does not include still cameras or devices used for the purpose of the resident having contact with another person but not for the purpose of electronically monitoring a resident.

2. The electronic monitoring device must be placed in a fixed, stationary position; monitors only the area occupied by the resident and not the area occupied by the resident's roommate; and **protects the privacy and dignity of the resident**. If possible and as part of the Installation Plan, after device is installed, or any time the facility has reason to believe the position of an electronic monitoring device may be in violation of law or this policy, a screenshot should be provided to ensure the area covered by the device monitors only the area occupied by the resident and protects the privacy and dignity of the resident.

3. All costs, except for electricity associated with the authorized electronic monitoring device, including installation, operation, internet access, disabling, removal, repairs, room damage, and maintenance, are paid by the resident or resident representative who initiated the use.

4. If resident or resident representative chooses to install a monitoring device that uses internet technology. The monitoring device must have at least 128-bit encryption and enable a secure socket layer ("SSL"). The resident or resident's representative is responsible for contracting with an internet provider if that is needed as part of the electronic monitoring system. The facility is not required to allow internet

access.

5. It is the responsibility of the resident or the resident's representative to obtain all necessary consents from any other resident occupying the room as required on SFN____. The facility may but is not required to facilitate communications between residents or resident's representatives, to complete the Authorization and Consent Form for Electronic Monitoring SFN___ and HIPAA consent form, SFN ____.

Signage

Facility will post a sign at the entryway of the facility which states: "Electronic Monitoring devices including security cameras and audio devices may be present to record persons and activities". Facility will also post a sign outside and inside each resident's room where electronic monitoring is occurring.

Disabling or Monitoring Operation of the Electronic Monitoring Device

At any time a resident, resident's representative or other resident residing in a room where an electronic monitoring device is used, may withdraw their consent for the use of the device. It is the responsibility of the resident or resident's representative to disable any device if the required consents have been withdrawn and provide confirmation of same. It is also the responsibility of the resident or resident's representative requesting the electronic monitoring device to ensure the device is operating with the restrictions on SFN ____ required by the resident or resident's representative or any other residents residing in the room.

Facility may disable a device should the resident expire, is hospitalized or is absent for an extended period of time and unable to disable the device.

Access to Recordings or Tampering with Electronic Monitoring Device

A facility or staff of the facility may not access any video or audio recording created through an authorized electronic monitoring device placed in a resident's room without the written consent of the resident or resident representative or court order.

It is a Class B Misdemeanor to 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 resident representative. Use or disclosure of a tape or other recording made by a resident's electronic monitoring device, without the resident's written consent may be a crime or a violation of law by invading the privacy rights of another.

Recordings obtained through an electronic monitoring device which are not in

compliance with North Dakota law, or which have been altered in some way without the consent of the resident or the resident's representative cannot be used in any civil proceeding, administrative proceeding or survey process. All recordings used in any proceedings or survey process must be date and time stamped.

No recordings or portion of a recording may be shared or posted on any social media.

All documentation and recordings related to the use of Electronic Monitoring shall be maintained in accordance with the facility's record retention policies and practices.

References:

N.D. Cent. Code §50-10.2

North Dakota Administrative Rules Section 75-03-40