

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 AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 14, 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 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

RESIDENT CARE MONITORING

18 Section 801-A. Scope of chapter.

19 This chapter relates to 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 "Electronic monitoring device." A video surveillance
6 instrument installed in the room of a resident of a facility, in
7 accordance with this chapter, which broadcasts, photographs or
8 records activity occurring in the facility.

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

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

15 ~~"Legal representative." An individual who is authorized~~ <--
16 ~~under a power of attorney that complies with 20 Pa.C.S. Ch. 56~~
17 ~~(relating to powers of attorney) to make decisions on behalf of~~
18 ~~a resident.~~

19 "Resident." An individual who resides in a facility in this
20 Commonwealth.

21 ~~"UNAUTHORIZED ELECTRONIC MONITORING DEVICE." AN ELECTRONIC,~~ <--
22 ~~MECHANICAL OR OTHER MEANS OF MONITORING A WIRE OR ELECTRONIC~~
23 ~~COMMUNICATION THAT DOES NOT MEET THE PROVISIONS OF THIS CHAPTER~~
24 ~~AND IS SPECIFICALLY USED FOR THE NONCONSENSUAL INTERCEPTION OF~~
25 ~~WIRE OR ELECTRONIC COMMUNICATIONS.~~

26 Section 803-A. Authorization.

27 (a) Who may authorize.--A resident may authorize
28 installation and use of an electronic monitoring device in the
29 following ways:

30 (1) If a resident has capacity to request an electronic

1 monitoring device and has not been judicially declared to
2 lack the required capacity, only the resident may authorize
3 an electronic monitoring device in a facility,
4 notwithstanding the terms of a power of attorney or similar
5 legal agreement executed by the resident.

6 (2) If a resident has been judicially declared to lack
7 capacity required for taking an action such as requesting an
8 electronic monitoring device, only the guardian of the
9 resident may authorize an electronic monitoring device in a
10 facility.

11 ~~(3) Subject to paragraph (2), if a resident has been~~ <--
12 ~~determined by a physician to lack capacity to request an~~
13 ~~electronic monitoring device, only the legal representative~~
14 ~~of the resident may authorize an electronic monitoring device~~
15 ~~in a facility.~~

16 (b) Requirements.--A resident or the guardian ~~or legal~~ <--
17 representative of the resident may authorize installation and
18 use of an electronic monitoring device in a facility provided
19 that:

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

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

24 (3) The electronic monitoring device and all
25 installation, removal and maintenance costs, including
26 Internet service costs and network access costs, are paid for
27 by the resident or guardian or legal representative of the
28 resident.

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

1 walls or other structures, unless the resident OR THE <--
2 GUARDIAN OF THE RESIDENT agrees to be liable for replacement
3 or repair of the damage incurred during the installation,
4 maintenance or removal of the electronic monitoring device.

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

7 (6) The electronic monitoring device is placed in a
8 conspicuous location.

9 Section 804-A. Conditions of consent.

10 (a) Form.--

11 (1) A resident or the guardian ~~or legal representative~~ <--
12 of the resident who authorizes an electronic monitoring
13 device in a facility shall notify the facility on an
14 electronic monitoring device authorization form prescribed by
15 the department and provided by the facility to the resident, <--
16 AND, IF APPLICABLE, THE guardian ~~or legal representative~~ OF <--
17 THE RESIDENT.

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

19 (i) Require the resident or the guardian ~~or legal~~ <--
20 representative of the guardian RESIDENT to choose whether <--
21 the electronic monitoring device will always be
22 unobstructed or whether the camera should be obstructed
23 in specified circumstances to protect the dignity of the
24 resident.

25 (ii) Specify that the consent of other residents
26 residing in the same room as the resident must be
27 obtained regarding the use of the electronic monitoring
28 device.

29 (b) Written consent generally.--Subject to subsection (c),
30 written consent for an electronic monitoring device in a

1 facility shall be given only by:

2 (1) A resident who has capacity to sign the consent
3 form.

4 (2) The guardian of the resident, if the resident has
5 been judicially declared to lack capacity required to sign
6 the consent form.

7 ~~(3) The legal representative of the resident, if the~~ <--
8 ~~resident does not have capacity to sign the consent form but~~
9 ~~has not been judicially declared to lack capacity required to~~
10 ~~sign the consent form.~~

11 (c) Residents occupying same room.--

12 (1) Prior to the use of the electronic monitoring
13 device, written consent shall be given by each other
14 resident, or the guardian or legal representative of each <--
15 other resident, who resides in the same room as the resident
16 for whom an electronic monitoring device in a facility is
17 being used.

18 (2) Another resident who resides in the same room as the
19 resident for whom an electronic monitoring device in a
20 facility is being used may:

21 (i) When the electronic monitoring device is a video
22 surveillance camera, condition consent on the camera
23 being pointed away from the resident residing in the same
24 room or in private areas of the room. An electronic
25 monitoring device may not be placed 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 AND, IF <--

1 APPLICABLE, THE GUARDIAN of the resident.

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 an electronic
6 monitoring device.

7 (e) Requests for room changes.--A facility shall make every
8 effort to accommodate a resident or the guardian ~~or legal~~ <--
9 ~~representative~~ of the resident desiring to utilize an electronic
10 monitoring device to move to another room if the resident or
11 guardian ~~or legal representative~~ of the resident requests a room <--
12 change within a reasonable amount of time. A facility may not be
13 cited by the department if the facility cannot accommodate a
14 room change requested for this purpose.

15 Section 805-A. Electronic monitoring device authorization form
16 and contents.

17 The form for the electronic monitoring device authorization
18 shall provide for:

19 (1) Consent of the resident or the guardian ~~or legal~~ <--
20 ~~representative~~ of the resident authorizing the installation
21 and use of the electronic monitoring device.

22 (2) Notice to the facility of the resident's
23 installation of an electronic monitoring device and specifics
24 as to its type, function and use.

25 (3) Consent of any other resident or the guardian ~~or~~ <--
26 ~~legal representation~~ of any other resident sharing the same
27 room of the resident for whom an electronic monitoring device
28 in a facility is being used, including any condition set by
29 any other resident of the same room.

30 (4) Notice of release from liability for privacy

1 violation through the use of the electronic monitoring
2 device.

3 (5) Waiver of the resident's right to privacy in
4 conjunction with the use of the electronic monitoring device.

5 (6) Notification of the prohibition of audio recording
6 under 18 Pa.C.S. Ch. 57 (relating to wiretapping and
7 electronic surveillance).

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

12 Section 806-A. Notice.

13 (a) Main entrances.--A facility shall post at or near its
14 main entrances a sign that clearly states that electronic
15 monitoring devices may be in use in the facility.

16 (b) Residents' rooms.--Additional notice shall be displayed
17 at the entrance of the room of a resident with an electronic
18 monitoring device stating that the room is being monitored.

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

20 Any video recording or photograph produced from an electronic
21 monitoring device at a facility shall be considered the personal
22 property of the resident and the facility may not access the
23 recording or photograph without the written consent of the
24 resident or the guardian ~~or legal representative~~ of the <--
25 resident. The following apply:

26 (1) A person or entity that distributes material
27 obtained from an electronic monitoring device with the intent
28 to ridicule or demean the resident shall be subject to the
29 penalties prescribed in 18 Pa.C.S. ~~§ 2713 (relating to~~ <--
30 ~~neglect of care dependent person).~~ § 2713.1 (RELATING TO <--

1 ABUSE OF CARE-DEPENDENT PERSON).

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

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

5 (a) General rule.--No person or entity may intentionally
6 hamper, obstruct, tamper with or destroy an electronic
7 monitoring device installed in a facility.

8 (b) Criminal offense.--A violation of this section shall
9 constitute a misdemeanor of the second degree. A person or
10 entity that intentionally or knowingly hampers, obstructs,
11 tampers with or destroys a recording or an electronic monitoring
12 device installed in a facility shall be subject to the penalties
13 prescribed in 18 Pa.C.S. § 4910 (relating to tampering with or
14 fabricating physical evidence) as it relates to tampering of
15 physical evidence.

16 (c) Interception, disclosure and use of intercepted
17 communications.--No person or entity may intercept a
18 communication or disclose or use an intercepted communication of
19 an electronic monitoring device placed or installed in a
20 resident's room, without the express written consent of
21 the resident or the guardian ~~or legal representative~~ of the <--
22 resident.

23 Section 809-A. Admissibility of evidence.

24 (a) General rule.--In a civil action against a facility,
25 material obtained through the use of an unauthorized electronic
26 monitoring device shall be inadmissible as evidence.

27 (b) Immunity.--Compliance with the provisions of this
28 section shall be a complete defense against any civil or
29 criminal action brought against the resident, OR guardian ~~or~~ <--
30 legal representative of the resident or facility for the use or

1 presence of an electronic monitoring device.

2 Section 810-A. Regulations and statements of policy. <--

3 (a) General rule.--The department shall MAY, in consultation <--

4 with the Department of Aging, State Long-Term Care Ombudsman,

5 representatives of licensed long-term care service providers and

6 other aging advocates, promulgate regulations and issue <--

7 statements of policy as necessary no later than one year after

8 the effective date of this section. The regulations shall

9 establish minimum standards, including, but not limited to:

10 (1) Consent and revocation of consent form.

11 (2) Resident's right to privacy under certain

12 circumstances.

13 (3) Notice of electronic monitoring device usage in the

14 facility.

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

16 (5) Restricted area of placement of an electronic

17 monitoring device TO IMPLEMENT THIS CHAPTER. <--

18 (b) Procedure.--Regulations shall be promulgated in

19 accordance with the provisions of the act of June 25, 1982

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

21 (c) Effect of chapter.--Nothing in this chapter shall be

22 construed to supersede Federal authority regarding facilities or

23 prevent the department from taking necessary actions to render

24 the Commonwealth eligible for Federal funds or reimbursement

25 services provided in facilities.

26 Section 2. This act shall take effect in ~~one year~~ 60 DAYS. <--