

Electronic Monitoring Workgroup

MEETING SUMMARIES 9/21/18 AND 10/9/18

The electronic monitoring workgroup is using a discussion document to work through issues related to electronic monitoring. That document has been updated as of 10/9/18 with a summary of the conversations and issues we discussed at meetings 1 and 2. Refer to that document to understand the detailed arguments at issue in this workgroup. You may also want to consult the version of SF 3437 that has been circulated to this workgroup, as we are using several areas of language developed in that bill to work from.

This document is a summary of possible points of consensus and issues for you and/or your organization to consider. It also includes a to-do list for certain items such as research or gathering of more information.

Electronic Monitoring Workgroup Updated 9/21/18

Who can install a camera? Definition of legal representative

- Consider possible points of consensus:
 - Resident, Guardian, and health care agent can install camera
 - Resident representative from federal law can provide roadmap for identifying other people who can install a camera on behalf of the resident
- Consider where you organization stands on these issues
 - Whether it should be required that a “person chosen” by the resident is documented somewhere in resident file
- Next steps:
 - Develop language that incorporates concepts from federal definition of resident representative

Definition of the Monitoring Device

- Consider how the definition deals with each of these issues
 - The type of device
 - Broadcast ability
 - Intent/purpose
- Next Steps:
 - Consider whether the language of 3437 is close to something your organization could support and if not what changes might you consider? How can we get at the intent/purpose part of the statute?
 - Consider how different states have already defined this in their laws regarding electronic monitoring and if those definitions are worth borrowing from.

What facilities are covered by these electronic monitoring provisions

- Consider

- Whether there are some HWS settings that should be excluded from these electronic monitoring regulations
- If so – why exclude them (i.e. the setting has so few services that its more like an apartment and this regulation would actually decrease rights of resident to install whatever they want just like any other tenant)?
- If so – what is the best way to exclude them?
- Should swing beds be added to the list of covered facilities?
- Next Steps:
 - Do we have better data from MDH/DHS to drill down to exactly how many and what type of HWS settings should be considered for being Discussion of what facilities should not be covered by these provisions
 - Is there another way to approach these electronic monitoring rules from the right to privacy and corresponding provider duties related to that right? What would that approach look like?

How a resident representative gets consent from resident

- Consider whether the language in 3437 subdivision 3(a) provides the best approach (see SF 3437 lines 3.23 to 3.32)
- Consider whether there should be an additional requirement in 3437 subdivision 3(b) (see SF 3437 lines 4.1 to 4.13) that a resident representative explains to the resident the purpose of installing the camera
- Consider if your organization has a position on whether there should be a “witness” requirement for the consent provisions.

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How a resident gets consent from a roommate

- Consider whether your organization supports the policy of balancing the interest in placing the camera vs. protecting a roommate via the “affirmative oppose” concept and physician approval concepts
- Consider whether your organization approves of the provider as a “pass through” communicator to help resident get in touch with roommate’s designated advocates
- Consider whether your organization supports the elimination of the physician approval for practical (or other) reasons
- Consider how this section can be re-written for clarity

What type of notice should be provided to a facility?

- Consider if your organization supports notice to both a facility and the Ombudsman office for long term care
- Consider if your organization supports a “limited notice” to the facility – meaning only limited personnel from the facility can know about the camera.
- Consider what, if any, language should exist about where in a resident file the notice form should exist.