



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB2462

Introduced 2/17/2015, by Rep. Greg Harris

SYNOPSIS AS INTRODUCED:

New Act

Creates the Authorized Electronic Monitoring in Long-Term Care Facilities Act. Provides that, subject to certain conditions, a resident of a facility licensed under the ID/DD Community Care Act or the Nursing Home Care Act shall be permitted to use an audio or video surveillance system in his or her room at his or her expense. Requires the electronic monitoring device to be placed in a conspicuously visible location in the room. Requires the Department of Public Health to establish a program to distribute up to \$50,000 in funds, disbursed by lottery, each year to certain residents for the purchase and installation of electronic monitoring devices. Establishes criminal penalties for a person or entity that knowingly hampers, obstructs, tampers with, or destroys an electronic monitoring device. Provides that it is a business offense for a facility to discriminate or retaliate against a resident or prospective resident for consenting to the electronic monitoring. Provides that it is a petty offense for a facility to prevent the installation of an electronic monitoring device by a resident who has provided the facility with the consent required by certain provisions of the Act. Contains provisions concerning: resident consent to monitoring; facility accommodation of electronic monitoring; notice of electronic monitoring to visitors; limitations on facility access to recordings; the admissibility of recordings in civil, criminal, and administrative actions; facility reporting; and rulemaking.

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

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

7 Section 5. Definitions. As used in this Act:

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

11 "Department" means the Department of Public Health.

12 "Electronic monitoring device" means (1) a video
13 surveillance instrument installed in a resident's room under
14 the provisions of this Act that broadcasts, photographs, or
15 records activity occurring in the room or (2) an audio
16 surveillance instrument installed in a resident's room under
17 the provisions of this Act that broadcasts or records sounds
18 occurring in the room.

19 "Facility" means a facility licensed under the ID/DD
20 Community Care Act or the Nursing Home Care Act.

21 "Resident" means a person receiving personal or medical
22 care, including, but not limited to, habilitation, mental
23 health treatment, psychiatric rehabilitation, psychiatric

1 services, therapeutic services, physical rehabilitation, or
2 assistance with activities of daily living, from a facility.

3 Section 10. Authorized electronic monitoring. A resident
4 shall be permitted to conduct authorized electronic monitoring
5 of the resident's room through the use of electronic monitoring
6 devices placed in the room pursuant to this Act.

7 Section 15. Consent.

8 (a) Except as otherwise provided in this subsection, a
9 resident must consent in writing to the authorized electronic
10 monitoring in his or her room on a consent form prescribed by
11 the Department. If the resident has not affirmatively objected
12 to the authorized electronic monitoring:

13 (1) a person appointed as a guardian of the person of
14 the resident under the Probate Act of 1975 may consent on
15 behalf of the resident to the authorized electronic
16 monitoring; or

17 (2) a person from the following list, in order of
18 priority, may consent on behalf of the resident to the
19 authorized electronic monitoring on a consent form
20 prescribed by the Department if the resident's physician
21 determines that the resident does not have the capacity to
22 consent to authorized electronic monitoring:

23 (A) the health care agent named under the Illinois
24 Power of Attorney Act, if any;

- 1 (B) the resident's spouse;
2 (C) the resident's parent; or
3 (D) an adult child of the resident who has the
4 waiver and consent of all other adult children of the
5 resident to act as the sole decision maker regarding
6 authorized electronic monitoring.

7 If consent is sought under this paragraph (2), the
8 resident's physician must document on the consent form his
9 or her determination that the resident does not have the
10 capacity to consent to authorized electronic monitoring.

11 (b) Prior to the authorized electronic monitoring, a
12 resident must obtain the written consent of any other resident
13 residing in the room on the consent form prescribed by the
14 Department. A resident may consent to authorized electronic
15 monitoring with conditions that include, but are not limited
16 to:

- 17 (1) prohibiting audio monitoring; or
18 (2) limiting the direction a video surveillance
19 instrument may be pointed.

20 Consent may be withdrawn at any time.

21 (c) If a resident who is residing in a shared room wants to
22 conduct authorized electronic monitoring and another resident
23 living in the same shared room refuses to consent to the use of
24 an electronic monitoring device, the facility shall
25 accommodate the resident who wants to conduct authorized
26 electronic monitoring by moving him or her to another room.

1 (d) If authorized electronic monitoring is being conducted
2 in the room of a resident, another resident may not be moved
3 into that room unless the resident has consented to the
4 existing authorized electronic monitoring.

5 Section 20. Notice to the facility. Authorized electronic
6 monitoring may begin only after the required consent form
7 specified in Section 15 of this Act has been completed and
8 submitted to the facility.

9 Section 25. Cost and installation.

10 (a) A resident choosing to conduct authorized electronic
11 monitoring must do so at his or her own expense.

12 (b) If a resident chooses to install an electronic
13 monitoring device that uses Internet technology for visual or
14 audio monitoring, that resident is responsible for contracting
15 with an Internet service provider and the facility shall make a
16 reasonable attempt to accommodate the resident, including, but
17 not limited to, allowing access to the facility's
18 telecommunications or equipment room. A facility has the burden
19 of proving that a requested accommodation is not reasonable.

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

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

1 Section 27. Assistance program. The Department shall
2 establish a program to assist residents receiving medical
3 assistance under Article V of the Illinois Public Aid Code in
4 accessing authorized electronic monitoring.

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

10 (2) Applications for funds must be made in a manner
11 prescribed by the Department and the funds shall be
12 disbursed by means of a lottery.

13 Section 30. Notice to visitors. A sign, as prescribed by
14 the Department, shall be clearly and conspicuously posted at
15 the main facility entrance. The notice must be entitled
16 "Electronic Monitoring" and must state, in large, easy-to-read
17 type, "The rooms of some residents may be monitored
18 electronically by or on behalf of the residents.".

19 Section 35. Prohibited acts.

20 (a) A prospective resident or resident shall not be denied
21 admission to or discharged from a facility or be otherwise
22 discriminated against or retaliated against for consenting to
23 authorized electronic monitoring. A violation of this
24 subsection is a business offense punishable by a fine not to

1 exceed \$10,000. The State's Attorney of the county in which the
2 facility is located, or the Attorney General, shall be notified
3 by the Director of Public Health of any violations of this
4 subsection.

5 (b) A facility shall not prevent the installation of an
6 electronic monitoring device by a resident who has provided the
7 facility with consent as required in Section 15 of this Act. A
8 violation of this subsection is a petty offense punishable by a
9 fine not to exceed \$1,000. The State's Attorney of the county
10 in which the facility is located, or the Attorney General,
11 shall be notified by the Director of Public Health of any
12 violations of this subsection.

13 Section 40. Obstruction of electronic monitoring devices.
14 A person or entity is prohibited from knowingly hampering,
15 obstructing, tampering with, or destroying an electronic
16 monitoring device installed in a resident's room or a video or
17 audio recording obtained in accordance with this Act. A person
18 or entity that violates this Section is guilty of a Class B
19 misdemeanor. A person or entity that violates this Section in
20 the commission of or to conceal a misdemeanor offense is guilty
21 of a Class A misdemeanor. A person or entity that violates this
22 Section in the commission of or to conceal a felony offense is
23 guilty of a Class 4 felony.

24 Section 45. Access to recordings or photographs. Any video

1 or audio recording or photograph created through authorized
2 electronic monitoring shall be considered the personal
3 property of the resident, and the facility shall not access
4 such recordings or photographs without the written consent of
5 the resident or the person who consented on behalf of the
6 resident in accordance with Section 15 of this Act.

7 Section 50. Admissibility of evidence. Any video or audio
8 recording or photograph created through authorized electronic
9 monitoring in accordance with this Act may be admitted into
10 evidence in a civil, criminal, or administrative proceeding if
11 the contents of the recording or photograph have not been
12 edited or artificially enhanced and the video recording or
13 photograph includes the date and time the events occurred.

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

20 Section 60. Rules. The Department shall adopt rules
21 necessary to implement this Act.