

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2578 Session of 2018

INTRODUCED BY MASSER, SCHLEGEL CULVER, DAY, KLUNK, BERNSTINE, RYAN, ROTHMAN, HENNESSEY, A. DAVIS, MILLARD, DeLUCA, B. O'NEILL, SAYLOR, COX, MENTZER, WATSON, READSHAW, BOBACK, DRISCOLL, McGINNIS, A. HARRIS, PHILLIPS-HILL, GILLEN, HEFFLEY AND OBERLANDER, AUGUST 6, 2018

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES, AUGUST 6, 2018

AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An  
 2 act relating to health care; prescribing the powers and  
 3 duties of the Department of Health; establishing and  
 4 providing the powers and duties of the State Health  
 5 Coordinating Council, health systems agencies and Health Care  
 6 Policy Board in the Department of Health, and State Health  
 7 Facility Hearing Board in the Department of Justice;  
 8 providing for certification of need of health care providers  
 9 and prescribing penalties," adding provisions relating to  
 10 patient care monitoring.

11 The General Assembly of the Commonwealth of Pennsylvania  
 12 hereby enacts as follows:

13 Section 1. The act of July 19, 1979 (P.L.130, No.48), known  
 14 as the Health Care Facilities Act, is amended by adding a  
 15 chapter to read:

16 CHAPTER 8-A

17 PATIENT CARE MONITORING

18 Section 801-A. Scope of chapter.

19 This chapter relates to patient care monitoring.

20 Section 802-A. Definitions.

1 The following words and phrases when used in this chapter  
2 shall have the meanings given to them in this section unless the  
3 context clearly indicates otherwise:

4 "Department." The Department of Health of the Commonwealth.

5 "Long-term care nursing facility" or "facility." As defined  
6 in section 802.1.

7 "Monitoring device." A video surveillance instrument  
8 installed in the common areas or resident's room of a facility  
9 under the provisions of this chapter that broadcasts,  
10 photographs or records activity occurring in the facility.

11 "Representative of a resident." An individual who is  
12 authorized to make decisions on behalf of a resident.

13 "Resident." An individual who resides in a long-term care  
14 facility in this Commonwealth.

15 "Unauthorized electronic monitoring." An electronic,  
16 mechanical or other means of monitoring a wire or electronic  
17 communication that does not meet the provisions of this chapter  
18 and is specifically used for the nonconsensual interception of  
19 wire or electronic communications.

20 Section 803-A. Authorization and use of device.

21 (a) General rule.--A resident or representative of a  
22 resident may authorize installation and use of a monitoring  
23 device in a facility provided that:

24 (1) The facility is given notice of the installation.

25 (2) If the monitoring device records activity visually,  
26 the recording denotes the date and time.

27 (3) The monitoring device and all installation and  
28 maintenance costs are paid for by the resident.

29 (4) Installation of the monitoring device does not cause  
30 extensive damage to the facility's interior walls or other

1 structures, unless the resident agrees to be liable for  
2 replacement or repair of the damage incurred during the  
3 installation, maintenance or removal of the monitoring  
4 device.

5 (b) Limitations on use.--The resident may establish and the  
6 facility shall permit limits on the use, including the time of  
7 operation, direction, focus or volume of a monitoring device,  
8 provided that the monitoring device shall be placed in a  
9 conspicuously visible location in the room of the resident.

10 Section 804-A. Conditions of consent.

11 (a) General rule.--A resident or representative of a  
12 resident must consent in writing to the authorized electronic  
13 monitoring in the resident's room. The consent must be on a form  
14 prescribed by the department and placed on file in the facility.

15 (b) Residents occupying same room.--

16 (1) Written consent must be given by each resident or  
17 representative of a resident who resides in the same room.

18 (2) Another resident who resides in the same room may:

19 (i) When the monitoring device is a video  
20 surveillance camera, condition consent on the camera  
21 being pointed away from the nonconsenting resident or in  
22 private areas of the room.

23 (ii) Revoke that resident's consent at any time,  
24 provided that revocation is in writing. The revocation of  
25 consent shall be kept on file at the facility on a form  
26 prescribed by the department.

27 (c) Release of liability.--Consent to the authorization for  
28 the installation and use of a monitoring device shall include a  
29 release of liability for the facility for a violation of the  
30 resident's right to privacy insofar as the use of the monitoring

1 device is concerned.

2 (d) Discrimination prohibited.--Neither a prospective  
3 resident nor a resident may be denied admission to or discharged  
4 from a facility or be otherwise discriminated against or  
5 retaliated against for consenting to use authorized electronic  
6 monitoring.

7 (e) Requests for room changes.--A long-term care facility  
8 shall accommodate a resident or the representative of a resident  
9 desiring to utilize a monitoring device to move to another room  
10 if the resident or representative of the resident requests a  
11 room change within a reasonable amount of time.

12 Section 805-A. Authorization form and contents.

13 The form for the authorization of installation and use of a  
14 monitoring device shall provide for:

15 (1) Consent of the resident or the representative of the  
16 resident authorizing the installation and use of the  
17 monitoring device.

18 (2) Notice to the facility of the resident's  
19 installation of a monitoring device and specifics as to its  
20 type, function and use.

21 (3) Consent of any other resident or representative of  
22 the resident sharing the same room.

23 (4) Notice of release from liability for privacy  
24 violation through the use of the monitoring device.

25 (5) Waiver of the patient's right to privacy in  
26 conjunction with the use of the monitoring device.

27 (6) Notification of the prohibition of audio recording  
28 pursuant to 18 Pa.C.S. Ch. 57 (relating to wiretapping and  
29 electronic surveillance).

30 Section 806-A. Notice.

1 (a) Main entrances.--A long-term care facility shall post at  
2 or near its main entrances a sign that clearly states that  
3 monitoring devices may be in use in the facility.

4 (b) Residents' rooms.--Additional notice shall be displayed  
5 at the entrance of the room of a resident in which authorized  
6 electronic monitoring occurs stating that the room is being  
7 monitored by a monitoring device.

8 Section 807-A. Access to recordings or photographs.

9 Any video recording or photograph produced from a monitoring  
10 device at a facility shall be considered the personal property  
11 of the resident and the facility may not access the recording or  
12 photograph without the written consent of the resident or the  
13 representative of the resident.

14 Section 808-A. Prohibition of obstruction or interception.

15 (a) General rule.--No person or entity may intentionally  
16 hamper, obstruct, tamper with or destroy an electronic  
17 monitoring device installed in a long-term care facility.

18 (b) Criminal offense.--A person or entity that intentionally  
19 hampers, obstructs, tampers with or destroys a recording or a  
20 monitoring device installed in a long-term care facility shall  
21 be subject to the penalties prescribed in 18 Pa.C.S. § 4910  
22 (relating to tampering with or fabricating physical evidence) as  
23 it relates to tampering of physical evidence.

24 (c) Interception, disclosure and use of intercepted  
25 communications.--No person or entity may intercept a  
26 communication or disclose or use an intercepted communication of  
27 a monitoring device placed or installed in a common area of a  
28 long-term care facility without:

29 (1) the express written consent of the facility; or

30 (2) for an electronic monitoring device installed in a

1 resident's room, the express written consent of the resident  
2 or the representative of the resident.

3 Section 809-A. Admissibility of evidence.

4 (a) General rule.--In a civil action against a facility,  
5 material obtained through the use of a monitoring device shall  
6 be inadmissible as evidence if the monitoring device was  
7 installed or used without the knowledge of the facility or  
8 without the prescribed form.

9 (b) Immunity.--Compliance with the provisions of this  
10 section shall be a complete defense against any civil or  
11 criminal action brought against the resident, representative of  
12 the resident or facility for the use or presence of a monitoring  
13 device.

14 Section 810-A. Regulations and statements of policy.

15 (a) General rule.--The department shall, in consultation  
16 with the Department of Aging, State Long-Term Care Ombudsman,  
17 representatives of licensed long-term care service providers and  
18 other aging advocates, promulgate regulations and issue  
19 statements of policy as necessary or appropriate governing  
20 electronic monitoring no later than one year after the effective  
21 date of this section. The regulations shall establish minimum  
22 standards, including, but not limited to:

23 (1) Consent and revocation of consent form.

24 (2) Resident's right to privacy under certain  
25 circumstances.

26 (3) Notice of monitoring device usage in the facility.

27 (4) Fines relating to the violation of this chapter.

28 (5) Restricted area of placement of a monitoring device.

29 (b) Procedure.--Regulations shall be promulgated in  
30 accordance with the provisions of the act of June 25, 1982

1 (P.L.633, No.181), known as the Regulatory Review Act.

2 Section 2. This act shall take effect in one year.