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# Texas Administrative Code

[Next Rule>>](#)**TITLE 40****SOCIAL SERVICES AND ASSISTANCE****PART 1****DEPARTMENT OF AGING AND DISABILITY SERVICES****CHAPTER 92****LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES****SUBCHAPTER G****MISCELLANEOUS PROVISIONS****RULE §92.129****Authorized Electronic Monitoring (AEM)**

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(a) A facility must permit a resident, or the resident's guardian or legal representative, to monitor the resident's room through the use of electronic monitoring devices.

(b) A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct authorized electronic monitoring.

(c) The Texas Department of Human Services (DHS) Information Regarding Authorized Electronic Monitoring form must be signed by or on behalf of all new residents upon admission. The form must be completed and signed by or on behalf of all current residents by October 1, 2004. A copy of the form must be maintained in the active portion of the resident's clinical record.

**Attached Graphic**

(d) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM must request AEM by giving a completed, signed, and dated DHS Request for Authorized Electronic Monitoring form to the manager or designee. A copy of the form must be maintained in the active portion of the resident's clinical record.

(1) If a resident has the capacity to request AEM and has not been judicially declared to lack the required capacity, only the resident may request AEM, notwithstanding the terms of any durable power of attorney or similar instrument.

(2) If a resident has been judicially declared to lack the capacity required to request AEM, only the guardian of the resident may request AEM.

(3) If a resident does not have the capacity to request AEM and has not been judicially declared to lack the required capacity, only the legal representative of the resident may request AEM.

(A) A resident's physician makes the determination regarding the capacity to request AEM. Documentation of the determination must be made in the resident's clinical record.

(B) When a resident's physician determines the resident lacks the capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:

- (i) a person named in the resident's medical power of attorney or other advance directive;
- (ii) the resident's spouse;

(iii) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;

(iv) a majority of the resident's reasonably available adult children;

(v) the resident's parents; or

(vi) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

(e) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM also must obtain the consent of other residents in the room, using the DHS Consent to Authorized Electronic Monitoring form. When complete, the form must be given to the manager or designee. A copy of the form must be maintained in the active portion of the resident's clinical record. AEM cannot be conducted without the consent of other residents in the room.

(1) Consent to AEM may be given only by:

(A) the other resident or residents in the room;

(B) the guardian of the other resident, if the resident has been judicially declared to lack the required capacity; or

(C) the legal representative of the other resident, determined by following the same procedure established under subsection (d)(3) of this section.

(2) Another resident in the room may condition consent on:

(A) pointing the camera away from the consenting resident, when the proposed electronic monitoring is a video surveillance camera; and

(B) limiting or prohibiting the use of an audio electronic monitoring device.

(3) AEM must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room. The resident's roommate, or the roommate's guardian or legal representative, assumes responsibility for assuring AEM is conducted according to the designated limitations.

(4) If AEM is being conducted in a resident's room, and another resident is moved into the room who has not yet consented to AEM, the monitoring must cease until the new resident, or the resident's guardian or legal representative, consents.

(f) When the completed DHS Request for Authorized Electronic Monitoring form and the DHS Consent to Authorized Electronic Monitoring form, if applicable, have been given to the manager or designee, AEM may begin.

(1) Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(2) The resident, or the resident's guardian or legal representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

(3) The facility must meet residents' requests to have a video camera obstructed to protect their dignity.

(4) The facility must make reasonable physical accommodation for AEM, which includes providing:

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

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

(g) All facilities, regardless of whether AEM is being conducted, must post an 8 1/2-inch by 11-inch notice at the main facility entrance. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."

(h) A facility may:

(1) require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room, and meets all local and state regulations;

(2) require AEM to be conducted in plain view; and

(3) place a resident in a different room to accommodate a request for AEM.

(i) A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. If a facility discovers a covert electronic monitoring device and it is no longer covert as defined in §92.3 of this chapter (relating to Definitions), the resident must meet all the requirements for AEM before monitoring is allowed to continue.

(j) All instances of abuse or neglect must be reported to DHS, as required by §92.102 of this chapter (relating to Abuse, Neglect, or Exploitation Reportable to the Texas Department of Human Services (DHS) by Facilities). For purposes of the duty to report abuse or neglect, the following apply:

(1) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

(2) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording.

(3) A person is required to report abuse based on the person's viewing of or listening to a tape or

recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.

(4) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording must provide the facility with a copy at the facility's expense. The cost of the copy must not exceed the community standard. If the contents of the tape or recording are transferred from the original technological format, a qualified professional must do the transfer.

(5) A person who sends more than one tape or recording to DHS must identify each tape or recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

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**Source Note:** The provisions of this §92.129 adopted to be effective August 1, 2004, 29 TexReg 6354

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