



Rep. Greg Harris

Filed: 3/17/2015

09900HB2462ham001

LRB099 06604 RPS 32835 a

1 AMENDMENT TO HOUSE BILL 2462

2 AMENDMENT NO. _____. Amend House Bill 2462 by replacing
3 everything after the enacting clause with the following:

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

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

6 "Resident" means a person receiving personal or medical
7 care, including, but not limited to, habilitation, mental
8 health treatment, psychiatric rehabilitation, psychiatric
9 services, therapeutic services, physical rehabilitation, or
10 assistance with activities of daily living, from a facility.

11 Section 10. Authorized electronic monitoring. A resident
12 shall be permitted to conduct authorized electronic monitoring
13 of the resident's room through the use of electronic monitoring
14 devices placed in the room pursuant to this Act.

15 Section 15. Consent.

16 (a) Except as otherwise provided in this subsection, a
17 resident or the parent or legal guardian of a resident under
18 the age of 18 must consent in writing to the authorized
19 electronic monitoring in the resident's room. If the resident
20 has not affirmatively objected to the authorized electronic
21 monitoring and lacks the ability to understand and appreciate
22 the nature and consequences of electronic monitoring, the
23 following individuals may consent on behalf of the resident:

24 (1) a person appointed as a guardian of the resident

1 under the Probate Act of 1975;

2 (2) a health care agent named under the Illinois Power
3 of Attorney Act; or

4 (3) if the resident's physician determines that the
5 resident lacks the ability to understand and appreciate the
6 nature and consequences of electronic monitoring, a person
7 from the following list, in order of priority:

8 (A) the resident's spouse;

9 (B) the resident's parent; or

10 (C) the resident's adult child who has the waiver
11 and consent of the other adult children of the resident
12 to act as the sole decision maker regarding authorized
13 electronic monitoring.

14 Prior to another person consenting on behalf of a resident
15 18 years of age or older in accordance with this Section, the
16 resident must be asked by that person, in the presence of a
17 facility employee, if he or she wants authorized electronic
18 monitoring to be conducted. For the purposes of this
19 subsection, a resident affirmatively objects when he or she
20 verbally declines authorized electronic monitoring. The
21 resident's response must be documented on the consent form.

22 (b) Prior to the authorized electronic monitoring, a
23 resident must obtain the written consent of any other resident
24 residing in the room on the consent form. A resident may
25 consent to authorized electronic monitoring with conditions
26 that include, but are not limited to, prohibiting audio

1 monitoring.

2 Consent by a roommate under this subsection authorizes the
3 resident's use of any recording obtained under this Act, as
4 provided in Section 45 of this Act.

5 (c) Consent may be withdrawn at any time, and the
6 withdrawal of consent shall be documented in the resident's
7 file. If a roommate withdraws consent and the resident
8 conducting the authorized electronic monitoring does not
9 remove or disable the electronic monitoring device, the
10 facility may turn off the device.

11 (d) If a resident who is residing in a shared room wants to
12 conduct authorized electronic monitoring and another resident
13 living in the same shared room refuses to consent to the use of
14 an electronic monitoring device, the facility shall make a
15 reasonable attempt to accommodate the resident who wants to
16 conduct authorized electronic monitoring. A facility has met
17 the requirement to make a reasonable attempt to accommodate a
18 resident who wants to conduct authorized electronic monitoring
19 when upon notification that a roommate has not consented to the
20 use an electronic monitoring device in his or her room, the
21 facility offers to move either resident to another room that is
22 available at the time of the request. If a facility is unable
23 to accommodate a resident due to lack of space, the facility
24 must reevaluate the request every 2 weeks until the request is
25 fulfilled.

1 Section 20. Notice to the facility.

2 (a) Authorized electronic monitoring may begin only after
3 the required consent form specified in Section 15 of this Act
4 has been completed and submitted to the facility.

5 (b) A resident shall notify the facility in writing of his
6 or her intent to install an electronic monitoring device by
7 providing a completed consent form. Notice shall be given on a
8 consent form that must include the following:

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

14 (A) the date the resident was asked if he or she
15 wants authorized electronic monitoring to be
16 conducted;

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

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

21 (2) the resident's roommate's signed consent or the
22 signature of the person consenting on behalf of the
23 resident in accordance with Section 15 of this Act, if
24 applicable, and any conditions placed on the roommate's
25 consent; if a person other than the roommate signs the
26 consent form, the form must document the following:

1 (A) the date the roommate was asked if he or she
2 wants authorized electronic monitoring to be
3 conducted;

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

6 (C) an acknowledgement that the roommate did not
7 affirmatively object.

8 (c) A copy of the consent form shall be placed in the
9 resident's file and a copy shall be provided to the resident.

10 Section 25. Cost and installation.

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

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

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

23 (d) A facility may not charge the resident a fee for the
24 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 funds
6 on an annual basis to residents receiving medical assistance
7 under Article V of the Illinois Public Aid Code for the
8 purchase and installation of authorized electronic monitoring
9 devices.

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

13 Section 30. Notice to visitors.

14 (a) A sign shall be clearly and conspicuously posted at all
15 building entrances accessible to visitors. The notice must be
16 entitled "Electronic Monitoring" and must state, in large,
17 easy-to-read type, "The rooms of some residents may be
18 monitored electronically by or on behalf of the residents.".

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

24 Section 32. Enforcement. The Department is authorized to

1 accept and investigate complaints regarding compliance with
2 the provisions of this Act following the procedures prescribed
3 in Section 3-702 of the Nursing Home Care Act and Section 3-702
4 of the ID/DD Community Care Act. The Department may assess
5 compliance with the Act during any inspection conducted in
6 accordance with Section 3-212 of the Nursing Home Care Act or
7 Section 3-212 of the ID/DD Community Care Act.

8 Section 35. Prohibited acts.

9 (a) A prospective resident or resident shall not be denied
10 admission to or discharged from a facility or be otherwise
11 discriminated against or retaliated against for consenting to
12 authorized electronic monitoring. A violation of this
13 subsection is a business offense punishable by a fine not to
14 exceed \$10,000. The State's Attorney of the county in which the
15 facility is located, or the Attorney General, shall be notified
16 by the Director of Public Health of any violations of this
17 subsection.

18 (b) A facility shall not prevent the installation of an
19 electronic monitoring device by a resident who has provided the
20 facility with consent as required in Section 15 of this Act. A
21 violation of this subsection is a petty offense punishable by a
22 fine not to exceed \$1,000. The State's Attorney of the county
23 in which the facility is located, or the Attorney General,
24 shall be notified by the Director of Public Health of any
25 violations of this subsection.

1 Section 40. Obstruction of electronic monitoring devices.

2 (a) A person or entity is prohibited from knowingly
3 hampering, obstructing, tampering with, or destroying an
4 electronic monitoring device installed in a resident's room or
5 a video or audio recording obtained in accordance with this
6 Act.

7 (b) A person or entity that violates this Section is guilty
8 of a Class B misdemeanor. A person or entity that violates this
9 Section in the commission of or to conceal a misdemeanor
10 offense is guilty of a Class A misdemeanor. A person or entity
11 that violates this Section in the commission of or to conceal a
12 felony offense is guilty of a Class 4 felony.

13 (c) It shall be an affirmative defense to a violation of
14 this Section that the person or facility acted with the consent
15 of the resident or the person who consented on behalf of the
16 resident in accordance with Section 15 of this Act.

17 Section 45. Access to recordings.

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

23 (b) Any recording created through authorized electronic
24 monitoring may be disseminated by the resident or the person

1 who consented on behalf of the resident in accordance with
2 Section 15 of this Act to only the following:

3 (1) the facility;

4 (2) the Department;

5 (3) a representative of the Office of the State Long
6 Term Care Ombudsman;

7 (4) a law enforcement agency;

8 (5) an attorney representing the resident; or

9 (6) any other person as required by a court.

10 (c) A violation of this Section is a Class B misdemeanor.

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

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

1 Section 60. Rules. The Department shall adopt rules
2 necessary to implement this Act.".