

Wyoming Administrative Rules

Health, Department of

Aging Division

Chapter 15: Electronic Monitoring of Long-term Care

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Chapter 15

Electronic Monitoring of Long-term Care

Emergency rules are in effect no longer than 120 days after filing with the Registrar of Rules

Section 1. Authority. The Department of Health (Department) promulgates this chapter pursuant to Wyoming Statutes 9-2-1204, 35-1-240, 35-2-908, 35-2-1208(a), and 35-4-101.

Section 2. Purpose & Applicability.

(a) This chapter:

(i) Implements the Long-term Care Electronic Monitoring Act, W.S. 35-2-1201 to -1208; and

(ii) Enables residents and concerned individuals to have an increased level of involvement, connection, and assurance that proper care and services are provided during the public health emergency.

(b) This chapter applies to electronic monitoring in assisted living facilities and nursing care facilities.

Section 3. Definitions & Construction.

(a) The following definitions apply to this chapter:

(i) “Assisted living facility” means as defined in W.S. 35-2-901(a)(xxii).

(ii) “Nursing care facility” means as defined in W.S. 35-2-901(a)(xvi).

(b) Provisions that use the term “resident” are intended to apply to the “resident’s representative” when necessary or appropriate to account for an individual with a power of attorney for health care or other legal authority to make health care decisions on behalf of a resident who lacks capacity to consent.

Section 4. Electronic Monitoring Grievances and Complaints.

(a) A facility shall adopt and implement an electronic monitoring device grievance investigation policy. The facility’s policy must:

(i) Ensure the resident’s right to submit a grievance to the facility without discrimination or reprisal;

(ii) Ensure the facility promptly responds to, investigates, and attempts to resolve the resident's grievance;

(iii) Ensure the facility keeps the resident apprised of the status of the resident's grievance, including providing the resident final notice of the facility's efforts to resolve the grievance, as well as any corrective actions;

(iv) Establish and identify a grievance representative to receive resident grievances and ensure compliance with this chapter, including administering the facility's electronic monitoring device grievance investigation policy;

(v) Ensure the resident is provided contact information, including telephone number and address, for the following:

- (A) The Long-Term Care Ombudsman;
- (B) Protection & Advocacy System, Inc.;
- (C) The local office for Department of Family Services, Adult Protective Services;
- (D) Wyoming's Medicaid Fraud Control Unit;
- (E) The State Survey Agency; and
- (F) The facility's grievance representative identified under subsection (a)(iv) of this section.

(b) A facility shall provide a resident a copy of its electronic monitoring device grievance investigation policy at the following times:

- (i) Upon the resident's admission;
- (ii) Upon the resident's request for an electronic monitoring device;
- (iii) Once every year following a resident's request for and continued use of the electronic monitoring device; and
- (iv) Upon any amendment or other change to the facility's electronic monitoring device grievance investigation policy.

(c) If a facility fails to respond to or resolve a resident's grievance, the resident may forward the grievance to the Long-Term Care Ombudsman. The Long-Term Care Ombudsman shall handle the grievance as a "complaint" under the Long Term Care Ombudsman Act, W.S. 9-2-1301 to -1309.

(d) A facility shall provide the Long-Term Care Ombudsman access to all facility records regarding a resident's grievance or complaint, upon the Long-Term Care Ombudsman's request.

Section 5. Facility Use of a Recording from a Resident's Electronic Monitoring Device.

(a) Pursuant to W.S. 35-2-1203(d), a facility may use a recording made by a resident's electronic monitoring device according to the following:

(i) A facility may not use a recording made by a resident's electronic monitoring device under this section unless the facility obtains the written consent of the resident.

(ii) If the facility is an assisted living facility, the facility may use a recording made by a resident's electronic monitoring device only to investigate a suspicion of:

(A) Abuse, neglect, or exploitation as required under *Rules, Department of Health, Aging Division*, chapter 12, § 7(i) (2020);

(B) A violation of resident rights established under *Rules, Department of Health, Aging Division*, chapter 12, § 7(c) (2020); or

(C) The resident not receiving care and services in accordance with the resident's needs as contemplated under *Rules, Department of Health, Aging Division*, chapter 12 (2020).

(iii) If the facility is a nursing care facility, the facility may use a recording made by a resident's electronic monitoring device only to investigate a suspicion of:

(A) Abuse, neglect, or the misappropriation of resident property as required under 42 C.F.R. § 483.12;

(B) A violation of resident rights established under 42 C.F.R. § 483.10;
or

(C) The resident not receiving care and services in accordance with the resident's needs as contemplated under 42 C.F.R. Part 483, Subpart B.

(iv) If a facility requests to use a recording from a resident's electronic monitoring device, the facility shall notify the Long-Term Care Ombudsman of the request and the basis for the request within one business day. If the resident consents to the facility's use and provides the recording to the facility, the facility shall notify the Long-Term Care Ombudsman of its receipt of the recording within one business day.

Section 6. Facility Licensure. A facility's compliance with this chapter is a condition of the facility's licensure pursuant to W.S. 35-2-908.

Section 7. COVID-19 Public Health Emergency. During the public health emergency, a facility shall ensure proper infection control practices are followed with the installation, maintenance, and use of each electronic monitoring device, including following all relevant guidance from the Centers for Disease Control and Prevention, State Health Officer, and Department.