

Stakeholder Submitted Questions - 2026 ALF Legislative Updates Webinar

Exempt Action 11205 - 2026 Legislative changes for ALF, effective 11/4/26.

SB 409 (Chapter 496, 2026 Session) - Electronic Monitoring in Assisted Living Facilities (ALFs)

Question: Please clarify that the bill outlines requirements for electronic monitoring conducted by the ALF. Is this inclusive of security camera monitoring that is in common areas in assisted living and, also, outside of the building?

Electronic Monitoring is defined in § 63.2-1808.2 A of the Code of Virginia and can be found in 22VAC40-73-10 as follows:

"Electronic monitoring" means the use of a surveillance device with a fixed position video camera or audio recording device or a combination thereof which is installed in a resident's room and broadcasts or records activities or sounds occurring within the confines of the room. "Electronic monitoring" does not include use of a device that enables audio communication into the resident's room from another source.

This bill outlines requirements for electronic monitoring in a resident's room by the ALF, the resident, or the resident's legal representative. This bill does not apply to security cameras monitoring in the common areas or outside of the building.

Question: Regarding the part of the bill that mandates that ALFs allow residents and/or their representatives to place recording devices in their apartments, does the electronic monitoring device include those with the ability for the person watching the video in real time to communicate through the device to the resident?

As outlined in § 63.2-1808.2 A of the Code of Virginia and 22VAC40-73-10, the electronic monitoring addressed in this bill does not include the use of any device that enables audio communication into the resident's room from another source.

Question: Will there be guidelines given addressing the creation of ALF policies, defining what the "specified criteria" for use is, the manner in which the current residents are to be informed, or not informed, of this new mandate, and signage outside of the apartment indicating a recording device is being used?

§ 63.2-1808.2 R and 22VAC40-73-755 subsection D require ALF to adopt policies and procedures for electronic monitoring consistent with § 63.2-1808.2. § 63.2-1808.2 P and 22VAC40-73-755 G require ALF to conspicuously post and maintain notice at the entrance to the resident's room stating that an electronic monitoring device is in operation. ALFs should address the placement of the signage in their policies and procedures. Effective November 4, 2026, the ALF resident agreement should be amended to include the resident or resident's legal representative's acknowledgement of the facility's policy and procedures related to electronic monitoring.

Question: Does the law or revised regulation indicate who owns the recording from the device in a resident's room? Since the resident and/or their representative have immediate access to the recording and could use it to report a service failure, will there be guidance distributed to ALFs on the ALF's use of the recording to defend against a claim of a service failure?

§ 63.2-1808.2 F address that ALF may assume custodial ownership of any recordings from the resident or resident's legal representative unless the resident or resident's legal guardian has indicated otherwise, verbally or in writing, as outlined in § 63.2-1808.2 O of the Code of Virginia. § 63.2-1808.2 J of the Code of Virginia addresses that the facility is not required to seek access to the recording that it does not have custodial ownership of and is not expected to have knowledge of a recording's content unless the ALF suspects abuse or neglect or a recording is brought to the attention of the ALF. The requirements related to ownership of electronic monitoring recordings are in 22VAC40-73-755 N.

Concerns brought to the ALF for electronic monitoring should be addressed in the same manner as other concerns reported to the ALF. All reporting mandates remain in place including requirements for incident reporting, mandated reporting, compliance with 22VAC40-73.

Question: Will there be guidelines distributed that address the escalation pathway for concerns resulting from watching or hearing the recordings that are raised by residents and/or their representatives as well as parameters requiring such concerns to be reported to the ALF prior to escalation to third parties or external agencies? Also, will there be guidance on what the circumstances are under which immediate escalation outside the

community would be considered appropriate? Will there be guidance distributed regarding placing limitations on the sharing or dissemination of recordings obtained from resident apartments, including restrictions on posting audio or video footage to social media platforms or other public forums?

§ 63.2-1808.2 of the Code of Virginia and 22VAC40-73-755 M require that staff immediately report safety or care quality related incidents observed on a recording to the ALF administrator. § 63.2-1808.2 K of the Code of Virginia and 22VAC40-73-755 N 5 address the obligations of an ALF when it chooses to assume ownership of a recording, including compliance with local, state and federal privacy laws; the removal and replacement of recordings; and the use of firewall protections to prevent images that would violate obscenity laws from being inadvertently shown on the internet. § 63.2-1808 of the Code of Virginia and 22VAC40-73-550 outline resident rights and privacy requirements for ALF.

Question: Does the bill address use in memory care communities? Will there be guidance on how to maintain the privacy of residents who wander into a room with a recording device in use?

22VAC40-73 applies to all ALFs, including those that operate a safe, secure environment (sometimes called ‘memory care’). The ALF is required to develop policies and procedures regarding electronic monitoring and the facility’s practices to maintain the privacy of residents can be addressed within those policies and procedures. 22VAC40-73-755 G requires ALF to conspicuously post and maintain notice at the entrance to the resident’s room stating that an electronic monitoring device is in operation.

Question: If every resident at an ALF indicates that they do not wish to have electronic monitoring in their rooms, does the facility have to provide the service?

Electronic monitoring is only permitted with the informed consent of the resident or resident’s legal representative which must be obtained prior to the installation or use of any electronic monitoring device. All ALF are required to develop policies and procedures regarding electronic monitoring in resident rooms per [§ 63.2-1808.2](#) of the Code of Virginia by November 4, 2026, to demonstrate compliance with the Code and 22VAC40-73-755. All ALF are required to update the resident agreement and review with the resident or the resident’s legal representative the facility’s policies and procedures for electronic monitoring of resident rooms as required by 22VAC40-73-390.

Question: What if a resident has a shared bathroom, does this fall under the shared room definition?

In the definition, it mentions "in a resident's room" - to clarify, if a legal representative were to request monitoring that includes visualization of the bathroom (either private or shared), and the bathroom is connected to their room, is this permitted?

The definition for electronic monitoring from § 63.2-1808.2 and 22VAC40-73-10 states that it is "...installed in a resident's room and broadcasts or records activities or sounds occurring within the confines of the room." A room that includes a shared bathroom is considered part of the resident's room; therefore, both residents must provide consent before electronic monitoring can occur.

Question: If the forms and documents will not be posted available until November 4th, when will enforcement occur? As ALFs will need time to get updated resident agreements, etc.

There are no required forms resulting from these changes. Enforcement will begin on the effective date of November 4, 2026. The text of the regulation is available through the link shared in the memos and on [Virginia Regulatory Town Hall](#). The VDSS model form for the resident agreement will be updated; however, ALFs may update their own resident agreement forms as required by 22VAC40-73-390 C, as this is not a mandated form.

Question: If the ALF takes ownership of the recordings is the facility obligated to share the recordings with family members if requested?

Per 22VAC40-73-755 N 1, "Recordings from electronic monitoring devices shall not be considered part of the resident's record." There is no regulatory requirement to share the recordings with family members. The ALF may choose to address this in their policies and procedures to prevent confusion with residents and their families.

Question: If a two-way communication electronic monitoring device is requested to be used by the family, can the ALF deny that as that is excluded from the EM definition?

A two-way communication device does not meet the definition of electronic monitoring per 22VAC40-73-10 or § 63.2-1808.2. ALF should outline in their policies and procedures that

electronic monitoring devices should meet the definition outlined in 22VAC40-73-10 or § 63.2-1808.2.

Question: For the electronic monitoring and the requirement for the ALF to provide secure password protected WiFi, can this be at the expense of the resident if they are the ones requesting the EM device?

The requirements in 22VAC40-73-755 A and § 63.2-1808.2 outline the conditions under which electronic monitoring is permitted. The regulation states: "Electronic monitoring shall be permitted only: When the assisted living facility has secured and password-protected wireless internet access or other means available to operate the electronic monitoring device without modification to the assisted living facility or a change in level or capacity of internet access." If the ALF is unable to meet this requirement, electronic monitoring is not allowed. The ALF must have policies and procedures regarding electronic monitoring.

Question: In the definition of "electronic monitoring" it says "does not include the use of a device that enables audio communication into the resident's room from another source" - does the phrase "does not include" mean "cannot"? So, if a family desires to place a recording device in a resident's room, is it prohibited for them to use a device that enables audio communication into the room?

§ 63.2-1808.2 B of the Code of Virginia requires ALFs allow electronic monitoring of a resident room if the electronic monitoring is in accordance with the section. A device with two-way communication does not meet the definition of electronic monitoring.

Question: In the definition, it mentions a "fixed position" video camera - does this prohibit the use of devices which allow remote panning or adjustment of the camera position?

A fixed position video camera means a camera that is installed in a stationary location but does not change its mounting point. A camera that can tilt or pan but remains in the same place is still considered a fixed position camera.

Question: Regarding the policy requirement for prohibiting staff from willful tampering with the device, it mentions that adjusting or disabling during patient care is not considered

willful tampering if done to protect the dignity of a resident or at the discretion of the resident or legal representative. Is it *expected* that staff would disable during certain care activities, like dressing/undressing, or changing someone in bed who is unable to use the toilet? Are there guidelines on what qualifies on "maintaining dignity" - this could be subjective as to what various staff members might deem as "dignity" to warrant disabling or adjusting the device.

As the regulation requires the ALF to create a policy regarding staff "willful tampering," circumstances to protect the dignity of residents should be outlined in the policy. The resident and/or resident's legal representative are permitted to place conditions on the electronic monitoring device, which may include turning off the device during the scenarios listed. The facility is required to comply with those conditions as required by 22VAC40-73-755 L.

Question: To clarify, in a shared room, with both residents or their legal representatives consenting, no audio recording is permitted, only video monitoring? Is this correct?

This is correct, only video electronic monitoring is allowed in rooms with roommates as outlined in 22VAC40-73-755 A 2 b and § 63.2-1808.2 B 2 b.

Question: Is the facility liable to check the specifications for any monitoring device that a family member is providing and installing?

The facility is required to allow a family member or resident to install an electronic monitoring device in accordance with 22VAC40-73-755 I and § 63.2-1808.2 of the Code of Virginia. The facility should address the requirements for electronic monitoring devices installed by the resident or resident's family in their policies and procedures to ensure compliance with § 63.2-1808.2 and 22VAC40-73-755.

Question: In the policy, and in a roommate's consent form, is it acceptable for a facility to include a release of liability regarding the recordings, since facilities have no control over what happens with any of the recorded content?

22VAC40-73-755 N 3 and § 63.2-1808.2 H outline that the facility shall not be held liable for any breach of data or privacy related to the presence of the electronic monitoring device. §

63.2-1808.2 K and 22VAC40-73-755 N 5 outline the responsibilities of the resident or resident's legal representative unless the facility has taken ownership of the electronic monitoring recordings. This should be included in the facility's policies and procedures and reviewed by the residents and their legal representatives.

Question: As a facility, we do not provide public WiFi service - even if we did allow access to our WiFi, it does not reach throughout the entire building. Based on item B-4 of SB409, which mentions the *facility* providing secure and password-protected wireless internet access as a requirement for electronic monitoring, does this mean that electronic monitoring is not permitted? Would a family member be able to provide their own wireless internet for connecting their recording device, or is this prohibited because we cannot verify the security of their personal hotspot connection?

Electronic monitoring is only permitted when the facility has secured and password protected wireless internet access or other means available to operate the electronic monitoring device without modification to the ALF or a change in level of capacity of internet access. For 22VAC40-73-755 A 4 and § 63.2-1808.2 B 2 4 electronic monitoring can occur:

- If a facility has password protected and secured wireless internet access which can be used without modification to the ALF or change in level or capacity of the internet access; or
- A resident or the resident's legal representative installs a camera that operates with other means such as cellular data or local-storage, which does not require modification to the ALF.

[HB1522 \(Chapter 323, 2026 Session\)](#) - Automated External Defibrillator (AED)

Requirement

Question: Can an ALF whose residents all have an active DNR order on file be exempt from the requirement to have an AED at the ALF?

The requirement to have an AED is required by [§ 63.2-1701 B](#) of the Code of Virginia. All ALF are required to have and maintain an AED, and have staff trained to use the device, even if all residents have a DNR order.