

AN ACT concerning regulation.

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

Section 1. Short title. This Act may be cited as the Authorized Electronic Monitoring in Long-Term Care Facilities Act.

Section 5. Definitions. As used in this Act:

"Authorized electronic monitoring" means the placement and use of an electronic monitoring device by a resident in his or her room in accordance with this Act.

"Department" means the Department of Public Health.

"Electronic monitoring device" means a surveillance instrument with a fixed position video camera or an audio recording device, or a combination thereof, that is installed in a resident's room under the provisions of this Act and broadcasts or records activity or sounds occurring in the room.

"Facility" means an intermediate care facility for the developmentally disabled licensed under the ID/DD Community Care Act that has 30 beds or more, a long-term care for under age 22 facility licensed under the ID/DD Community Care Act, or a facility licensed under the Nursing Home Care Act.

"Resident" means a person residing in a facility.

"Resident's representative" has the meaning given to that

term in (1) Section 1-123 of the Nursing Home Care Act if the resident resides in a facility licensed under the Nursing Home Care Act or (2) Section 1-123 of the ID/DD Community Care Act if the resident resides in a facility licensed under the ID/DD Community Care Act.

Section 10. Authorized electronic monitoring.

(a) A resident shall be permitted to conduct authorized electronic monitoring of the resident's room through the use of electronic monitoring devices placed in the room pursuant to this Act.

(b) Nothing in this Act shall be construed to allow the use of an electronic monitoring device to take still photographs or for the nonconsensual interception of private communications.

Section 15. Consent.

(a) Except as otherwise provided in this subsection, a resident, a resident's plenary guardian of the person, or the parent of a resident under the age of 18 must consent in writing on a notification and consent form prescribed by the Department to the authorized electronic monitoring in the resident's room. If the resident has not affirmatively objected to the authorized electronic monitoring and the resident's physician determines that the resident lacks the ability to understand and appreciate the nature and consequences of electronic monitoring, the following individuals may consent

on behalf of the resident, in order of priority:

(1) a health care agent named under the Illinois Power of Attorney Act;

(2) a resident's representative, as defined in Section 5 of this Act;

(3) the resident's spouse;

(4) the resident's parent;

(5) the resident's adult child who has the written consent of the other adult children of the resident to act as the sole decision maker regarding authorized electronic monitoring; or

(6) the resident's adult brother or sister who has the written consent of the other adult siblings of the resident to act as the sole decision maker regarding authorized electronic monitoring.

(a-5) Prior to another person, other than a resident's plenary guardian of the person, consenting on behalf of a resident 18 years of age or older in accordance with this Section, the resident must be asked by that person, in the presence of a facility employee, if he or she wants authorized electronic monitoring to be conducted. The person must explain to the resident:

(1) the type of electronic monitoring device to be used;

(2) the standard conditions that may be placed on the electronic monitoring device's use, including those listed

in paragraph (7) of subsection (b) of Section 20;

(3) with whom the recording may be shared according to Section 45; and

(4) the resident's ability to decline all recording.

For the purposes of this subsection, a resident affirmatively objects when he or she orally, visually, or through the use of auxiliary aids or services declines authorized electronic monitoring. The resident's response must be documented on the notification and consent form.

(b) A resident or roommate may consent to authorized electronic monitoring with any conditions of the resident's choosing, including, but not limited to, the list of standard conditions provided in paragraph (7) of subsection (b) of Section 20. A resident or roommate may request that the electronic monitoring device be turned off or the visual recording component of the electronic monitoring device be blocked at any time.

(c) Prior to the authorized electronic monitoring, a resident must obtain the written consent of any other resident residing in the room on the notification and consent form prescribed by the Department. Except as otherwise provided in this subsection, a roommate, a roommate's plenary guardian of the person, or the parent of a roommate under the age of 18 must consent in writing to the authorized electronic monitoring in the resident's room. If the roommate has not affirmatively objected to the authorized electronic monitoring in accordance

with subsection (a-5) and the roommate's physician determines that the roommate lacks the ability to understand and appreciate the nature and consequences of electronic monitoring, the following individuals may consent on behalf of the roommate, in order of priority:

(1) a health care agent named under the Illinois Power of Attorney Act;

(2) a roommate's resident's representative, as defined in Section 5 of this Act;

(3) the roommate's spouse;

(4) the roommate's parent;

(5) the roommate's adult child who has the written consent of the other adult children of the resident to act as the sole decision maker regarding authorized electronic monitoring; or

(6) the roommate's adult brother or sister who has the written consent of the other adult siblings of the resident to act as the sole decision maker regarding authorized electronic monitoring.

(c-5) Consent by a roommate under subsection (c) authorizes the resident's use of any recording obtained under this Act, as provided in Section 45 of this Act.

(c-7) Any resident previously conducting authorized electronic monitoring must obtain consent from any new roommate before the resident may resume authorized electronic monitoring. If a new roommate does not consent to authorized

electronic monitoring and the resident conducting the authorized electronic monitoring does not remove or disable the electronic monitoring device, the facility may turn off the device.

(d) Consent may be withdrawn by the resident or roommate at any time, and the withdrawal of consent shall be documented in the resident's clinical record. If a roommate withdraws consent and the resident conducting the authorized electronic monitoring does not remove or disable the electronic monitoring device, the facility may turn off the electronic monitoring device.

(e) If a resident who is residing in a shared room wants to conduct authorized electronic monitoring and another resident living in or moving into the same shared room refuses to consent to the use of an electronic monitoring device, the facility shall make a reasonable attempt to accommodate the resident who wants to conduct authorized electronic monitoring. A facility has met the requirement to make a reasonable attempt to accommodate a resident who wants to conduct authorized electronic monitoring when upon notification that a roommate has not consented to the use of an electronic monitoring device in his or her room, the facility offers to move either resident to another shared room that is available at the time of the request. If a resident chooses to reside in a private room in order to accommodate the use of an electronic monitoring device, the resident must pay the private

room rate. If a facility is unable to accommodate a resident due to lack of space, the facility must reevaluate the request every 2 weeks until the request is fulfilled.

Section 20. Notice to the facility.

(a) Authorized electronic monitoring may begin only after a notification and consent form prescribed by the Department has been completed and submitted to the facility.

(b) A resident shall notify the facility in writing of his or her intent to install an electronic monitoring device by providing a completed notification and consent form prescribed by the Department that must include, at minimum, the following information:

(1) the resident's signed consent to electronic monitoring or the signature of the person consenting on behalf of the resident in accordance with Section 15 of this Act; if a person other than the resident signs the consent form, the form must document the following:

(A) the date the resident was asked if he or she wants authorized electronic monitoring to be conducted in accordance with subsection (a-5) of Section 15;

(B) who was present when the resident was asked;
and

(C) an acknowledgement that the resident did not affirmatively object; and

(2) the resident's roommate's signed consent or the

signature of the person consenting on behalf of the resident in accordance with Section 15 of this Act, if applicable, and any conditions placed on the roommate's consent; if a person other than the roommate signs the consent form, the form must document the following:

(A) the date the roommate was asked if he or she wants authorized electronic monitoring to be conducted in accordance with subsection (a-5) of Section 15;

(B) who was present when the roommate was asked; and

(C) an acknowledgement that the roommate did not affirmatively object; and

(3) the type of electronic monitoring device to be used;

(4) any installation needs, such as mounting of a device to a wall or ceiling;

(5) the proposed date of installation for scheduling purposes;

(6) a copy of any contract for maintenance of the electronic monitoring device by a commercial entity;

(7) a list of standard conditions or restrictions that the resident or a roommate may elect to place on use of the electronic monitoring device, including, but not limited to:

(A) prohibiting audio recording;

(B) prohibiting broadcasting of audio or video;

(C) turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device for the duration of an exam or procedure by a health care professional;

(D) turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device while dressing or bathing is performed; and

(E) turning the electronic monitoring device off for the duration of a visit with a spiritual advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor; and

(8) any other condition or restriction elected by the resident or roommate on the use of an electronic monitoring device.

(c) A copy of the completed notification and consent form shall be placed in the resident's and any roommate's clinical record and a copy shall be provided to the resident and his or her roommate, if applicable.

(d) The Department shall prescribe the notification and consent form required in this Section no later than 60 days after the effective date of this Act. If the Department has not prescribed such a form by that date, the Office of the Attorney General shall post a notification and consent form on its website for resident use until the Department has prescribed the form.

Section 25. Cost and installation.

(a) A resident choosing to conduct authorized electronic monitoring must do so at his or her own expense, including paying purchase, installation, maintenance, and removal costs.

(b) If a resident chooses to install an electronic monitoring device that uses Internet technology for visual or audio monitoring, that resident is responsible for contracting with an Internet service provider.

(c) The facility shall make a reasonable attempt to accommodate the resident's installation needs, including, but not limited to, allowing access to the facility's telecommunications or equipment room. A facility has the burden of proving that a requested accommodation is not reasonable.

(d) The electronic monitoring device must be placed in a conspicuously visible location in the room.

(e) A facility may not charge the resident a fee for the cost of electricity used by an electronic monitoring device.

(f) All electronic monitoring device installations and supporting services shall comply with the requirements of the National Fire Protection Association (NFPA) 101 Life Safety Code (2000 edition).

Section 27. Assistance program.

(a) Subject to appropriation, the Department shall establish a program to assist residents receiving medical

assistance under Article V of the Illinois Public Aid Code in accessing authorized electronic monitoring.

(b) The Department shall distribute up to \$50,000 in funds on an annual basis to residents receiving medical assistance under Article V of the Illinois Public Aid Code for the purchase and installation of authorized electronic monitoring devices.

(c) Applications for funds and disbursement of funds must be made in a manner prescribed by the Department.

Section 30. Notice to visitors.

(a) If a resident of a facility conducts authorized electronic monitoring, a sign shall be clearly and conspicuously posted at all building entrances accessible to visitors. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents."

(b) A sign shall be clearly and conspicuously posted at the entrance to a resident's room where authorized electronic monitoring is being conducted. The notice must state, in large, easy-to-read type, "This room is electronically monitored."

(c) The facility is responsible for installing and maintaining the signage required in this Section.

Section 40. Obstruction of electronic monitoring devices.

(a) A person or entity is prohibited from knowingly hampering, obstructing, tampering with, or destroying an electronic monitoring device installed in a resident's room without the permission of the resident or the individual who consented on behalf of the resident in accordance with Section 15 of this Act.

(b) A person or entity is prohibited from knowingly hampering, obstructing, tampering with, or destroying a video or audio recording obtained in accordance with this Act without the permission of the resident or the individual who consented on behalf of the resident in accordance with Section 15 of this Act.

(c) A person or entity that violates this Section is guilty of a Class B misdemeanor. A person or entity that violates this Section in the commission of or to conceal a misdemeanor offense is guilty of a Class A misdemeanor. A person or entity that violates this Section in the commission of or to conceal a felony offense is guilty of a Class 4 felony.

(d) It is not a violation of this Section if a person or facility turns off the electronic monitoring device or blocks the visual recording component of the electronic monitoring device at the direction of the resident or the person who consented on behalf of the resident in accordance with Section 15 of this Act.

Section 45. Dissemination of recordings.

(a) A facility may not access any video or audio recording created through authorized electronic monitoring without the written consent of the resident or the person who consented on behalf of the resident in accordance with Section 15 of this Act.

(b) Except as required under the Freedom of Information Act, a recording or copy of a recording made pursuant to this Act may only be disseminated for the purpose of addressing concerns relating to the health, safety, or welfare of a resident or residents.

(c) The resident or person who consented on behalf of the resident in accordance with Section 15 of this Act shall provide a copy of any video or audio recording to parties involved in a civil, criminal, or administrative proceeding, upon a party's request, if the video or audio recording was made during the time period that the conduct at issue in the proceeding allegedly occurred.

Section 50. Admissibility of evidence. Subject to applicable rules of evidence and procedure, any video or audio recording created through authorized electronic monitoring in accordance with this Act may be admitted into evidence in a civil, criminal, or administrative proceeding if the contents of the recording have not been edited or artificially enhanced and the video recording includes the date and time the events occurred.

Section 55. Report. Each facility shall report to the Department, in a manner prescribed by the Department, the number of authorized electronic monitoring notification and consent forms received annually. The Department shall report the total number of authorized electronic monitoring notification and consent forms received by facilities to the Office of the Attorney General annually.

Section 60. Liability.

(a) A facility is not civilly or criminally liable for the inadvertent or intentional disclosure of a recording by a resident or a person who consents on behalf of the resident for any purpose not authorized by this Act.

(b) A facility is not civilly or criminally liable for a violation of a resident's right to privacy arising out of any electronic monitoring conducted pursuant to this Act.

Section 65. Rules. The Department shall adopt rules necessary to implement this Act.

Section 70. The Nursing Home Care Act is amended by changing Section 3-318 and by adding Section 2-115 as follows:

(210 ILCS 45/2-115 new)

Sec. 2-115. Authorized electronic monitoring of a

resident's room. A resident shall be permitted to conduct authorized electronic monitoring of the resident's room through the use of electronic monitoring devices placed in the room pursuant to the Authorized Electronic Monitoring in Long-Term Care Facilities Act.

(210 ILCS 45/3-318) (from Ch. 111 1/2, par. 4153-318)

Sec. 3-318. (a) No person shall:

(1) Intentionally fail to correct or interfere with the correction of a Type "AA", Type "A", or Type "B" violation within the time specified on the notice or approved plan of correction under this Act as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension;

(2) Intentionally prevent, interfere with, or attempt to impede in any way any duly authorized investigation and enforcement of this Act;

(3) Intentionally prevent or attempt to prevent any examination of any relevant books or records pertinent to investigations and enforcement of this Act;

(4) Intentionally prevent or interfere with the preservation of evidence pertaining to any violation of this Act or the rules promulgated under this Act;

(5) Intentionally retaliate or discriminate

against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized under this Act;

(6) Wilfully file any false, incomplete or intentionally misleading information required to be filed under this Act, or wilfully fail or refuse to file any required information; ~~or~~

(7) Open or operate a facility without a license; ~~or~~

(8) Intentionally retaliate or discriminate against any resident for consenting to authorized electronic monitoring under the Authorized Electronic Monitoring in Long-Term Care Facilities Act; or

(9) Prevent the installation or use of an electronic monitoring device by a resident who has provided the facility with notice and consent as required in Section 20 of the Authorized Electronic Monitoring in Long-Term Care Facilities Act.

(b) A violation of this Section is a business offense, punishable by a fine not to exceed \$10,000, except as otherwise provided in subsection (2) of Section 3-103 as to submission of false or misleading information in a license application.

(c) The State's Attorney of the county in which the facility is located, or the Attorney General, shall be notified by the Director of any violations of this Section.

(Source: P.A. 96-1372, eff. 7-29-10.)

Section 75. The ID/DD Community Care Act is amended by changing Section 3-318 and by adding Section 2-116 as follows:

(210 ILCS 47/2-116 new)

Sec. 2-116. Authorized electronic monitoring of a resident's room. A resident shall be permitted to conduct authorized electronic monitoring of the resident's room through the use of electronic monitoring devices placed in the room pursuant to the Authorized Electronic Monitoring in Long-Term Care Facilities Act.

(210 ILCS 47/3-318)

Sec. 3-318. Business offenses.

(a) No person shall:

(1) Intentionally fail to correct or interfere with the correction of a Type "AA", Type "A", or Type "B" violation within the time specified on the notice or approved plan of correction under this Act as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension;

(2) Intentionally prevent, interfere with, or attempt to impede in any way any duly authorized investigation and enforcement of this Act;

(3) Intentionally prevent or attempt to prevent any examination of any relevant books or records pertinent to

investigations and enforcement of this Act;

(4) Intentionally prevent or interfere with the preservation of evidence pertaining to any violation of this Act or the rules promulgated under this Act;

(5) Intentionally retaliate or discriminate against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized under this Act;

(6) Willfully file any false, incomplete or intentionally misleading information required to be filed under this Act, or willfully fail or refuse to file any required information; ~~or~~

(7) Open or operate a facility without a license; ~~or~~

(8) Intentionally retaliate or discriminate against any resident for consenting to authorized electronic monitoring under the Authorized Electronic Monitoring in Long-Term Care Facilities Act; or

(9) Prevent the installation or use of an electronic monitoring device by a resident who has provided the facility with notice and consent as required in Section 20 of the Authorized Electronic Monitoring in Long-Term Care Facilities Act.

(b) A violation of this Section is a business offense, punishable by a fine not to exceed \$10,000, except as otherwise provided in subsection (2) of Section 3-103 as to submission of

false or misleading information in a license application.

(c) The State's Attorney of the county in which the facility is located, or the Attorney General, shall be notified by the Director of any violations of this Section.

(Source: P.A. 96-339, eff. 7-1-10; 97-38, eff. 6-28-11.)

Section 99. Effective date. This Act takes effect January 1, 2016.