

AMENDMENTS TO HOUSE BILL NO. 1428

Sponsor: REPRESENTATIVE DAY

Printer's No. 1544

1 Amend Bill, page 1, line 10, by striking out "patient" and
2 inserting
3 resident

4 Amend Bill, page 1, line 17, by striking out "PATIENT" and
5 inserting

6 RESIDENT

7 Amend Bill, page 1, line 19, by striking out "patient" and
8 inserting
9 resident

10 Amend Bill, page 2, lines 4 through 11, by striking out all
11 of said lines and inserting

12 "Electronic monitoring device." A video surveillance
13 instrument installed in the room of a resident of a facility, in
14 accordance with this chapter, which broadcasts, photographs or
15 records activity occurring in the facility.

16 "Facility." As the term "long-term care nursing facility" is
17 defined in section 802.1.

18 "Guardian." A fiduciary who has the care and management of
19 the estate or person of an incapacitated person under the
20 provisions of 20 Pa.C.S. Ch. 55 (relating to incapacitated
21 persons).

22 "Legal representative." An individual who is authorized
23 under a power of attorney that complies with 20 Pa.C.S. Ch. 56
24 (relating to powers of attorney) to make decisions on behalf of
25 a resident.

26 Amend Bill, page 2, line 12, by striking out "long-term care"

27 Amend Bill, page 2, lines 14 through 18, by striking out all
28 of said lines

1 Amend Bill, page 2, line 19, by striking out "and use of
2 device"

3 Amend Bill, page 2, lines 20 through 30; page 3, lines 1
4 through 8; by striking out all of said lines on said pages and
5 inserting

6 (a) Who may authorize.--A resident may authorize
7 installation and use of an electronic monitoring device in the
8 following ways:

9 (1) If a resident has capacity to request an electronic
10 monitoring device and has not been judicially declared to
11 lack the required capacity, only the resident may authorize
12 an electronic monitoring device in a facility,
13 notwithstanding the terms of a power of attorney or similar
14 legal agreement executed by the resident.

15 (2) If a resident has been judicially declared to lack
16 capacity required for taking an action such as requesting an
17 electronic monitoring device, only the guardian of the
18 resident may authorize an electronic monitoring device in a
19 facility.

20 (3) Subject to paragraph (2), if a resident has been
21 determined by a physician to lack capacity to request an
22 electronic monitoring device, only the legal representative
23 of the resident may authorize an electronic monitoring device
24 in a facility.

25 (b) Requirements.--A resident or the guardian or legal
26 representative of the resident may authorize installation and
27 use of an electronic monitoring device in a facility provided
28 that:

29 (1) The facility is given notice of the installation at
30 least 30 days prior to the installation.

31 (2) If the electronic monitoring device records activity
32 visually, the recording denotes the date and time.

33 (3) The electronic monitoring device and all
34 installation, removal and maintenance costs, including
35 Internet service costs and network access costs, are paid for
36 by the resident or guardian or legal representative of the
37 resident.

38 (4) Installation of the electronic monitoring device
39 does not cause extensive damage to the facility's interior
40 walls or other structures, unless the resident agrees to be
41 liable for replacement or repair of the damage incurred
42 during the installation, maintenance or removal of the
43 electronic monitoring device.

44 (5) The electronic monitoring device is installed and
45 conducted only in a fixed position.

46 (6) The electronic monitoring device is placed in a

1 conspicuous location.

2 Amend Bill, page 3, lines 10 through 13, by striking out all
3 of said lines and inserting

4 (a) Form.--

5 (1) A resident or the guardian or legal representative
6 of the resident who authorizes an electronic monitoring
7 device in a facility shall notify the facility on an
8 electronic monitoring device authorization form prescribed by
9 the department and provided by the facility to the resident,
10 guardian or legal representative.

11 (2) The form in subsection (a) shall:

12 (i) Require the resident or the guardian or legal
13 representative of the guardian to choose whether the
14 electronic monitoring device will always be unobstructed
15 or whether the camera should be obstructed in specified
16 circumstances to protect the dignity of the resident.

17 (ii) Specify that the consent of other residents
18 residing in the same room as the resident must be
19 obtained regarding the use of the electronic monitoring
20 device.

21 (b) Written consent generally.--Subject to subsection (c),
22 written consent for an electronic monitoring device in a
23 facility shall be given only by:

24 (1) A resident who has capacity to sign the consent
25 form.

26 (2) The guardian of the resident, if the resident has
27 been judicially declared to lack capacity required to sign
28 the consent form.

29 (3) The legal representative of the resident, if the
30 resident does not have capacity to sign the consent form but
31 has not been judicially declared to lack capacity required to
32 sign the consent form.

33 Amend Bill, page 3, line 14, by striking out "(b)" and
34 inserting

35 (c)

36 Amend Bill, page 3, line 15, by striking out "Written" and
37 inserting

38 Prior to the use of the electronic monitoring device,
39 written

40 Amend Bill, page 3, line 15, by striking out "must" and
41 inserting

42 shall

1 Amend Bill, page 3, line 15, by inserting after "each"
2 other
3 Amend Bill, page 3, lines 15 and 16, by striking out "or
4 representative of a resident" and inserting
5 , or the guardian or legal representative of each other
6 resident,
7 Amend Bill, page 3, line 16, by striking out the period after
8 "room" and inserting
9 as the resident for whom an electronic monitoring device
10 in a facility is being used.
11 Amend Bill, page 3, line 17, by inserting after "room"
12 as the resident for whom an electronic monitoring device
13 in a facility is being used
14 Amend Bill, page 3, line 18, by inserting after "the"
15 electronic
16 Amend Bill, page 3, line 20, by striking out "nonconsenting"
17 Amend Bill, page 3, line 20, by inserting after "resident"
18 residing in the same room
19 Amend Bill, page 3, line 21, by inserting after "room."
20 An electronic monitoring device may not be placed in
21 a bathroom.
22 Amend Bill, page 3, lines 26 through 30, by striking out all
23 of said lines
24 Amend Bill, page 4, line 4, by striking out "authorized" and
25 inserting
26 an
27 Amend Bill, page 4, line 5, by inserting after "monitoring"
28 device
29 Amend Bill, page 4, line 6, by striking out "long-term care"
30 Amend Bill, page 4, line 7, by inserting after "shall"
31 make every effort to

1 Amend Bill, page 4, line 7, by striking out "representative
2 of a" and inserting

3 guardian or legal representative of the

4 Amend Bill, page 4, line 8, by striking out "a" and inserting
5 an electronic

6 Amend Bill, page 4, line 9, by striking out "representative"
7 and inserting

8 guardian or legal representative

9 Amend Bill, page 4, line 10, by inserting after "time."

10 A facility may not be cited by the department if the
11 facility cannot accommodate a room change requested for this
12 purpose.

13 Amend Bill, page 4, line 11, by striking out "Authorization"
14 and inserting

15 Electronic monitoring device authorization

16 Amend Bill, page 4, line 12, by inserting after "the"

17 electronic monitoring device

18 Amend Bill, page 4, lines 12 and 13, by striking out "of
19 installation and use of a monitoring device"

20 Amend Bill, page 4, line 14, by striking out "representative"
21 and inserting

22 guardian or legal representative

23 Amend Bill, page 4, line 15, by inserting after "the" where
24 it occurs the second time

25 electronic

26 Amend Bill, page 4, line 18, by striking out "a" and
27 inserting

28 an electronic

29 Amend Bill, page 4, lines 20 and 21, by striking out
30 "representative of the resident" and inserting

31 the guardian or legal representation of any other
32 resident

Amend Bill, page 4, line 21, by striking out the period after
"room" and inserting

of the resident for whom an electronic monitoring device
in a facility is being used, including any condition set by
any other resident of the same room.

Amend Bill, page 4, line 23, by inserting after "the" where
it occurs the second time

electronic

Amend Bill, page 4, line 24, by striking out "patient's" and
inserting

resident's

Amend Bill, page 4, line 25, by inserting after "the" where
it occurs the second time

electronic

Amend Bill, page 4, line 27, by striking out "pursuant to"
and inserting

under

Amend Bill, page 4, by inserting between lines 28 and 29

(7) A release from civil liability on the part of a
facility for a violation of the resident's privacy rights
regarding the use of the electronic monitoring device in the
facility.

Amend Bill, page 4, line 30, by striking out "long-term care"

Amend Bill, page 5, line 1, by inserting after "that" where
it occurs the second time

electronic

Amend Bill, page 5, line 4, by striking out "in which
authorized" and inserting

with an

Amend Bill, page 5, line 5, by striking out "occurs" and
inserting

device

1 Amend Bill, page 5, line 6, by striking out "by a monitoring
2 device"

3 Amend Bill, page 5, line 8, by striking out "a" and inserting
4 an electronic

5 Amend Bill, page 5, line 11, by inserting after "the" where
6 it occurs the third time
7 guardian or legal

8 Amend Bill, page 5, line 12, by inserting after "resident."
9 The following apply:

10 (1) A person or entity that distributes material
11 obtained from an electronic monitoring device with the intent
12 to ridicule or demean the resident shall be subject to the
13 penalties prescribed in 18 Pa.C.S. § 2713 (relating to
14 neglect of care-dependent person).

15 (2) A violation of this section shall constitute a
16 misdemeanor of the third degree.

17 Amend Bill, page 5, line 16, by striking out "long-term care"

18 Amend Bill, page 5, line 17, by inserting after "offense.--"
19 A violation of this section shall constitute a misdemeanor
20 of the second degree.

21 Amend Bill, page 5, line 17, by inserting after
22 "intentionally"

23 or knowingly

24 Amend Bill, page 5, line 18, by striking out "a" where it
25 occurs the second time and inserting

26 an electronic

27 Amend Bill, page 5, line 19, by striking out "long-term care"

28 Amend Bill, page 5, line 26, by striking out "a" where it
29 occurs the first time and inserting

30 an electronic

31 Amend Bill, page 5, lines 26 through 29, by striking out
32 "common area of a" in line 26 and all of lines 27 through 29

1 Amend Bill, page 5, line 30, by inserting after "room,"

2 without

3 Amend Bill, page 6, line 1, by inserting after "the" where it
4 occurs the first time

5 guardian or legal

6 Amend Bill, page 6, line 4, by striking out "a" and inserting

7 an unauthorized electronic

8 Amend Bill, page 6, lines 5 through 7, by striking out "if

9 the monitoring device was" in line 5, all of line 6 and "without
10 the prescribed form" in line 7

11 Amend Bill, page 6, line 10, by inserting after "resident,"

12 guardian or legal

13 Amend Bill, page 6, line 11, by striking out "a" and

14 inserting

15 an electronic

16 Amend Bill, page 6, lines 18 and 19, by striking out "or

17 appropriate governing electronic monitoring"

18 Amend Bill, page 6, line 25, by inserting after "of"

19 electronic

20 Amend Bill, page 6, line 27, by striking out "a" where it

21 occurs the second time and inserting

22 an electronic

23 Amend Bill, page 6, by inserting after line 30

24 (c) Effect of chapter.--Nothing in this chapter shall be
25 construed to supersede Federal authority regarding facilities or
26 prevent the department from taking necessary actions to render
27 the Commonwealth eligible for Federal funds or reimbursement
28 services provided in facilities.