

GENERAL QUESTIONS

When did the electronic monitoring law take effect?

The law took effect on Jan. 1, 2020.

Where can I read the actual language of the electronic monitoring law?

Good question. It's important to read the complete statute and keep it handy as a reference. You will find the law at [Minnesota Statutes section 144.6502](#).

How does the law define *electronic monitoring*?

Under the law, *electronic monitoring* means the placement and use of an electronic monitoring device by a resident in the resident's room or private living unit in accordance with Minnesota Statutes section 144.6502.

An *electronic monitoring device* is a camera or other device that captures, records, or broadcasts audio, video, or both, that is placed in a resident's room or private living unit and is used to monitor the resident or activities in the room or private living unit.

What "facilities" does the law apply to?

The law applies to the following facilities:

- Nursing homes licensed under Minnesota Statutes chapter 144A;
- Boarding care homes licensed under Minnesota Statutes, sections 144.50 to 144.56;
- Through July 31, 2021: housing with services establishment registered under Minnesota Statutes chapter 144D that either has an assisted living designation described in Minnesota Statutes chapter 144G or has a disclosed special unit under Minnesota Statutes, section 325F.72; and
- An assisted living facility on or after Aug. 1, 2021.

CONSENT REQUIREMENTS

Does a consent form have to be signed every time a resident conducts electronic monitoring in his or her room or private living unit?

Yes. This is a fundamental part of the law, designed to protect resident privacy. If a resident who wishes to conduct electronic monitoring has a roommate, the roommate (or the roommate's representative) must also sign a consent form in every case.

Who is authorized to sign the consent form?

The general rule is that the resident must sign the consent form for himself or herself.

A resident representative may sign a consent form on behalf of the resident but only if (i) the resident's medical professional determines that the resident currently lacks the ability to understand and appreciate the nature and consequences of electronic monitoring and (ii) the resident has not affirmatively objected to electronic monitoring.

Before a resident representative consents on behalf of a resident, the resident must be asked if the resident wants electronic monitoring to be conducted. Other procedures must also be followed, which are specified in Minn. Stat. section 144.6502, subd. 3, and described in the standard consent form developed by the Minnesota Department of Health (see below).

A "resident representative" means one of the following in the order of priority listed:

- a court-appointed guardian;
- a health care agent as defined in section 145C.01, subdivision 2; or
- a person who is not an agent of a facility or of a home care provider designated in writing by the resident and maintained in the resident's records on file with the facility.

Is there a standard consent form for residents to use?

Yes. The Minnesota Department of Health (MDH) developed Consent forms with instructions for residents, resident representatives, roommates and roommate representatives to use (see [MDH Information Bulletin 19-06](#)). Each party has different requirements under the electronic monitoring law, and the four consent forms reflect these differences.

Do all residents need to sign a consent form, even if they don't want to conduct electronic monitoring?

No. Every resident has a choice about whether or not to use electronic monitoring. If a resident does not want to use electronic monitoring, she or he does not need to sign a consent form.

NOTIFICATION REQUIREMENTS

Does a facility have to notify residents about the option to conduct electronic monitoring?

Yes. Facilities must make the MDH-issued Consent forms available to residents and inform residents of their option to conduct electronic monitoring of their rooms or private living unit. This applies both to all new residents who move into a facility after the Jan. 1, 2020, effective date, and to existing residents who resided in the facility prior to Jan. 1.

Does the law specify how a facility should notify residents of the option to conduct electronic monitoring?

No. Facilities may decide how to notify residents that they have the option to conduct electronic monitoring and that consent forms are available from the facility. Choose the method that you believe will be most effective at providing residents with information about the new law. You might take more than one approach – such as a written communication and a discussion with your resident/tenant council and family council.

Does a resident have to sign an acknowledgment that s/he received the notice?

No. The law does not require residents to sign an acknowledgment that they received notification of the option to conduct electronic monitoring.

Does a resident or resident representative have to notify the facility that she or he is conducting electronic monitoring?

Yes. The general rule is that electronic monitoring may begin *only after* the resident or resident representative who intends to place an electronic monitoring device and any roommate or roommate's resident representative completes the consent form and submits the form to the facility. But there is a time-limited exception to this general rule.

A resident/representative may place a device without submitting a notification and consent form to the facility *for up to 14 days, if:* (i) the resident fears retaliation by the facility; (ii) there has not been a timely written response from the facility to a written communication from the resident/representative expressing a concern prompting the desire to place an electronic monitoring device; or (iii) the resident/representative has already submitted a MAARC report or police report regarding the resident's concerns prompting the desire to place a device.

If a resident uses the 14-day exception, she or he must sign the consent form and submit it to the Office of Ombudsman for Long-Term Care, and then submit it to the facility on the 15th day.

See Minn. Stat. section 144.6502, subd. 5, as well as the MDH Consent form templates for more information about this important issue.

OTHER FACILITY RESPONSIBILITIES

If a resident or resident representative wishes to conduct electronic monitoring, but elects to place a condition or restriction on use of the device (such as prohibiting audio recording or turning off the device at certain times), what responsibility does a facility have to support implementation of those conditions?

NOTE: We do not yet have a definitive answer to this question. The statute does not address whose responsibility it is to implement conditions or restrictions that a resident or resident representative elects to place on the use of the resident's electronic monitoring device.

Because the law is silent on this issue, we could read it to mean that a facility has discretion to decide whether and to what extent staff will take responsibility to implement resident-imposed conditions or restrictions. **As of the date of this document, however, MDH has not confirmed what discretion facilities have in this regard and it has signaled that regulatory obligations relating to service planning and care delivery (i.e. requirements outside of the electronic monitoring statute itself) are applicable to the issue.**

Please stay tuned. The Department of Health is convening a stakeholder meeting to discuss this question, and we will update this document as soon as we receive additional information.

A facility must post a sign at each facility entrance accessible to visitors that states: "Electronic monitoring devices, including security cameras and audio devices, may be present to record persons and activities." Does the sign have to meet particular specifications – such as the size of the overall sign or the size of the font?

The law does not include any specifications for the signage other than the specified wording quoted above.

Note: We will update this document periodically to add new questions and, if needed, to revise or supplement the information presented above. Please check our [Electronic Monitoring webpage](#) from time to time to be sure you have the latest version. If you have questions or suggestions for additional information to include in this resource, please contact Bobbie Guidry (651-603-3508 or bguidry@leadingagemn.org) or Jonathan Lips (651-603-3510 or jlips@leadingagemn.org).