

1 AN ACT concerning nursing homes.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Nursing Home Care Act is amended by adding
5 Article IIIB as follows:

6 (210 ILCS 45/Art. Heading IIIB new)

7 ARTICLE IIIB. ELECTRONIC MONITORING OF RESIDENT'S ROOM

8 (210 ILCS 45/3B-5 new)

9 Sec. 3B-5. Definitions. As used in this Article:

10 "Authorized electronic monitoring" means the placement of
11 an electronic monitoring device in the room of a resident of
12 a facility and making tapes or recordings with the device
13 after making a request to the facility to allow electronic
14 monitoring.

15 "Electronic monitoring device" includes (i) video
16 surveillance cameras installed in the room of a resident or
17 (ii) audio devices installed in the room of a resident
18 designed to acquire communications or other sounds occurring
19 in the room, or both. "Electronic monitoring device" does not
20 include an electronic, mechanical, or other device that is
21 specifically used for the nonconsensual interception of wire
22 or electronic communications.

23 (210 ILCS 45/3B-10 new)

24 Sec. 3B-10. Criminal and civil liability.

25 (a) It is a defense to prosecution under any law of this
26 State under which it is an offense to intercept a
27 communication or disclose or use an intercepted
28 communication, that the communication was intercepted by an
29 electronic monitoring device placed in the room of a resident

1 of a facility.

2 (b) This Article does not affect whether a person may be
3 held to be civilly liable under any other law in connection
4 with placing an electronic monitoring device in the room of a
5 resident of a facility or in connection with using or
6 disclosing a tape or recording made by the device except as
7 specifically provided by this Article or to the extent that
8 liability is affected by a consent or waiver signed under
9 this Article or the fact that authorized electronic
10 monitoring is required to be conducted with notice to persons
11 who enter a resident's room.

12 (c) A communication or other sound acquired by an audio
13 electronic monitoring device installed under the provisions
14 of this Article concerning authorized electronic monitoring
15 is not considered to be an oral communication as defined by
16 Section 108B-1 of the Code of Criminal Procedure of 1963.

17 (210 ILCS 45/3B-15 new)

18 Sec. 3B-15. Covert use of electronic monitoring device;
19 liability of Department or facility.

20 (a) For the purposes of this Article, the placement and
21 use of an electronic monitoring device in the room of a
22 resident is considered to be covert if (i) the placement and
23 use of the device is not open and obvious and (ii) the
24 facility and the Department are not informed about the device
25 by the resident, by a person who placed the device in the
26 room, or by a person who is using the device.

27 (b) The Department and the facility may not be held to
28 be civilly liable in connection with the covert placement or
29 use of an electronic monitoring device in the room of a
30 resident.

31 (210 ILCS 45/3B-20 new)

32 Sec. 3B-20. Required form on admission. The Department

1 by rule shall prescribe a form that must be completed and
2 signed on a resident's admission to a facility by or on
3 behalf of the resident. The form must state all of the
4 following:

5 (1) That a person who places an electronic
6 monitoring device in the room of a resident or who uses
7 or discloses a tape or other recording made by the device
8 may be civilly liable for any unlawful violation of the
9 privacy rights of another.

10 (2) That a person who covertly places an electronic
11 monitoring device in the room of a resident or who
12 consents to or acquiesces in the covert placement of the
13 device in the room of a resident has waived any privacy
14 right the person may have had in connection with images
15 or sounds that may be acquired by the device.

16 (3) That a resident or the resident's guardian or
17 legal representative is entitled to conduct authorized
18 electronic monitoring under this Article and that, if the
19 facility refuses to permit the electronic monitoring or
20 fails to make reasonable physical accommodations for the
21 authorized electronic monitoring, the person should
22 contact the Department.

23 (4) The basic procedures that must be followed to
24 request authorized electronic monitoring.

25 (5) The manner in which this Article affects the
26 legal requirement to report abuse or neglect when
27 electronic monitoring is being conducted.

28 (6) Any other information regarding covert or
29 authorized electronic monitoring that the Department
30 considers advisable to include on the form.

31 (210 ILCS 45/3B-25 new)

32 Sec. 3B-25. Authorized electronic monitoring; who may
33 request.

1 (a) If a resident has the capacity to request electronic
2 monitoring and has not been judicially declared to lack the
3 required capacity, only the resident may request authorized
4 electronic monitoring under this Article, notwithstanding the
5 terms of any durable power of attorney or similar instrument.

6 (b) If a resident has been judicially declared to lack
7 the capacity required for taking an action such as requesting
8 electronic monitoring, only the guardian of the resident may
9 request electronic monitoring under this Article.

10 (c) If a resident does not have capacity to request
11 electronic monitoring but has not been judicially declared to
12 lack the required capacity, only the legal representative of
13 the resident may request electronic monitoring under this
14 Article. The Department by rule shall prescribe (i)
15 guidelines that will assist the facility, family members of
16 residents, advocates for residents, and other interested
17 persons in determining when a resident lacks the required
18 capacity and (ii) who may be considered to be a resident's
19 legal representative for purposes of this Article, including
20 persons who may be considered the legal representative under
21 the terms of an instrument executed by the resident when the
22 resident had capacity and persons who may become the legal
23 representative for the limited purpose of this Article under
24 a procedure prescribed by the Department.

25 (210 ILCS 45/3B-30 new)

26 Sec. 3B-30. Authorized electronic monitoring; form of
27 request; consent of other residents in room.

28 (a) A resident or the guardian or legal representative
29 of a resident who wishes to conduct authorized electronic
30 monitoring must make the request to the facility on a form
31 prescribed by the Department.

32 (b) The form prescribed by the Department must require
33 the resident or the resident's guardian or legal

1 representative to do all of the following:

2 (1) Release the facility from any civil liability
3 for a violation of the resident's privacy rights in
4 connection with the use of the electronic monitoring
5 device.

6 (2) Choose, when the electronic monitoring device
7 is a video surveillance camera, whether the camera will
8 always be unobstructed or whether the camera should be
9 obstructed in specified circumstances to protect the
10 dignity of the resident.

11 (3) If the resident resides in a multi-person room,
12 obtain the consent of other residents in the room, using
13 a form prescribed for this purpose by the Department.

14 (c) Consent under item (3) of subsection (b) may be
15 given only by the following:

16 (1) The other resident or residents in the room.

17 (2) The guardian of the other resident in the room,
18 if the person has been judicially declared to lack the
19 required capacity.

20 (3) By the legal representative who under Section
21 25 may request electronic monitoring on behalf of the
22 other resident in the room, if the person does not have
23 capacity to sign the form but has not been judicially
24 declared to lack the required capacity.

25 (d) The form prescribed by the Department under item (3)
26 of subsection (b) must condition the consent of another
27 resident in the room on the other resident also releasing the
28 facility from any civil liability for a violation of the
29 person's privacy rights in connection with the use of the
30 electronic monitoring device.

31 (e) Another resident in the room may (i) when the
32 proposed electronic monitoring device is a video surveillance
33 camera, condition consent on the camera being pointed away
34 from the consenting resident and (ii) condition consent on

1 the use of an audio electronic monitoring device being
2 limited or prohibited.

3 (f) If authorized electronic monitoring is being
4 conducted in the room of a resident and another resident is
5 moved into the room who has not yet consented to the
6 electronic monitoring, authorized electronic monitoring must
7 cease until the new resident has consented in accordance with
8 this Section.

9 (g) The Department may include other information that
10 the Department considers to be appropriate on either of the
11 forms that the Department is required to prescribe under this
12 Section.

13 (h) The Department may adopt rules prescribing the place
14 or places that a form signed under this Section must be
15 maintained and the period for which it must be maintained.

16 (i) Authorized electronic monitoring may not commence
17 until all request and consent forms required by this Section
18 have been completed and returned to the facility and must be
19 conducted in accordance with any limitation placed on the
20 monitoring as a condition of the consent given by or on
21 behalf of another resident in the room.

22 (210 ILCS 45/3B-35 new)

23 Sec. 3B-35. Authorized electronic monitoring; general
24 provisions.

25 (a) A facility shall permit a resident or the resident's
26 guardian or legal representative to monitor the room of the
27 resident through the use of electronic monitoring devices.

28 (b) The facility shall require a resident who conducts
29 authorized electronic monitoring or the resident's guardian
30 or legal representative to post and maintain a conspicuous
31 notice at the entrance to the resident's room. The notice
32 must state that the room is being monitored by an electronic
33 monitoring device.

1 (c) Authorized electronic monitoring conducted under
2 this Article is not compulsory and may be conducted only at
3 the request of the resident or the resident's guardian or
4 legal representative.

5 (d) A facility may not refuse to admit an individual to
6 residency in the facility and may not remove a resident from
7 the facility because of a request to conduct authorized
8 electronic monitoring. A facility may not remove a resident
9 from the facility because covert electronic monitoring is
10 being conducted by or on behalf of a resident.

11 (e) A facility shall make reasonable physical
12 accommodation for authorized electronic monitoring, including
13 (i) providing a reasonably secure place to mount the video
14 surveillance camera or other electronic monitoring device and
15 (ii) providing access to power sources for the video
16 surveillance camera or other electronic monitoring device.

17 (f) The resident or the resident's guardian or legal
18 representative must pay for all costs associated with
19 conducting electronic monitoring, other than the costs of
20 electricity. The resident or the resident's guardian or legal
21 representative is responsible for all costs associated with
22 the installation of the equipment and maintaining the
23 equipment.

24 (g) A facility may require an electronic monitoring
25 device to be installed in a manner that is safe for
26 residents, employees, or visitors who may be moving about the
27 room. The Department may adopt rules regarding the safe
28 placement of an electronic monitoring device.

29 (h) If authorized electronic monitoring is conducted,
30 the facility may require the resident or the resident's
31 guardian or legal representative to conduct the electronic
32 monitoring in plain view.

33 (i) A facility may but is not required to place a
34 resident in a different room to accommodate a request to

1 conduct authorized electronic monitoring.

2 (210 ILCS 45/3B-40 new)

3 Sec. 3B-40. Reporting abuse and neglect.

4 (a) For purposes of the duty to report abuse or neglect
5 under Section 2-107 of this Act, a person who is conducting
6 electronic monitoring on behalf of a resident under this
7 Article is considered to have viewed or listened to a tape or
8 recording made by the electronic monitoring device on or
9 before the fourteenth day after the date the tape or
10 recording is made.

11 (b) If a resident who has capacity to determine that the
12 resident has been abused or neglected and who is conducting
13 electronic monitoring under this Article gives a tape or
14 recording made by the electronic monitoring device to a
15 person and directs the person to view or listen to the tape
16 or recording to determine whether abuse or neglect has
17 occurred, the person to whom the resident gives the tape or
18 recording is considered to have viewed or listened to the
19 tape or recording on or before the seventh day after the date
20 the person receives the tape or recording for purposes of the
21 duty to report abuse or neglect under Section 2-107 of this
22 Act.

23 (c) A person is required to report abuse based on the
24 person's viewing of or listening to a tape or recording only
25 if the incident of abuse is acquired on the tape or
26 recording. A person is required to report neglect based on
27 the person's viewing of or listening to a tape or recording
28 only if it is clear from viewing or listening to the tape or
29 recording that neglect has occurred.

30 (d) If abuse or neglect of the resident is reported to
31 the facility and the facility requests a copy of any relevant
32 tape or recording made by an electronic monitoring device,
33 the person who possesses the tape or recording shall provide

1 the facility with a copy at the facility's expense.

2 Section 99. Effective date. This Act takes effect upon

3 becoming law.