



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2628

Introduced 2/21/2013, by Rep. Silvana Tabares

SYNOPSIS AS INTRODUCED:

210 ILCS 45/3-202.6 new

Amends the Nursing Home Care Act. Requires a nursing home to place electronic monitoring devices throughout the facility in areas including specified common areas and residents' rooms. Allows residents to opt out of electronic monitoring in their rooms. Sets forth requirements concerning recordings. Provides that intentionally hampering, obstructing, tampering with, or destroying an electronic monitoring device installed in a facility is a Class A misdemeanor for which a \$5,000 fine may be imposed. Provides for access to real-time and recorded files. Allows for the admission of recordings into evidence. Contains provisions concerning civil liability; reimbursement of facilities for expenses incurred in installing electronic monitoring systems; the authority of the Department of Public Health to deny, suspend, or refuse to renew a facility's license; the adoption of rules by the Department; and other matters. Effective immediately.

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning regulation.

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 Section 3-202.6 as follows:

6 (210 ILCS 45/3-202.6 new)

7 Sec. 3-202.6. Electronic monitoring in facilities.

8 (a) Definitions. In this Section:

9 "Authorized electronic monitoring" means the placement of
10 electronic monitoring devices in the common areas and rooms of
11 residents of a facility and recordings with the devices
12 pursuant to this Section.

13 "Electronic monitoring device" means a video surveillance
14 camera installed in any of a facility's common areas and
15 residents' rooms and an audio device installed in a resident's
16 bathroom and shower or bathing areas, designed to acquire
17 communication or other sounds occurring in the rooms.

18 (b) Placement of electronic monitoring devices. A facility
19 shall place electronic monitoring devices throughout the
20 facility in areas that include, but need not be limited to:

21 (1) Entrances and exits.

22 (2) Hallways.

23 (3) Dining areas.

1 (4) Nurses' stations.

2 (5) Residents' rooms.

3 (c) Opting out of electronic monitoring; waiver. A resident
4 or a resident's legal representative shall have the choice to
5 opt out of electronic monitoring in the resident's room by
6 executing a waiver in the manner and form prescribed by the
7 Department. If a resident or a resident's legal representative
8 opts out by executing a waiver, electronic monitoring in that
9 resident's room shall be turned off. If a resident or a
10 resident's legal representative chooses to opt out of
11 electronic monitoring, execution of the waiver must be
12 witnessed and signed by a representative of the Office of State
13 Long Term Care Ombudsman.

14 (d) Temporary waiver. A resident who has electronic
15 monitoring in his or her room and who desires privacy for
16 purposes of intimacy has the right to request a temporary
17 waiver from monitoring during such personal periods as follows:

18 (1) A temporary waiver must be executed by the resident
19 if he or she is of sound mind or does not have a diagnosis
20 of Alzheimer's disease or dementia or has not been deemed
21 incompetent.

22 (2) If the resident is not of sound mind, has a
23 diagnosis of Alzheimer's disease or dementia, or has been
24 deemed to be incompetent, the resident's legal
25 representative may request the temporary waiver.

26 A temporary waiver under this subsection shall be executed

1 in the manner and form prescribed by the Department.

2 (e) Notice to resident. Upon a resident's admission to a
3 facility, the resident shall be given a form prescribed by the
4 Department which provides notice that the facility is required
5 by State law to place electronic monitoring devices throughout
6 the facility. The form shall provide language to allow the
7 resident or the resident's legal representative to opt out of
8 electronic monitoring in the resident's room, if the resident
9 or the resident's legal representative chooses privacy over
10 increased safety provided by electronic monitoring. The form
11 shall also release the facility from any civil liability for a
12 violation of the resident's privacy rights in connection with
13 the use of the electronic monitoring device. The form must be
14 signed by the resident or the resident's legal representative.
15 The signed form shall be attached as a permanent record in the
16 resident's file. A facility must provide a room to any resident
17 who opts out of electronic monitoring. Under no circumstances
18 shall a resident be provided a room without video monitoring
19 unless that resident or his or her legal representative opts
20 out of electronic monitoring.

21 (f) Constant monitoring. Electronic monitoring in
22 residents' rooms, bathrooms, and bathing areas shall be
23 constant.

24 (g) Recording requirements. Recordings shall be
25 motion-activated and activated whenever the nurse-call or
26 call-for-assistance button is pressed for video recordings in a

1 resident's room and sound-activated for bathrooms and bathing
2 areas. Recordings shall capture a minimum of 30 seconds prior
3 to the activation and shall continue until no motion is
4 detected for 3 minutes. Recordings shall be maintained at the
5 facility for a minimum of 30 days. All recordings shall be
6 transferred to the Department, which shall store recordings for
7 a minimum of 5 years. Electronic monitoring systems for video
8 monitoring shall be color, motion-activated, with a minimum of
9 15 seconds per frame, minimum 550 resolution, with infrared
10 illuminator or greater for night or low-lighting monitoring.
11 All video tapes or recordings made pursuant to this Section
12 shall show the time and date that events acquired on the tape
13 or recording occurred.

14 (h) Posted notices. A facility shall post and maintain a
15 conspicuous notice at the entrance to the facility stating that
16 the facility is being monitored by electronic monitoring
17 devices.

18 A facility that conducts authorized electronic monitoring
19 in a resident's room pursuant to this Section shall post and
20 maintain a conspicuous notice at the entrance to the resident's
21 room stating that the room is being monitored by one or more
22 electronic monitoring devices.

23 (i) Residents' consent. Authorized electronic monitoring
24 of a resident's room conducted under this Section is not
25 compulsory and shall be conducted only with the consent of all
26 residents living in that room or their legal representatives. A

1 facility shall not refuse to admit an individual as a resident
2 of the facility and shall not remove a resident from the
3 facility because of the individual's or his or her
4 representative's consent or refusal to consent to authorized
5 electronic monitoring of the resident's room.

6 (j) Criminal offenses. No person or entity shall
7 intentionally hamper, obstruct, tamper with, or destroy an
8 electronic monitoring device installed in a facility.

9 Any person or entity that intentionally hampers,
10 obstructs, tampers with, or destroys a recording or an
11 electronic monitoring device installed in a facility commits a
12 Class A misdemeanor for which a fine not exceeding \$5,000 may
13 be imposed.

14 No person or entity shall intercept a communication or
15 disclosure or use an intercepted communication of an electronic
16 monitoring device placed or installed in a facility without the
17 express consent of the facility or, for an electronic
18 monitoring device installed in a resident's room, the express
19 consent of the resident or the resident's legal representative.

20 (k) Availability of recordings. A facility shall make
21 available to any resident or resident's legal representative
22 real-time and recorded files. The facility shall provide the
23 resident or resident's legal representative with a secured
24 Internet address, login, and password specifically for that
25 resident to view real-time and recorded activity. The facility
26 shall provide a computer station at the facility for residents

1 and their legal representatives to access real-time or recorded
2 files. Recordings may be provided by the facility upon request
3 made by a resident or a resident's legal representative. The
4 facility shall provide the recordings within 48 hours after a
5 request is made. A resident or his or her legal representative
6 may provide the facility with a DVD or flash drive for the
7 transfer of such recorded files; otherwise the facility may
8 charge a fee of no more than \$25 to recover the cost of storage
9 media for such file transfers.

10 A facility shall make access to real-time video, tapes, or
11 other recordings permitted by this Section available to the
12 Department. The Department shall adopt rules as necessary to
13 ensure that the provisions of this subsection (k) do not
14 violate the privacy rights of a facility's residents protected
15 by State or federal law.

16 Residents, residents' legal representatives, authorized
17 facility staff, and authorized Department staff shall have
18 real-time access and access to recorded files.

19 Law enforcement agencies, State's Attorneys, and attorneys
20 representing residents or residents' legal representatives
21 shall have access to recorded files.

22 (l) Use of recordings as evidence. Subject to the
23 provisions of law, a tape or recording created through the use
24 of authorized electronic monitoring pursuant to this Section
25 may be admitted into evidence in a civil or criminal court
26 action or administrative proceeding. A court or administrative

1 agency may not admit into evidence a tape or recording created
2 through the use of authorized electronic monitoring, or take or
3 authorize action based on the tape or recording, unless all of
4 the following criteria are met:

5 (1) If the tape or recording is a video tape or
6 recording, the tape or recording must show the time and
7 date that the events acquired on the tape or recording
8 occurred.

9 (2) The contents of the tape or recording must not have
10 been edited or artificially enhanced.

11 (3) If the contents of the tape or recording have been
12 transferred from the original format to another
13 technological format, the transfer must have been done by a
14 qualified professional, and the contents of the tape or
15 recording must not have been altered.

16 (m) Civil liability. This Section does not affect whether a
17 person may be held civilly liable under other provisions of law
18 in connection with placing an electronic monitoring device in
19 the room of a resident of a facility or in connection with
20 using or disclosing a tape or recording made by such a device,
21 except:

22 (1) as specifically provided in this Section; or

23 (2) to the extent that liability is affected by a
24 consent form or waiver signed pursuant to the provisions of
25 this Section or the fact that authorized electronic
26 monitoring is required to be conducted with notice to

1 persons who enter the facility or a resident's room.

2 The Department shall not be held civilly liable in
3 connection with the placement or use of an electronic
4 monitoring device in a facility.

5 (n) Placement of monitoring device at resident's expense.
6 Nothing in this Section shall be construed to prevent a
7 resident or resident's legal representative from placing an
8 electronic monitoring device in the resident's room at the
9 expense of the resident or his or her legal representative and
10 with the consent of all other residents living in the room or
11 their legal representatives.

12 (o) Reimbursement of facility. A facility shall be
13 reimbursed for expenses incurred in the acquisition and
14 installation of electronic monitoring systems pursuant to this
15 Section.

16 (p) Sanctions against facility's licensure. The Department
17 may deny, suspend, or refuse to renew the license of a facility
18 that violates this Section.

19 (q) Rules. The Department shall adopt rules as necessary to
20 implement this Section.

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.