

Section 1. Chapter 75-03-42 is created as follows:

CHAPTER 75-03-42
AUTHORIZED ELECTRONIC MONITORING

Section

<u>75-03-42-01</u>	<u>Definitions</u>
<u>75-03-42-02</u>	<u>Determination of Capacity to Consent</u>
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75-03-42-01. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-10.2-01. In addition, as used in this chapter, unless the context or subject matter otherwise requires, "roommate" means a resident occupying the same room as the resident requesting to install and use an authorized electronic monitoring device.

History: Effective April 1, 2020.

General Authority: NDCC 50-10.1-03, 50-10.2-02.1, 50-10.2-03

Law Implemented: NDCC 50-10.2-02.1, 50-10.2-03

75-03-42-02. Determination of capacity to consent.

1. A resident is presumed to have the capacity to consent to authorized electronic monitoring if the resident understands and appreciates the nature and consequences of the decision to consent to authorized electronic monitoring, including the benefits and risks of the decision. If a resident has capacity to consent, only the resident may consent to authorized electronic monitoring in the resident's room.
2. A resident's lack of capacity to consent to authorized electronic monitoring must be documented in writing by the resident's attending physician or by a court order pursuant to North Dakota Century Code chapter 30.1-28. If the resident is not under a guardianship, the attending physician shall also document in writing if the resident regains the capacity to consent to authorized electronic monitoring.
3. If a resident is determined to lack capacity to consent to authorized electronic monitoring, then the resident representative may consent to authorized electronic monitoring and complete the required forms.
4. The resident representative shall make the decision of whether to consent to authorized electronic monitoring in the resident's room in accordance with the resident's wishes, values, preferences, and directions.

5. If a 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 use of authorized electronic monitoring, the facility shall report this concern in the manner required to the department or the department's designee.

History: Effective April 1, 2020.

General Authority: NDCC 50-10.1-03, 50-10.2-02.1, 50-10.2-03

Law Implemented: NDCC 50-10.2-02.1, 50-10.2-03

75-03-42-03. Documentation.

1. The forms and information relating to authorized electronic monitoring shall be provided by the facility upon request in a language, form, and manner residents, resident representative, and visitors can access and understand.
2. At the request of the resident or the resident representative, the facility shall provide a copy of the facility's standards and regulations regarding the installation, use, maintenance, disabling, and removal of the authorized electronic monitoring device to the resident or resident representative.
3. Before the use of authorized electronic monitoring or the installation of an authorized electronic monitoring device, the resident or resident representative shall submit the following documentation to the facility:
 - a. A written notice to the facility of the intent to place and use an authorized electronic monitoring device, including an installation plan that complies with the facility's standards and regulations.
 - b. A statement that the facility is not civilly or criminally liable for a violation of any resident's right to privacy arising from authorized electronic monitoring.
 - c. A written consent form for placement and use of an authorized electronic monitoring device signed by the existing or proposed roommate or roommate's resident representative. The form must:
 - (1) Allow the roommate or roommate's resident representative to specify any conditions or restrictions the roommate or roommate's resident representative may elect to place on the device's time of operation, direction, and focus, including verifying the viewing area captured by the camera, prohibiting audio, and turning off the authorized electronic

monitoring device during certain times when total privacy is wanted.

(2) State that roommate or roommate's resident representative has the right to withdraw consent at any time in writing and have the device disabled in compliance with the facility's standards and regulations after receipt of the written withdrawal.

(3) State that the facility will not be held civilly or criminally liable for a violation of the roommate's right to privacy arising out of authorized electronic monitoring conducted by the resident or the resident representative.

d. An authorization signed by the existing or proposed roommate or roommate's resident representative for the disclosure of protected health information in compliance with title 45, Code of Federal Regulation, parts 160 and 164.

4. The facility shall maintain a copy of the applicable consent and authorization forms submitted pursuant to this section.

History: Effective April 1, 2020.

General Authority: NDCC 50-10.1-03, 50-10.2-02.1, 50-10.2-03

Law Implemented: NDCC 50-10.2-02.1, 50-10.2-03

75-03-42-04. Signs.

A facility shall clearly and conspicuously post a sign where authorized electronic monitoring is being conducted to alert and inform other residents, staff, and visitors to the facility. The sign must be provided in a language, form, and manner residents, staff, and visitors can access and understand.

History: Effective April 1, 2020.

General Authority: NDCC 50-10.1-03, 50-10.2-02.1, 50-10.2-03

Law Implemented: NDCC 50-10.2-02.1, 50-10.2-03

75-03-42-05. Use of internet and responsibilities.

1. The resident or resident representative shall select the type of monitoring device that will be used in the resident's room, accounting for any restrictions imposed by the roommate or roommate's resident representative. If the 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.

2. The resident or resident representative is responsible to contract with an internet provider if that is needed to operate the authorized electronic monitoring device and shall comply with facility's standards and regulations. The facility is not required to allow internet access through facility or corporate networks that maintain confidential patient, medical, financial, or personnel records.
3. No recording, or portion of a recording, from an authorized electronic monitoring device may be shared or posted on any social media.

History: Effective April 1, 2020.

General Authority: NDCC 50-10.1-03, 50-10.2-02.1, 50-10.2-03

Law Implemented: NDCC 50-10.2-02.1, 50-10.2-03