

## **POLICY AND PROCEDURE PERTAINING TO ELECTRONIC MONITORING**

### **PURPOSE**

The purpose of this policy is to provide residents, resident representatives and staff of the protections and consent procedures for residents and roommates where applicable, who choose to install electronic monitoring devices.

### **POLICY**

Effective January 1, 2020, Glesener's Assisted Living complies with the Minnesota Electronic Monitoring law pursuant to Minn. Stat. § 144.6502. A residents or Resident Representative may conduct Electronic Monitoring in the resident's room or private living unit consistent with the consent, notification and other requirements set forth in that section of law. It is the policy of Glesener's Assisted Living not to prohibit or retaliate against a resident for conducting electronic monitoring pursuant to the law.

A resident, and in certain cases the Resident's Representative, may conduct electronic monitoring of the resident's room or private living unit through the use of electronic monitoring devices placed in the resident's room or private living unit. Throughout this Policy and Procedure, the following terms are defined below, and pursuant to the above-referenced statute:

"Electronic Monitoring" means the placement and use of an electronic monitoring device in the resident's room or private living unit.

"Electronic Monitoring Device" means 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.

"Resident Representative" means one of the following in the order of priority listed, to the extent the person may reasonably be identified and located:

1. A court-appointed guardian;
2. A health care agent as defined in Minn. Stat. § 145C.01, subdivision 2; or
3. 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.

### **PROCEDURE**

#### **I. Consent and Notification**

##### **A. Consent:**

1. Prior to conducting Electronic Monitoring, a resident, or their Resident Representative must consent to Electronic Monitoring in writing on the notification and consent form developed by the Minnesota Department of Health. Glesener's Assisted Living will make the notification and consent form available to residents and inform residents of their option to conduct Electronic Monitoring of their rooms or private living unit.

2. A Resident Representative may consent on behalf of the resident if the resident has not affirmatively objected to Electronic Monitoring and the resident's medical professional determines that the resident currently lacks the ability to understand and appreciate the nature and consequences of Electronic Monitoring. A resident "affirmatively objects" when the resident orally, visually, or through the use of auxiliary aids or services declines Electronic Monitoring. The resident's response must be documented on the notification and consent form. The Resident Representative must ask the resident if the resident wants Electronic Monitoring to be conducted and must explain to the resident:
    - a. The type of Electronic Monitoring Device to be used;
    - b. The standard conditions that may be placed on the Electronic Monitoring Device's use;
    - c. With whom the recording may be shared pursuant to law;
    - d. The resident's ability to decline all recording.
- B. Conditions on Consent:
1. The resident or Resident Representative may consent to Electronic Monitoring with any conditions, including but not limited to, prohibiting audio or video recording, prohibiting the broadcasting of audio or video, turning off the Electronic Monitoring Device or blocking the visual recording of the Electronic Monitoring Device during an exam or procedure by a health care professional, while dressing or bathing, or during a visit with persons such as a spiritual advisor, ombudsman, attorney, financial planner, intimate partner, or any other visitor. A resident or Resident Representative may request that the Electronic Monitoring Device be turned off or the visual or audio recording be blocked at any time.
- C. Roommate Consent:
1. Prior to implementing Electronic Monitoring, the resident, or Resident Representative when acting on behalf of the resident, must obtain the written consent on the notification and consent form of any other resident residing in the shared room or shared private living unit. The resident must remove or disable an Electronic Monitoring Device prior to a new roommate moving into a shared room or shared private living unit unless the resident obtains the roommate's or roommate's Resident Representative's written consent and follows the consent and notification requirements described herein.
  2. If the resident's roommate refuses to consent to Electronic Monitoring, Glesener's Assisted Living shall make a reasonable attempt to accommodate the resident who wants to conduct Electronic Monitoring, including offering to move the resident to another shared room or shared living unit that is available at the time of the request. The resident may also choose to reside in a private room or private living unit, but the resident must pay any difference in cost for that private room or private living unit. If Glesener's Assisted Living is unable to accommodate a resident due to lack of space, the request will be reevaluated every two (2) weeks until the request is fulfilled.

**D. Notification:**

1. Prior to conducting Electronic Monitoring, the resident or the Resident Representative acting on behalf of the resident, and the roommate or roommate's Resident Representative must complete the notification and consent form and submit the form to Glesener's Assisted Living. The original form will be placed in the resident's file. Glesener's Assisted Living will provide a copy to the resident and the resident's roommate, if applicable.
2. The resident or Resident Representative may submit the notification and consent form to the Office of Ombudsman for Long-Term Care (Ombudsman) for up to 14 days prior to providing the form to Glesener's Assisted Living and prior to conducting Electronic Monitoring if any of the following exceptions apply:
  - a. The resident or Resident Representative reasonably fears retaliation against the resident by the facility, and timely submits a Minnesota Adult Abuse Reporting Center (MAARC) report or police report, or both, upon evidence from the Electronic Monitoring Device that suspected maltreatment has occurred;
  - b. There has not been a timely written response from the facility to a written communication from the resident or Resident Representative expressing a concern prompting the desire for placement of an Electronic Monitoring Device;
  - c. The resident or Resident Representative has already submitted a MAARC report or police report regarding the resident's concerns prompting the desire for placement.
3. The resident or Resident Representative must provide the notification and consent form to Glesener's Assisted Living no later than the 15<sup>th</sup> calendar day after providing such notice to the Ombudsman and conducting Electronic Monitoring pursuant to any of the three (3) exceptions listed above.

**E. Withdrawal of or Alteration of Consent:**

1. The resident, roommate, or the Resident Representative acting on behalf of the resident or roommate, may withdraw consent, or alter the conditions under which consent is given, at any time. If the resident, roommate, or the Resident Representative acting on behalf of the resident or roommate, chooses to withdraw consent to Electronic Monitoring, or to alter the conditions under which consent is given, the facility shall make available the original notification and consent form so that it may be updated. Upon receipt of the updated form, the facility shall place the updated form in the resident's file. A copy of the updated form shall be provided to the resident, the Resident Representative, or roommate as applicable.

**F. Facility-Authorized Removal of Electronic Monitoring Device:**

1. Glesener's Assisted Living shall remove the Electronic Monitoring Device in the following circumstances:
  - a. If a new roommate, or the new roommate's Resident Representative when consenting on behalf of the roommate, does not submit to the facility a completed notification and consent form and the resident conducting the Electronic Monitoring does not remove or disable the Electronic Monitoring Device;
  - b. If a roommate, or the roommate's Resident Representative when withdrawing consent on behalf of the roommate, submits an updated notification and

- consent form withdrawing consent and the resident conducting Electronic Monitoring does not remove or disable the Electronic Monitoring Device;
- c. If Glesener's Assisted Living determines that a consent and notification form has not been provided to the facility or the Ombudsman as outlined above, or notification to the facility has not occurred on the 15<sup>th</sup> calendar day after providing it to the Ombudsman. Glesener's Assisted Living must provide the Ombudsman with the type, make, and model number of the Electronic Monitoring Device discovered. Glesener's Assisted Living shall then also contact the resident or Resident Representative to communicate the requirements of this policy and the Minnesota statute.
  - d. If the resident withdraws consent or affirmatively objects to Electronic Monitoring after it is in place. Glesener's Assisted Living shall then communicate with resident or the Resident Representative the requirements of updating the notification and consent form.

## II. Restrictions and Conditions Regarding Use of Electronic Monitoring

- A. Glesener's Assisted Living will review a consent and notification form provided to it to confirm that the resident (and roommate, if applicable) or Resident Representative acting on behalf of the resident (or roommate, if applicable) has signed the form and otherwise fully completed it.
- B. If a consent and notification form specifies one or more conditions that must be met for Electronic Monitoring to occur, Glesener's Assisted Living shall discuss with resident or the Resident Representative acting on behalf of resident to determine whose responsibility it is to comply with any conditions required, for example, but not limited to, turning on or off the device at certain times.
- C. No person may access any video or audio recording without the written consent of the resident or Resident Representative.
- D. Except as required by law, a recording or copy of a recording through an Electronic Monitoring Device may only be disseminated for the purpose of addressing health, safety, or welfare concerns of one or more residents.
- E. The resident or Resident Representative choosing to conduct Electronic Monitoring must do so at the resident's own expense, including paying for purchase, installation, maintenance, and removal costs. This also may include costs for contracting with an internet service provider.
  - 1. Glesener's Assisted Living shall make a reasonable attempt to accommodate the resident's installation needs, including allowing access to the facility's public-use internet or Wi-Fi, if available for other public uses.
- F. All Electronic Monitoring Device installations and supporting services must be UL-listed.
- G. Resident must comply with any facility safety requirements with respect to use of cords, and electrical outlets.

### III. Notice to Residents and Visitors

- A. Glesener's Assisted Living shall inform residents of their option to conduct Electronic Monitoring of their rooms or private living unit by at admission.
- B. Facility shall make the consent and notification form developed by the Minnesota Department of Health available to residents.
- C. Glesener's Assisted living will provide a copy of this policy and procedures to all residents upon request.
- D. Glesener's Assisted Living shall 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.**"

### IV. Obstruction and Resident Protections

- A. A person must not knowingly hamper, obstruct, tamper with, or destroy an Electronic Monitoring Device without the permission of the resident or Resident Representative.
  - 1. Checking the Electronic Monitoring Device for the type, make and model number does not constitute tampering.
  - 2. It is not a violation to turn off the Electronic Monitoring Device or block the visual recording component at the direction of the resident or Resident Representative, or if consent has been withdrawn.
- B. Glesener's Assisted Living will not:
  - 1. Refuse to admit a potential resident or remove a resident because the facility disagrees with the decision of the potential resident, the resident, or a Resident Representative regarding Electronic Monitoring;
  - 2. Retaliate or discriminate against any resident for consenting or refusing to consent to Electronic Monitoring;
  - 3. Prevent the placement or use of an Electronic Monitoring Device by a resident who has complied with the consent and notification requirements above.

### V. Employee Discipline

- A. An employee of the facility or an employee of a contractor providing services at the facility, who is the subject of proposed disciplinary action based upon evidence obtained by Electronic Monitoring must be given access to that evidence for purposes of defending against a proposed action.
- B. Any employee who obtains a recording or copy of the recording must treat the recording or copy confidentially and must not further disseminate it to any other person except as required by law. The recording, or copy of the recording, must be returned to the facility or resident who provided it when it is no longer needed for purposes of defending against a proposed action.

### REFERENCED POLICIES

NONE

### REFERENCED FORMS

Minnesota Department of Health Notification and Consent