

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1428 Session of 2021

INTRODUCED BY MASSER, SCHLEGEL CULVER, DAY, KLUNK, PICKETT, RYAN, DAVANZO, HILL-EVANS, LEWIS DELROSSO, BROOKS, R. BROWN, THOMAS, MILLARD, HEFFLEY, FEE, NEILSON, T. DAVIS, GLEIM, ROWE AND MOUL, MAY 17, 2021

AS REPORTED FROM COMMITTEE ON AGING AND OLDER ADULT SERVICES, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 7, 2021

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 RESIDENT 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:

CHAPTER 8-A

PATIENT RESIDENT CARE MONITORING <--

18 Section 801-A. Scope of chapter.

19 This chapter relates to patient RESIDENT 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 ~~"ELECTRONIC MONITORING DEVICE." A VIDEO SURVEILLANCE~~ <--  
14 ~~INSTRUMENT INSTALLED IN THE ROOM OF A RESIDENT OF A FACILITY, IN~~  
15 ~~ACCORDANCE WITH THIS CHAPTER, WHICH BROADCASTS, PHOTOGRAPHS OR~~  
16 ~~RECORDS ACTIVITY OCCURRING IN THE FACILITY.~~

17 ~~"FACILITY." AS THE TERM "LONG-TERM CARE NURSING FACILITY" IS~~  
18 ~~DEFINED IN SECTION 802.1.~~

19 ~~"GUARDIAN." A FIDUCIARY WHO HAS THE CARE AND MANAGEMENT OF~~  
20 ~~THE ESTATE OR PERSON OF AN INCAPACITATED PERSON UNDER THE~~  
21 ~~PROVISIONS OF 20 PA.C.S. CH. 55 (RELATING TO INCAPACITATED~~  
22 ~~PERSONS).~~

23 ~~"LEGAL REPRESENTATIVE." AN INDIVIDUAL WHO IS AUTHORIZED~~  
24 ~~UNDER A POWER OF ATTORNEY THAT COMPLIES WITH 20 PA.C.S. CH. 56~~  
25 ~~(RELATING TO POWERS OF ATTORNEY) TO MAKE DECISIONS ON BEHALF OF~~  
26 ~~A RESIDENT.~~

27 ~~"Resident." An individual who resides in a long term care~~ <--  
28 ~~facility in this Commonwealth.~~

29 ~~"Unauthorized electronic monitoring." An electronic,~~ <--  
30 ~~mechanical or other means of monitoring a wire or electronic~~

1 ~~communication that does not meet the provisions of this chapter~~  
2 ~~and is specifically used for the nonconsensual interception of~~  
3 ~~wire or electronic communications.~~

4 ~~Section 803-A. Authorization and use of device.~~ <--

5 ~~(a) General rule. A resident or representative of a~~ <--  
6 ~~resident may authorize installation and use of a monitoring~~  
7 ~~device in a facility provided that:~~

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

9 ~~(2) If the monitoring device records activity visually,~~  
10 ~~the recording denotes the date and time.~~

11 ~~(3) The monitoring device and all installation and~~  
12 ~~maintenance costs are paid for by the resident.~~

13 ~~(4) Installation of the monitoring device does not cause~~  
14 ~~extensive damage to the facility's interior walls or other~~  
15 ~~structures, unless the resident agrees to be liable for~~  
16 ~~replacement or repair of the damage incurred during the~~  
17 ~~installation, maintenance or removal of the monitoring~~  
18 ~~device.~~

19 ~~(b) Limitations on use. The resident may establish and the~~  
20 ~~facility shall permit limits on the use, including the time of~~  
21 ~~operation, direction, focus or volume of a monitoring device,~~  
22 ~~provided that the monitoring device shall be placed in a~~  
23 ~~conspicuously visible location in the room of the resident.~~

24 ~~(A) WHO MAY AUTHORIZE.--A RESIDENT MAY AUTHORIZE~~ <--

25 ~~INSTALLATION AND USE OF AN ELECTRONIC MONITORING DEVICE IN THE~~  
26 ~~FOLLOWING WAYS:~~

27 ~~(1) IF A RESIDENT HAS CAPACITY TO REQUEST AN ELECTRONIC~~  
28 ~~MONITORING DEVICE AND HAS NOT BEEN JUDICIALLY DECLARED TO~~  
29 ~~LACK THE REQUIRED CAPACITY, ONLY THE RESIDENT MAY AUTHORIZE~~  
30 ~~AN ELECTRONIC MONITORING DEVICE IN A FACILITY,~~

1 NOTWITHSTANDING THE TERMS OF A POWER OF ATTORNEY OR SIMILAR  
2 LEGAL AGREEMENT EXECUTED BY THE RESIDENT.

3 (2) IF A RESIDENT HAS BEEN JUDICIALLY DECLARED TO LACK  
4 CAPACITY REQUIRED FOR TAKING AN ACTION SUCH AS REQUESTING AN  
5 ELECTRONIC MONITORING DEVICE, ONLY THE GUARDIAN OF THE  
6 RESIDENT MAY AUTHORIZE AN ELECTRONIC MONITORING DEVICE IN A  
7 FACILITY.

8 (3) SUBJECT TO PARAGRAPH (2), IF A RESIDENT HAS BEEN  
9 DETERMINED BY A PHYSICIAN TO LACK CAPACITY TO REQUEST AN  
10 ELECTRONIC MONITORING DEVICE, ONLY THE LEGAL REPRESENTATIVE  
11 OF THE RESIDENT MAY AUTHORIZE AN ELECTRONIC MONITORING DEVICE  
12 IN A FACILITY.

13 (B) REQUIREMENTS.--A RESIDENT OR THE GUARDIAN OR LEGAL  
14 REPRESENTATIVE OF THE RESIDENT MAY AUTHORIZE INSTALLATION AND  
15 USE OF AN ELECTRONIC MONITORING DEVICE IN A FACILITY PROVIDED  
16 THAT:

17 (1) THE FACILITY IS GIVEN NOTICE OF THE INSTALLATION AT  
18 LEAST 30 DAYS PRIOR TO THE INSTALLATION.

19 (2) IF THE ELECTRONIC MONITORING DEVICE RECORDS ACTIVITY  
20 VISUALLY, THE RECORDING DENOTES THE DATE AND TIME.

21 (3) THE ELECTRONIC MONITORING DEVICE AND ALL  
22 INSTALLATION, REMOVAL AND MAINTENANCE COSTS, INCLUDING  
23 INTERNET SERVICE COSTS AND NETWORK ACCESS COSTS, ARE PAID FOR  
24 BY THE RESIDENT OR GUARDIAN OR LEGAL REPRESENTATIVE OF THE  
25 RESIDENT.

26 (4) INSTALLATION OF THE ELECTRONIC MONITORING DEVICE  
27 DOES NOT CAUSE EXTENSIVE DAMAGE TO THE FACILITY'S INTERIOR  
28 WALLS OR OTHER STRUCTURES, UNLESS THE RESIDENT AGREES TO BE  
29 LIABLE FOR REPLACEMENT OR REPAIR OF THE DAMAGE INCURRED  
30 DURING THE INSTALLATION, MAINTENANCE OR REMOVAL OF THE

1 ELECTRONIC MONITORING DEVICE.

2 (5) THE ELECTRONIC MONITORING DEVICE IS INSTALLED AND  
3 CONDUCTED ONLY IN A FIXED POSITION.

4 (6) THE ELECTRONIC MONITORING DEVICE IS PLACED IN A  
5 CONSPICUOUS LOCATION.

6 Section 804-A. Conditions of consent.

7 ~~(a) General rule. A resident or representative of a~~ <--  
8 ~~resident must consent in writing to the authorized electronic~~  
9 ~~monitoring in the resident's room. The consent must be on a form~~  
10 ~~prescribed by the department and placed on file in the facility.~~

11 (A) FORM.-- <--

12 (1) A RESIDENT OR THE GUARDIAN OR LEGAL REPRESENTATIVE  
13 OF THE RESIDENT WHO AUTHORIZES AN ELECTRONIC MONITORING  
14 DEVICE IN A FACILITY SHALL NOTIFY THE FACILITY ON AN  
15 ELECTRONIC MONITORING DEVICE AUTHORIZATION FORM PRESCRIBED BY  
16 THE DEPARTMENT AND PROVIDED BY THE FACILITY TO THE RESIDENT,  
17 GUARDIAN OR LEGAL REPRESENTATIVE.

18 (2) THE FORM IN SUBSECTION (A) SHALL:

19 (I) REQUIRE THE RESIDENT OR THE GUARDIAN OR LEGAL  
20 REPRESENTATIVE OF THE GUARDIAN TO CHOOSE WHETHER THE  
21 ELECTRONIC MONITORING DEVICE WILL ALWAYS BE UNOBSTRUCTED  
22 OR WHETHER THE CAMERA SHOULD BE OBSTRUCTED IN SPECIFIED  
23 CIRCUMSTANCES TO PROTECT THE DIGNITY OF THE RESIDENT.

24 (II) SPECIFY THAT THE CONSENT OF OTHER RESIDENTS  
25 RESIDING IN THE SAME ROOM AS THE RESIDENT MUST BE  
26 OBTAINED REGARDING THE USE OF THE ELECTRONIC MONITORING  
27 DEVICE.

28 (B) WRITTEN CONSENT GENERALLY.--SUBJECT TO SUBSECTION (C),  
29 WRITTEN CONSENT FOR AN ELECTRONIC MONITORING DEVICE IN A  
30 FACILITY SHALL BE GIVEN ONLY BY:

1           (1) A RESIDENT WHO HAS CAPACITY TO SIGN THE CONSENT  
2 FORM.

3           (2) THE GUARDIAN OF THE RESIDENT, IF THE RESIDENT HAS  
4 BEEN JUDICIALLY DECLARED TO LACK CAPACITY REQUIRED TO SIGN  
5 THE CONSENT FORM.

6           (3) THE LEGAL REPRESENTATIVE OF THE RESIDENT, IF THE  
7 RESIDENT DOES NOT HAVE CAPACITY TO SIGN THE CONSENT FORM BUT  
8 HAS NOT BEEN JUDICIALLY DECLARED TO LACK CAPACITY REQUIRED TO  
9 SIGN THE CONSENT FORM.

10 ~~(b)~~ (C) Residents occupying same room.-- <--

11           (1) ~~Written~~ PRIOR TO THE USE OF THE ELECTRONIC <--  
12 MONITORING DEVICE, WRITTEN consent ~~must~~ SHALL be given by <--  
13 each OTHER resident ~~or representative of a resident~~, OR THE <--  
14 GUARDIAN OR LEGAL REPRESENTATIVE OF EACH OTHER RESIDENT, who  
15 resides in the same room. AS THE RESIDENT FOR WHOM AN <--  
16 ELECTRONIC MONITORING DEVICE IN A FACILITY IS BEING USED.

17           (2) Another resident who resides in the same room AS THE <--  
18 RESIDENT FOR WHOM AN ELECTRONIC MONITORING DEVICE IN A  
19 FACILITY IS BEING USED may:

20           (i) When the ELECTRONIC monitoring device is a video <--  
21 surveillance camera, condition consent on the camera  
22 being pointed away from the ~~nonconsenting~~ resident <--  
23 RESIDING IN THE SAME ROOM or in private areas of the <--  
24 room. AN ELECTRONIC MONITORING DEVICE MAY NOT BE PLACED <--  
25 IN A BATHROOM.

26           (ii) Revoke that resident's consent at any time,  
27 provided that revocation is in writing. The revocation of  
28 consent shall be kept on file at the facility on a form  
29 prescribed by the department. A COPY OF THE FORM SHALL BE <--  
30 GIVEN TO THE RESIDENT OR REPRESENTATIVE OF THE RESIDENT.

1 ~~(c) Release of liability. Consent to the authorization for~~ <--  
2 ~~the installation and use of a monitoring device shall include a~~  
3 ~~release of liability for the facility for a violation of the~~  
4 ~~resident's right to privacy insofar as the use of the monitoring~~  
5 ~~device is concerned.~~

6 (d) Discrimination prohibited.--Neither a prospective  
7 resident nor a resident may be denied admission to or discharged  
8 from a facility or be otherwise discriminated against or  
9 retaliated against for consenting to use ~~authorized AN~~ <--  
10 ~~electronic monitoring DEVICE.~~ <--

11 (e) Requests for room changes.--A ~~long term care facility~~ <--  
12 shall MAKE EVERY EFFORT TO accommodate a resident or the <--  
13 ~~representative of a~~ GUARDIAN OR LEGAL REPRESENTATIVE OF THE <--  
14 resident desiring to utilize a AN ELECTRONIC monitoring device <--  
15 to move to another room if the resident or ~~representative~~ <--  
16 GUARDIAN OR LEGAL REPRESENTATIVE of the resident requests a room <--  
17 change within a reasonable amount of time. A FACILITY MAY NOT BE <--  
18 CITED BY THE DEPARTMENT IF THE FACILITY CANNOT ACCOMMODATE A  
19 ROOM CHANGE REQUESTED FOR THIS PURPOSE.

20 Section 805-A. ~~Authorization~~ ELECTRONIC MONITORING DEVICE <--  
21 AUTHORIZATION form and contents.

22 The form for the ELECTRONIC MONITORING DEVICE authorization <--  
23 ~~of installation and use of a monitoring device shall provide~~ <--  
24 for:

25 (1) ~~Consent of the resident or the representative~~ <--  
26 GUARDIAN OR LEGAL REPRESENTATIVE of the resident authorizing <--  
27 the installation and use of the ELECTRONIC monitoring device. <--

28 (2) Notice to the facility of the resident's  
29 installation of a AN ELECTRONIC monitoring device and <--  
30 specifics as to its type, function and use.

1 (3) Consent of any other resident or ~~representative of~~ <--  
2 ~~the resident~~ THE GUARDIAN OR LEGAL REPRESENTATION OF ANY <--  
3 OTHER RESIDENT sharing the same room. OF THE RESIDENT FOR <--  
4 WHOM AN ELECTRONIC MONITORING DEVICE IN A FACILITY IS BEING  
5 USED, INCLUDING ANY CONDITION SET BY ANY OTHER RESIDENT OF  
6 THE SAME ROOM.

7 (4) Notice of release from liability for privacy  
8 violation through the use of the ELECTRONIC monitoring <--  
9 device.

10 (5) Waiver of the ~~patient's~~ RESIDENT'S right to privacy <--  
11 in conjunction with the use of the ELECTRONIC monitoring <--  
12 device.

13 (6) Notification of the prohibition of audio recording  
14 ~~pursuant to~~ UNDER 18 Pa.C.S. Ch. 57 (relating to wiretapping <--  
15 and electronic surveillance).

16 (7) A RELEASE FROM CIVIL LIABILITY ON THE PART OF A <--  
17 FACILITY FOR A VIOLATION OF THE RESIDENT'S PRIVACY RIGHTS  
18 REGARDING THE USE OF THE ELECTRONIC MONITORING DEVICE IN THE  
19 FACILITY.

20 Section 806-A. Notice.

21 (a) Main entrances.--A ~~long term care~~ facility shall post at <--  
22 or near its main entrances a sign that clearly states that  
23 ELECTRONIC monitoring devices may be in use in the facility. <--

24 (b) Residents' rooms.--Additional notice shall be displayed  
25 at the entrance of the room of a resident ~~in which authorized~~ <--  
26 WITH AN electronic monitoring ~~occurs~~ DEVICE stating that the <--  
27 room is being monitored by a monitoring device. <--

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

29 Any video recording or photograph produced from a AN <--  
30 ELECTRONIC monitoring device at a facility shall be considered

1 the personal property of the resident and the facility may not  
2 access the recording or photograph without the written consent  
3 of the resident or the GUARDIAN OR LEGAL representative of the <--  
4 resident. THE FOLLOWING APPLY: <--

5 (1) A PERSON OR ENTITY THAT DISTRIBUTES MATERIAL  
6 OBTAINED FROM AN ELECTRONIC MONITORING DEVICE WITH THE INTENT  
7 TO RIDICULE OR DEMEAN THE RESIDENT SHALL BE SUBJECT TO THE  
8 PENALTIES PRESCRIBED IN 18 PA.C.S. § 2713 (RELATING TO  
9 NEGLECT OF CARE-DEPENDENT PERSON).

10 (2) A VIOLATION OF THIS SECTION SHALL CONSTITUTE A  
11 MISDEMEANOR OF THE THIRD DEGREE.

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

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

16 (b) Criminal offense.--A VIOLATION OF THIS SECTION SHALL <--  
17 CONSTITUTE A MISDEMEANOR OF THE SECOND DEGREE. A person or  
18 entity that intentionally OR KNOWINGLY hampers, obstructs, <--  
19 tampers with or destroys a recording or a AN ELECTRONIC <--  
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 AN ELECTRONIC monitoring device placed or installed in a <--  
28 common area of a 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, WITHOUT the express written consent of the <--  
2 resident or the GUARDIAN OR LEGAL representative of the <--  
3 resident.

4 Section 809-A. Admissibility of evidence.

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

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

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

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

24 (1) Consent and revocation of consent form.

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

27 (3) Notice of ELECTRONIC monitoring device usage in the <--  
28 facility.

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

30 (5) Restricted area of placement of a AN ELECTRONIC <--

1 monitoring device.

2 (b) Procedure.--Regulations shall be promulgated in  
3 accordance with the provisions of the act of June 25, 1982  
4 (P.L.633, No.181), known as the Regulatory Review Act.

5 (C) EFFECT OF CHAPTER.--NOTHING IN THIS CHAPTER SHALL BE <--  
6 CONSTRUED TO SUPERSEDE FEDERAL AUTHORITY REGARDING FACILITIES OR  
7 PREVENT THE DEPARTMENT FROM TAKING NECESSARY ACTIONS TO RENDER  
8 THE COMMONWEALTH ELIGIBLE FOR FEDERAL FUNDS OR REIMBURSEMENT  
9 SERVICES PROVIDED IN FACILITIES.

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