

Department of Public Safety and Correctional Services

12.11.10.00 Private Home Detention Monitoring Agencies

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12.11.10.03 Private Home Detention Monitoring Agencies

LICENSE REQUIRED

- A.** A private home detention monitoring agency may not operate in the State without a license.
- B.** The license is not transferable to any other person.
- C.** For each branch office of the licensee, the Secretary shall issue a branch office license certificate.
- D.** The license of renewal license certificate shall be prominently displayed in each office and branch of the licensee.

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INITIAL LICENSING

A. Initial Application for License.

1. An applicant shall submit an application for a license on a form provided by the Secretary.
2. If the applicant is an individual, the:
 - (a) Applicant shall be 18 years old or older;
 - (b) Application shall be signed under oath by the applicant.
3. If the applicant is a corporation, partnership, business trust, limited liability company, or other entity, the application shall be signed under oath by each partner, director, and officer.
4. The applicant shall submit with the application;
 - (a) A non-refundable application fee in the amount of \$500;
 - (b) Proof of general liability insurance covering all activities of the applicant, in an amount not less than \$100,000;
 - (c) A bond that is conditioned on the faithful and honest conduct of the applicant and runs to the State of Maryland for the benefit of any person injured by any wrongful act of the applicant that is willful or malicious, in an amount not less than \$2,500;
 - (d) Proof of application for State and national criminal history records checks, on a form provided by the Secretary;
 - (e) Three statements attesting to good character and reputation, for each of the following:
 - (i) The applicant, if the applicant is an individual,
 - (ii) Each partner, director, and officer of the applicant, if the applicant is a corporation, partnership, business trust, limited liability company, or other entity, and
 - (iii) Each private home detention monitor employed or listed on the application to be employed by the applicant;
 - (f) A statement, on a form provided by the Secretary, that training in the monitoring agency's policies, procedures, and electronic monitoring equipment has been provided to each of the following:
 - (i) The applicant, if the applicant is an individual,
 - (ii) A partner, director, or officer of the applicant, if the applicant is a corporation, partnership, business trust, limited liability company, or other entity, and
 - (iii) Each private home detention monitor employed or listed on the application to be employed by the application to be employed by the application; and

(g) A statement on a form provided by the Secretary, that the applicant has the demonstrable ability to provide either satellite monitoring or continuously signaling electronic monitoring.

B. Within 45 days of receipt of an application, the Secretary shall;

(1) Return an incomplete application, with instructions for completion;

(2) Grant the application, and issue a license to the applicant; or

(3) Initiate a complaint and issue a notice for denial of a license, under Regulation .10B of this chapter.

C. An initial license is valid for 2 years from the date issued, unless earlier suspended or revoked.

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RENEWAL LICENSING

A. At least 2 months before the expiration of a license, the Secretary shall send by U.S. mail to the licensee, at the licensee's last known address, a renewal application, and a notice that states:

(1) The date the current license expires;

(2) The amount of the renewal application fee;

(3) That the renewal application must be received by the Secretary at least 21 days before expiration of the current license to avoid a lapse in licensure and the imposition of late fees; and

(4) That a false statement on the renewal application is cause for license denial or revocation.

B. Renewal Application.

(1) A licensee shall submit a renewal application on a form provided by the Secretary.

(2) If the licensee is an individual, the renewal application shall be signed under oath by that individual.

(3) If the licensee is a corporation, partnership, business trust, limited liability company, or other entity, the renewal application shall be signed under oath by each partner, director, and officer.

(4) The licensee shall submit with the renewal application;

(a) A non-refundable renewal application fee of \$100;

(b) Proof of general liability insurance covering all activities of the licensee, in an amount not less than \$100,000;

(c) A bond that is conditioned on the faithful and honest conduct of the licensee and runs to the State of Maryland for the benefit of a person injured by any wrongful act of the licensee that is willful or malicious, in an amount not less than \$2,500;

(d) Certification on a form provided by the Secretary, together with supporting documentation, that the monitoring agency has paid all withholding taxes, social security taxes, and other governmental obligations as an employer for the past 2 years;

(e) A certificate of compliance issued by the Workers' Compensation commission or the policy or binder number of workers' compensation insurance as provided by Labor and Employment Article, §9-105, Annotated Code of Maryland;

(f) A receipt from the State Comptroller's Office, or other documentation authorized by the Secretary, showing that the monitoring agency has paid State income tax liabilities for the preceding 2 years;

(g) A late fee of \$10 per day if the application is not received by the Secretary at least 21 days before expiration of the current license;

(h) A statement, on a form provided by the Secretary, that training in the monitoring agency's policies, procedures, and equipment has been provided to each of the following:

- (i) The licensee, if the licensee is an individual,
- (ii) A partner, director, or officer of the applicant, if the applicant is a corporation, partnership, business trust, limited liability company, or other entity, and
- (iii) Each private home detention monitor employed or listed on the renewal application to be employed by the licensee; and

(i) A statement on a form provided by the Secretary, that the applicant has the demonstrable ability to provide either satellite monitoring or continuously signaling electronic monitoring.

C. Within 21 days of receipt of a renewal application, the Secretary shall:

- (1) Return an incomplete renewal application, with instructions for completion;
- (2) Grant the renewal application, and issue a renewal license; or
- (3) Initiate a complaint and issue a notice for denial of a renewal license under Regulation .10B of this chapter.

D. If a complete renewal application is received by the Secretary at least 14 days before the expiration of a license, and if a renewal license is not issued before the expiration of the current license, the current license shall continue to be in effect until either:

- (1) The renewal application is granted and a renewal license is issued; or
- (2) The renewal application is denied, and the time for seeking judicial review of the denial has expired.

E. A renewal license is valid for 2 years from the date of expiration of the current license, unless suspended or revoked.

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CONTINUING OBLIGATIONS OF LICENSEE

- A.** A licensee shall maintain an office in the State.
- B.** A licensee shall keep in an office in the State all files or other records that:
- (1) Are made in the State; and
 - (2) Relate to individuals monitored by the licensee.
- C.** A licensee shall submit within 21 days, written notice to the Secretary of the addition or deletion of a branch office, or a change in the address of an office of the licensee.
- (1) The notice shall be accompanied by a photocopy of the relevant license.
 - (2) Any license superseded by an amended license shall be returned to the Secretary.
- D.** A licensee shall submit within 5 working days written notice to the Secretary of the following:
- (1) The departure of a partner, director, officer, or monitor;
 - (2) The arrest or conviction for a misdemeanor or felony of a partner, director, officer, or monitor;
 - (3) The cancellation or forfeiture of the insurance or bond required by this chapter;
 - (4) A change in the telephone or pager number by which the licensee may be reached during business and non-business hours;
 - (5) The loss or destruction of a license; or
 - (6) Knowledge that a previous statement made to the Secretary by the licensee in an application, notice, communication, or document previously provided to the Secretary by the licensee is false or misleading.

E. Before a licensee adds a partner, director, officer, or employs a monitor, the licensee shall submit to the Secretary, on a form provided by the Secretary, information and documentation pertaining to that individual that is required as part of the initial application for license in Regulation .04 of this chapter.

F. A licensee shall maintain a daily count of the number of monitored individuals enrolled with the monitoring agency.

G. A licensee shall submit to the Secretary, by the 15th day of each month, a report, on a form provided by the Secretary that includes, but is not limited to, the following information for the preceding calendar month:

(1) The number of monitored individuals being monitored on the first day of the month, categorized by the type of electronic monitoring used;

(2) The number of monitored individuals for whom monitoring was initiated during the month, categorized by the type of electronic monitoring used;

(3) The number of monitored individuals for whom monitoring was ended during the month, categorized by the type of electronic monitoring used;

(4) The number of monitored individuals being monitored on the last day of the month, categorized by the type of electronic monitoring used and county served;

(5) The number of monitored individuals violating the court order or program rules, and the number of monitored individuals removed from monitoring for a violation, categorized by the type of monitoring used; and

(6) The number of instances for which a monitored individual was unaccounted for, absent from an approved location, or whose location was unknown within the following time frames:

(a) Less than 2 hours,

(b) More than 2 hours but less than 24 hours, and

(c) 24 hours or more, with a copy of the written notice provided to the appropriate authority.

(7) The number of instances where a monitored individual has been reported as having escaped.

H. A licensee shall submit to the Secretary documentation as may be requested during an audit or investigation, to substantiate compliance with this chapter.

I. A licensee shall maintain on a continuous basis:

(1) Appropriate permits and licenses required to do business in areas which are zoned to permit the operation of the business;

(2) Corporate and tax records required by the laws of Maryland;

(3) General liability insurance in an amount not less than \$100,000;

(4) A surety bond of not less than \$2,500; and

(5) Training consisting of education in the monitoring agency's policies and procedures, and instruction in the use of electronic monitoring equipment.

J. The monitoring agency licensee shall receive training in the use of electronic monitoring equipment from the manufacturer or its authorized representative.

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12.11.10.07 Private Home Detention Monitoring Agencies

CRIMINAL HISTORY RECORDS CHECK

A. Before the submission of an initial application for a license and the addition of a partner, director, officer, or monitor, the following individuals shall apply to the Central Repository for State and national criminal history records checks:

- (1) The applicant, if the applicant is an individual;
- (2) Each partner, director, and officer of the applicant, if the applicant is a corporation, partnership, business trust, limited liability company, or other entity;
- (3) Each private home detention monitor employed or listed on the application to be employed by the applicant; and
- (4) Each added partner, director, officer, or monitor.

B. An individual applying for State and national criminal history records checks shall submit to the Central Repository:

- (1) Completed forms required by the Director of the Central Repository;
- (2) Two sets of legible fingerprints taken at a State or local law enforcement office in the State or other location approved by the Secretary;
- (3) The mandatory processing fee required by the Federal Bureau of Investigation for a national criminal history records check; and
- (4) The fee required by the Criminal Justice Information System as authorized by Article 27, §746(b)(8), Annotated Code of Maryland, for a State criminal history records check.

C. The Central Repository shall:

- (1) Notify the Secretary of the receipt of an application;
 - (2) Process the State and national criminal history records checks;
 - (3) Provide to the Secretary a conviction only criminal history records check;
- and
- (4) Send to the subject individual by U.S. mail a printed statement listing a finding of a felony conviction.

D. Finding of a Felony Conviction.

(1) A finding of a felony conviction may be contested by the subject individual by submitting to the Director of the Central Repository, within 30 days of the date of the printed statement, a written request for a hearing.

(2) If a written request for a hearing is received by the Director of the Central Repository within 30 days of the date of the printed statement, the matter shall proceed in accordance with COMAR 12.15.03.10. Notwithstanding any provision in COMAR 12.15.03.10, a failure by the subject individual to appear at a scheduled hearing shall result in dismissal of the proceeding.

(3) If a written request for a hearing is not received by the Director of the Central Repository within 30 working days of the date of the printed statement, or if the Director of the Central Repository does not make a final determination that the subject individual has no felony conviction, the individual is ineligible to be a monitor. If the subject individual is a partner, director, officer, applicant, or licensee, the applicant or licensee is ineligible for a license and this ineligibility may be the basis for a complaint initiating a proceeding for:

- (a) Denial of a license application; or
- (b) Suspension or revocation of a license.

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12.11.10.08 Private Home Detention Monitoring Agencies

STANDARDS FOR ELECTRONIC MONITORING

A. A monitoring agency using continuously signaling equipment to monitor an individual shall:

(1) Maintain equipment in good working order that is capable of monitoring 24 hours a day using a transmitter affixed to monitored individual, a receiver and dialer, telephone, and host computer;

(2) Inform the monitored individual about the use of the equipment;

(3) Test the equipment before use;

(4) Ensure the proper installation of the equipment on the monitored individual and, if applicable, at the individual's approved location as ordered by the court; and

(5) Electronically monitor the monitored individual at an approved location, except for a time specified by the court order or a time of an approved activity, or both.

B. A monitoring agency using satellite monitoring equipment to monitor an individual shall:

(1) Maintain equipment capable of tracking a monitored individual 24 hours a day using global positioning satellite, cellular, or wireless technology;

(2) Inform the monitored individual about the use of the equipment;

(3) Test the equipment before use; and

(4) Ensure the proper installation of the equipment on the monitored individual and, if applicable, at the monitored individual's approved location.

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12.11.10.09 Private Home Detention Monitoring Agencies

STANDARDS OF OPERATION

- A.** Within 6 months of initial licensing, the licensee shall have and enforce the following written policies and procedures:
- (1) Within 6 months of initial procedure governing the orientation of a monitored individual before the activation of monitoring equipment, which shall include instructions regarding the following:
- (a) Equipment use and care,
 - (b) Expectations for others at the approved location,
 - (c) Rules and regulations of the monitoring agency,
 - (d) Internal complaint process,
 - (e) Access to case records by the monitored individual, attorneys, and the court,
 - (f) Emergency situation,
 - (g) A change in the monitored individual's schedule,
 - (h) The process for the termination of monitoring, and
 - (i) Notification that a violation of the home detention order or agreement may be considered an escape and subject to prosecution and imprisonment. The monitored individual shall sign an acknowledgement of such notification.
- (2) A written policy and procedure governing the enrollment of a newly received individual in the monitoring agency, which includes provisions for the following:
- (a) Verification of a legal document noting the conditions and stipulations ordered by the court,
 - (b) A system of identification of the monitored individual,
 - (c) Collection of personal data pertaining to the monitored individual,
 - (d) Approval by the leaseholder or owner of the approved location,
 - (e) Approval by the owner of the required telephone service,
 - (f) Verification of the monitored individual's approved location,
 - (g) Notification to the court that the monitored individual is enrolled in the monitoring agency's program, specifying the type of electronic monitoring to be used, and
 - (h) Installation of appropriate electronic monitoring equipment on the monitored individual or at the monitored individual's approved location, or both, if required;
- (3) A written policy and procedure for establishing the monitored individual's schedule as ordered or permitted by the court, including, but not limited to:

- (a) Establishment of the initial schedule signed and dated by the monitored individual and the monitor who prepared it,
- (b) Modification of the schedule to allow for court-approved activities,
- (c) A temporary court-approved change, initialed by the monitor making the change, and
- (d) Review of the schedule with the monitored individual at least monthly, signed and dated by the monitored individual and the monitor;

(4) A written policy and procedure governing fees, including:

- (a) Establishing the fee to be charged to a monitored individual,
 - (b) Collection of fees,
 - (c) Action to be taken against a monitored individual who is in arrears,
- and
- (d) Recording of fee payments received;

(5) A written policy and procedure governing the monitoring of an individual which includes provisions for the following:

- (a) Enough monitors on duty so that the number of individuals being monitored does not pose a threat to public safety, but not less than one monitor on duty and one on call available 24 hours a day, 7 days a week,
- (b) Drug or alcohol testing, or both, of a monitored individual as ordered by the court,
- (c) In-person contact by a monitor as ordered by the court, but not less than monthly,
- (d) Circumstances for a monitor's visit to the monitored individual's approved location, and
- (e) Verification of the monitored individual's attendance at, and status of, employment or a court-ordered activity, or both;
- (f) Immediate notification to the local law enforcement agency, and next working day notification to the court that ordered home detention, the State's Attorney and the supervising probation agent, if applicable, when a monitored individual is determined to have escaped;

(6) A written policy and procedure for the verification of the monitored individual's participation in court-ordered work and other community activities, including provisions for:

- (a) Documentation of scheduled activities, provided as soon as possible, but not later than the next working day;
- (b) Documentation of unscheduled activities, provided as soon as possible, but not later than the next working day;

(7) A written policy and procedure on the transportation of a monitored individual by a monitor in a vehicle that is properly licensed and insured for that purpose, or a policy prohibiting a monitor from transporting a monitored individual;

(8) A written policy and procedure governing the termination of monitoring an individual, which includes provisions for:

- (a) Verification of identity,
- (b) Authorization to discharge the monitored individual, and
- (c) Notification to the court and to affected agencies and individuals as required by law or ordered by the court;

(9) A written policy and procedure for documented action by a monitor, when the monitored individual is unaccounted for;

- (a) Less than 2 hours,
- (b) More than 2 hours but less than 24, and
- (c) 24 hours or more to include written notification to the appropriate authority by Business Occupations and Professions Article, §20-401(c), Annotated Code of Maryland;

(10) A written policy and procedure that includes provisions for a backup source of power, the resumption of monitoring, and notification to the appropriate authority, detailing plans for the following emergencies at the monitored individual's approved location:

- (a) Power outage,
- (b) Loss of telephone service,
- (c) Fire,
- (d) Flood,
- (e) Malfunction of equipment, and
- (f) Other emergencies;

(11) A written policy and procedure detailing contingency plans for the monitoring agency's operation, which includes provisions for:

- (a) Power outage or loss of telephone service,
- (b) The death, serious illness, incapacitation, or the personal emergency of a monitor,
- (c) Financial hardship or insolvency of the monitoring agency,
- (d) Movement of monitoring equipment or the transfer of monitoring services if the monitoring agency's office becomes unusable,
- (e) Prompt notification to a governmental agency responsible for supervising the monitored individual, and
- (f) Prompt notification to the court that ordered the monitoring;

(12) A written policy prohibiting discrimination against a monitored individual with regard to programs and services or activities on the basis of the following:

- (a) Race,
- (b) Religion,
- (c) National origin,
- (d) Gender, or
- (e) Disability;

(13) A written policy and procedure ensuring that reasonable accommodations are made for an individual with a disability;

(14) A written policy and procedure ensuring that, at orientation and before monitoring starts, a monitored individual is given written information describing the program and the expectations for a monitored individual;

(15) A written policy prohibiting a monitored individual from supervising, monitoring, controlling, or exerting or assuming authority over another monitored individual;

(16) A written policy ensuring the right of a monitored individual to choose a monitoring agency unless otherwise ordered by the court;

(17) A written policy and procedure ensuring access by a monitored individual to information pertaining to the individual's monitoring if the individual is referred to the court for a program violation;

(18) A written policy and procedure ensuring that a monitored individual does not have unauthorized access to files, computers, and computer records of the monitoring agency;

(19) A written policy and procedure ensuring the confidentiality of, and methods of authorized access to, a case record by a monitored individual, a person in interest, and an individual or agency making a formal request, which includes provisions for:

- (a) Identification of an individual authorized to approve access,
- (b) Designation of materials subject to disclosure and restriction in accordance with applicable statutes and regulations,
- (c) A form used by monitored individual for consenting to the release of information, and
- (d) A record of access decisions;

(20) A written policy and procedure establishing a case record for a monitored individual, which includes provisions for:

- (a) Secure storage in a manner which prevents unauthorized access by a monitored individual,
- (b) Specification of file content and order,

(c) A signature and date on documents and entries,
(d) Daily back-up, and date and author's identity on, electronic documents, and
(e) Establishment of a records retention schedule with documentation of dispositions;

(21) A written policy and procedure ensuring the maintenance of payment records showing receipts of payments of fees;

(22) A written policy and procedure ensuring that electronic or paper records of the monitoring of a monitored individual are available:

(a) To an appropriate authority as soon as possible, but in not more than 2 working days,

(b) For at least 3 years after the monitored individual completes the monitoring program or until the next audit by the Maryland Commission on Correctional Standards, whichever is later;

(23) A written policy and procedure providing for the retention of a monitored individual's case record for not less than 3 years after the completion of monitoring services;

(24) A written policy and procedure ensuring that the monitoring agency office is secure when not occupied;

(25) A written policy and procedure governing the availability, control, accountability, storage, and use of electronic monitoring equipment, which includes provisions for:

(a) Secure storage, making equipment inaccessible to a monitored individual,

(b) Visual inspection of equipment worn by the monitored individual to determine its condition not less than once per month,

(c) A master listing and inventory,

(d) Availability of at least complete backup unit for every 25 units in use,

(e) Responses to system malfunctions,

(f) Restricted password access to authorized staff of base station hardware, and

(g) Maintenance and cleaning of equipment,

(26) A written policy and procedure ensuring that an agreement with a contractor for monitoring services includes provisions for compliance with these regulations;

(27) A written policy and procedure prohibiting certain relationships with a monitored individual, including, but not limited to the following:

(a) A monitoring agency or employee may not associate with an individual monitored by that agency, except in a professional relationship that will support the goals of the program,

(b) A monitoring agency or employee may not enter into another business relationship with a monitored individual or monitored individual's family during the monitoring,

(c) A monitoring agency or employee may not employ a monitored individual for at least 1 year after the termination of the monitoring,

(d) A monitoring agency licensee or employee may not engage in criminal conduct or violate these standards, and

(e) A monitoring agency employee shall maintain confidentiality of records and information regarding a monitored individual.

B. The licensee shall conduct an annual review of policies and procedures and orientation materials and ensure their availability to staff.

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12.11.10.10 Private Home Detention Monitoring Agencies

PENALTIES AND SANCTIONS

A. The Secretary may deny an application for a license, suspend or revoke a license, or reprimand a licensee, for reasons including, but not limited to, the following:

(1) The applicant or licensee commits any act or fails to act as specified in Business Occupations and Professions Article, §20-314, Annotated Code of Maryland;

(2) The applicant or licensee violates any federal, State, or local law or regulation;

(3) The applicant or licensee fails to perform any order of the court pertaining to a monitored individual;

(4) Any partner, director, officer, or monitor of an applicant or licensee is not of good character and reputation for reasons including, but not limited to the following:

(a) Conviction of a felony,
(b) Conviction of a misdemeanor involving moral turpitude, or
(c) Violation of the laws or regulations governing monitoring agencies;

(5) The applicant or licensee provides to the Secretary a false or misleading statement or document;

(6) The applicant or licensee fails to meet the minimum standards of this chapter;

(7) The applicant or licensee, or any employee of the applicant or licensee, has a relationship with a monitored individual that could reasonably result in reduced public confidence in the integrity of private home detention monitoring.

B. Procedures for Denying a License to an Applicant, Suspending or Revoking a License, or Reprimanding a Licensee.

(1) A complaint shall be initiated by the Secretary or made to the Secretary.

(2) A complaint shall be in writing, signed by the complainant, and state the facts on which the complaint is based.

(3) A complaint to the Secretary shall be made under oath by the complainant.

(4) On receipt of a complaint, the Secretary shall investigate the complaint.

(5) At the conclusion of the investigation, the Secretary shall determine if there is a reasonable basis for grounds for denial of a license or other penalty.

(6) Based on the allegation of a complaint which is not dismissed under this regulation, the Secretary shall determine the appropriate action and shall send by U.S. mail a notice to the applicant or licensee that action shall be taken unless the applicant or licensee submits, within 30 days of the date of the notice, a written request for a hearing. The notice shall include:

- (a) A copy of the complaint;
- (b) A reference to a pertinent law or regulation, or both;
- (c) The action to be taken; and
- (d) A copy of COMAR 12.11.04.

(7) If a written request for a hearing is not received by the Secretary within 30 days of the date of the notice, the Secretary shall take the action specified in the notice.

(8) If a written request for a hearing is received by the Secretary within 30 days of the date of the notice, the matter shall proceed in accordance with COMAR 12.11.04.