

## Draft Regulations

### Draft Regulation

An Act respecting health services and social services (chapter S-4.2)

#### **Terms governing the use of monitoring mechanisms by a user sheltered in a facility maintained by an institution operating a residential and long-term care centre**

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting the terms governing the use of monitoring mechanisms by a user sheltered in a facility maintained by an institution operating a residential and long-term care centre, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation determines the terms governing the use, by a user sheltered in a facility maintained by an institution operating a residential and long-term care centre, or by the user's representative within the meaning of section 12 of the Act respecting health services and social services (chapter S-4.2), of monitoring mechanisms, such as cameras or any other technological means. It provides obligations for the user or the user's representative with respect to the installation of monitoring mechanisms, the terms to be complied with when installing and using such mechanisms, rules applicable to the images and recordings made with those mechanisms, as well as the obligations of institutions with regard to the use of monitoring mechanisms.

The draft Regulation has no impact on the public or on enterprises, including small and medium-sized businesses.

Further information may be obtained by contacting Fabienne Thibault, Direction du soutien aux personnes âgées en situation de vulnérabilité, Secrétariat aux aînés, Ministère de la Famille, 200, chemin Sainte-Foy, 7<sup>e</sup> étage, Québec (Québec) G1R 1T3; telephone: 418 528-7100, extension 2304; fax: 418 643-0882; email: fabienne.thibault@mfa.gouv.qc.ca

Any person wishing to comment on the matter is requested to submit written comments within the 45-day period to the Minister responsible for Seniors and Anti-Bullying, 425, rue Jacques-Parizeau, 4<sup>e</sup> étage, Québec (Québec) G1R 4Z1.

FRANCINE CHARBONNEAU,  
*Minister responsible for Seniors  
and Anti-Bullying*

GAÉTAN BARRETTE,  
*Minister of Health and  
Social Services*

#### **Regulation respecting the terms governing the use of monitoring mechanisms by a user sheltered in a facility maintained by an institution operating a residential and long-term care centre**

An Act respecting health services and social services (chapter S-4.2, s. 505, par. 30)

#### **CHAPTER I SCOPE AND DEFINITION**

**1.** This Regulation applies to the installation and use of monitoring mechanisms, concealed or not, by a user sheltered in a facility maintained by an institution operating a residential and long-term care centre within the meaning of section 83 of the Act respecting health services and social services (chapter S-4.2) or by the user's representative described in section 12 of the Act.

**2.** For the purposes of this Regulation, “monitoring mechanism” means any mechanism, device or technological means allowing to capture images or sounds and used for monitoring purposes, in particular a monitoring camera.

#### **CHAPTER II RULES GOVERNING THE INSTALLATION AND USE OF MONITORING MECHANISMS**

**3.** A monitoring mechanism must be installed by the user or, as the case may be, the user's representative.

Where the mechanism is installed by the representative, he or she must obtain the user's consent, if the circumstances allow it.

**4.** The installation of a monitoring mechanism is authorized only to ensure the safety of the user or that of the user's property, or to ensure the quality of the care and services provided to the user, in particular to detect a case of user maltreatment.

**5.** A monitoring mechanism may not be used in a continuous manner by a user's representative, unless the purposes sought by the installation of the mechanism justify it.

**6.** Visual or sound recording by means of a monitoring mechanism may be done only if such recording is necessary for the purposes set out in section 4.

**7.** When it is installed in a room where several users are sheltered, the monitoring mechanism may not be installed and used to capture images or sounds of the other users sheltered in that room.

**8.** A monitoring mechanism may not be installed and used to capture images and sounds from outside the user's room where a mechanism is installed.

In addition, a monitoring mechanism may not enable to capture images from a bathroom, unless the purposes sought by the installation of the mechanism justify it.

**9.** The installation or use of a monitoring mechanism must not require that alterations be made to the institution's property, except with the institution's consent.

**10.** The installation or use of monitoring mechanisms must not entail costs for the institution, except with the institution's consent.

**11.** The monitoring mechanism must be removed if its use is no longer necessary for the purposes sought by the installation of the mechanism.

The need to use a monitoring mechanism must be reassessed at least every 6 months by the user or, as the case may be, the user's representative. The user or, as the case may be, the user's representative must then assess whether the reasons for installing the mechanism are still valid, whether the objectives sought by installing it have been attained and whether the terms governing the use of the mechanism have been complied with.

### CHAPTER III RULES GOVERNING THE USE AND CONSERVATION OF IMAGES AND RECORDINGS

**12.** The user or, as the case may be, the user's representative is responsible for ensuring the confidentiality and security of the images captured using a monitoring mechanism and of the recordings made using such mechanism.

**13.** The use of images captured using a monitoring mechanism and of recordings made using such mechanism is restricted to what is necessary for the purposes set out in section 4.

**14.** The communication of images and recordings must be restricted and done in such a manner as to protect the identity of the persons whose picture or voice was captured.

The restrictions referred to in the first paragraph do not apply where the recordings are communicated to

(1) the institution that shelters the user or to the local service quality and complaints commissioner of the institution;

(2) a body that, under the law, is in charge of preventing, detecting or repressing crime or offences against the law, if the recordings are necessary to prosecute an offence against an Act applicable in Québec; or

(3) any other person to whom the recording must be communicated by reason of an emergency posing a threat to the life, health or safety of a person.

**15.** Recordings may be conserved only if such conservation is necessary for fulfilling the purposes sought by the installation of the mechanism.

The need to conserve recordings must be reassessed at least every 6 months by the user or, as the case may be, the user's representative. The user or, as the case may be, the user's representative must then assess whether the reasons for conserving the recordings are still valid and whether the objectives sought by conserving them have been attained.

**16.** A recording must be destroyed by the user or, as the case may be, the user's representative, or at their request.

**17.** A recording made with a monitoring mechanism must be destroyed using safe and permanent means that ensure the confidential nature of the information contained in the recording.

**18.** The destruction method used must take into account the medium used for the recording and the confidential nature of the recordings.

When the recording is on a reusable electronic medium such as a memory card or a computer's hard disk, destruction may be accomplished, in particular, by formatting, rewriting or electronic shredding.

Where the recording is on a non-reusable electronic medium such as a compact disc, destruction may be accomplished, in particular, by physically destroying the medium.

**19.** Where the recording is destroyed by a third person, he or she must be informed of the confidential nature of the recordings and of the fact that the recording was made in accordance with this Regulation.

**20.** This Chapter applies to any copy, transcription or reproduction, total or partial, of a recording made with a monitoring mechanism.

#### CHAPTER IV OBLIGATIONS OF INSTITUTIONS

**21.** When a user is admitted, an institution operating a residential and long-term care centre must inform the user or, as the case may be, the user's representative of the rules applicable to the installation and use of monitoring mechanisms and provide the user or representative with the support needed to comply with the rules.

**22.** An institution operating a residential and long-term care centre must, when informed that monitoring mechanisms are installed in a facility maintained by it, properly indicate the presence of the monitoring mechanisms in the facility.

The indications must be installed in such a way as to be visible by any person entering the facility.

The indications must not enable to identify the location where a monitoring mechanism is installed.

**23.** An institution operating a residential and long-term care centre that notices a contravention of this Regulation must provide the support needed to the user or, as the case may be, the user's representative so that they can comply with it.

#### CHAPTER V TRANSITIONAL AND FINAL

**24.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

103152