

FIRST REGULAR SESSION

HOUSE BILL NO. 399

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCDANIEL.

1063H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 198, RSMo, by adding thereto eleven new sections relating to the authorized electronic monitoring in long-term care facilities act, with penalty provisions and a referendum clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 198, RSMo, is amended by adding thereto eleven new sections, to be known as sections 198.610, 198.612, 198.614, 198.616, 198.618, 198.620, 198.622, 198.624, 198.626, 198.628, and 198.630, to read as follows:

198.610. 1. The provisions of sections 198.610 to 198.630 shall be known and may be cited as the “Authorized Electronic Monitoring in Long-Term Care Facilities Act”.

2. For purposes of sections 198.610 to 198.630, the following terms shall mean:

(1) “Authorized electronic monitoring”, the placement and use of an electronic monitoring device by a resident in his or her room in accordance with the provisions of sections 198.610 to 198.630;

(2) “Department”, the department of health and senior services;

(3) “Electronic monitoring device”, a surveillance instrument with a fixed position video camera or an audio recording device, or a combination thereof, that is installed in a resident’s room under the provisions of sections 198.610 to 198.630 and broadcasts or records activity or sounds occurring in the room;

(4) “Facility”, any residential care facility, assisted living facility, intermediate care facility, or skilled nursing facility;

(5) “Resident”, a person residing in a facility;

(6) “Resident’s representative”, a resident’s legal representative.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

198.612. 1. A resident shall be permitted to conduct authorized electronic monitoring of the resident's room through the use of electronic monitoring devices placed in the room under the provisions of sections 198.610 to 198.630.

2. Nothing in sections 198.610 to 198.630 shall be construed to allow the use of an electronic monitoring device to take still photographs or for the nonconsensual interception of private communications.

3. Except as otherwise provided in this section, a resident, a resident's representative, or the parent of a resident under eighteen years of age shall consent in writing on a notification and consent form prescribed by the department in order for authorized electronic monitoring to be conducted in the resident's room. If the resident has not affirmatively objected to the authorized electronic monitoring and the resident's physician determines that the resident lacks the ability to understand and appreciate the nature and consequences of electronic monitoring, the following individuals may consent on behalf of the resident in order of priority:

(1) An attorney-in-fact under a durable power of attorney for health care;

(2) The resident's representative;

(3) The resident's spouse;

(4) The resident's parent;

(5) The resident's adult child who has the written consent of all other adult children of the resident to act as the sole decision maker regarding authorized electronic monitoring; or

(6) The resident's adult brother or sister who has the written consent of all other adult siblings of the resident to act as the sole decision maker regarding authorized electronic monitoring.

4. Prior to another person, other than a resident's representative, consenting on behalf of a resident eighteen years of age or older in accordance with the provisions of sections 198.610 to 198.630, the resident shall be asked by that person, in the presence of a facility employee, if he or she wants authorized electronic monitoring to be conducted. The person shall explain to the resident:

(1) The type of electronic monitoring device to be used;

(2) The standard conditions that may be placed on the electronic monitoring device's use including those listed in subdivision (7) of subsection 2 of section 198.614;

(3) With whom the recording may be shared according to section 198.622; and

(4) The resident's ability to decline all recording.

36 For the purposes of this subsection, a resident affirmatively objects if he or she orally,
37 visually, or through the use of auxiliary aids or services declines authorized electronic
38 monitoring. The resident's response shall be documented on the notification and consent
39 form.

40 5. A resident or roommate may consent to authorized electronic monitoring with
41 any conditions of the resident's choosing including, but not limited to, the list of standard
42 conditions provided in subdivision (7) of subsection 2 of section 198.614. A resident or
43 roommate may request that the electronic monitoring device be turned off or the visual
44 recording component of the electronic monitoring device be blocked at any time.

45 6. Prior to the authorized electronic monitoring, a resident shall obtain the written
46 consent of any other resident residing in the room on the notification and consent form
47 prescribed by the department. Except as otherwise provided in this subsection, a
48 roommate, a roommate's legal representative, or the parent of a roommate under eighteen
49 years of age shall consent in writing to the authorized electronic monitoring in the
50 resident's room. If the roommate has not affirmatively objected to the authorized
51 electronic monitoring in accordance with subsection 4 of this section and the roommate's
52 physician determines that the roommate lacks the ability to understand and appreciate the
53 nature and consequences of electronic monitoring, the following individuals may consent
54 on behalf of the roommate, in order of priority:

55 (1) An attorney-in-fact under a durable power of attorney for health care;

56 (2) The roommate's legal representative;

57 (3) The roommate's spouse;

58 (4) The roommate's parent;

59 (5) The roommate's adult child who has the written consent of all other adult
60 children of the roommate to act as the sole decision maker regarding authorized electronic
61 monitoring; or

62 (6) The roommate's adult brother or sister who has the written consent of all other
63 adult siblings of the roommate to act as the sole decision maker regarding authorized
64 electronic monitoring.

65 7. Consent by a roommate under subsection 6 of this section authorizes the
66 resident's use of any recording obtained under sections 198.610 to 198.630 as provided
67 under section 198.622.

68 8. Any resident previously conducting authorized electronic monitoring shall obtain
69 consent from any new roommate before the resident may resume authorized electronic
70 monitoring. If a new roommate does not consent to authorized electronic monitoring and

the resident conducting the authorized electronic monitoring does not remove or disable the electronic monitoring device, the facility may turn off the device.

9. Consent may be withdrawn by the resident or roommate at any time, and the withdrawal of consent shall be documented in the resident's clinical record. If a roommate withdraws consent and the resident conducting the authorized electronic monitoring does not remove or disable the electronic monitoring device, the facility may turn off the electronic monitoring device.

10. If a resident who is residing in a shared room wants to conduct authorized electronic monitoring and another resident living in or moving into the same shared room refuses to consent to the use of an electronic monitoring device, the facility shall make a reasonable attempt to accommodate the resident who wants to conduct authorized electronic monitoring. A facility has met the requirement to make a reasonable attempt to accommodate a resident who wants to conduct authorized electronic monitoring if, upon notification that a roommate has not consented to the use of an electronic monitoring device in his or her room, the facility offers to move either resident to another shared room that is available at the time of the request. If a resident chooses to reside in a private room in order to accommodate the use of an electronic monitoring device, the resident shall pay the private room rate. If a facility is unable to accommodate a resident due to lack of space, the facility shall reevaluate the request every two weeks until the request is fulfilled.

198.614. 1. Authorized electronic monitoring may begin only after a notification and consent form prescribed by the department has been completed and submitted to the facility.

2. A resident shall notify the facility in writing of his or her intent to install an electronic monitoring device by providing a completed notification and consent form prescribed by the department that shall include at minimum the following information:

(1) The resident's signed consent to electronic monitoring or the signature of the person consenting on behalf of the resident in accordance with section 198.612. If a person other than the resident signs the consent form, the form shall document the following:

(a) The date the resident was asked if he or she wants authorized electronic monitoring to be conducted in accordance with subsection 4 of section 198.612;

(b) Who was present when the resident was asked; and

(c) An acknowledgment that the resident did not affirmatively object;

(2) The resident's roommate's signed consent or the signature of the person consenting on behalf of the roommate in accordance with section 198.612, if applicable, and any conditions placed on the roommate's consent. If a person other than the roommate signs the consent form, the form shall document the following:

- 18 (a) The date the roommate was asked if he or she wants authorized electronic
19 monitoring to be conducted in accordance with subsection 4 of section 198.612;
20 (b) Who was present when the roommate was asked; and
21 (c) An acknowledgment that the roommate did not affirmatively object;
22 (3) The type of electronic monitoring device to be used;
23 (4) Any installation needs, such as mounting of a device to a wall or ceiling;
24 (5) The proposed date of installation for scheduling purposes;
25 (6) A copy of any contract for maintenance of the electronic monitoring device by
26 a commercial entity;
27 (7) A list of standard conditions or restrictions that the resident or a roommate may
28 elect to place on the use of the electronic monitoring device including, but not limited to:
29 (a) Prohibiting audio recording;
30 (b) Prohibiting broadcasting of audio or video; or
31 (c) Turning off the electronic monitoring device or blocking the visual recording
32 component of the electronic monitoring device for the duration of an exam or procedure
33 by a health care professional; while dressing or bathing is performed; or for the duration
34 of a visit with a spiritual advisor, ombudsman, attorney, financial planner, intimate
35 partner, or other visitor; and
36 (8) Any other condition or restriction elected by the resident or roommate on the
37 use of an electronic monitoring device.
- 38 3. A copy of the completed notification and consent form shall be placed in the
39 resident's and any roommate's clinical record, and a copy shall be provided to the resident
40 and his or her roommate, if applicable.
- 41 4. The department shall prescribe the notification and consent form required in this
42 section no later than sixty days after the effective date of sections 198.610 to 198.630. If the
43 department has not prescribed such a form by that date, the attorney general shall post a
44 notification and consent form on its website for resident use until the department has
45 prescribed the form.
- 198.616. 1. A resident choosing to conduct authorized electronic monitoring shall
2 do so at his or her own expense, including paying purchase, installation, maintenance, and
3 removal costs.
- 4 2. If a resident chooses to install an electronic monitoring device that uses internet
5 technology for visual or audio monitoring, such resident is responsible for contracting with
6 an internet service provider.
- 7 3. The facility shall make a reasonable attempt to accommodate the resident's
8 installation needs including, but not limited to, allowing access to the facility's

9 telecommunications or equipment room. A facility has the burden of proving that a
10 requested accommodation is not reasonable.

11 4. The electronic monitoring device shall be placed in a conspicuously visible
12 location in the room.

13 5. No facility shall charge the resident a fee for the cost of electricity used by an
14 electronic monitoring device.

15 6. All electronic monitoring device installations and supporting services shall
16 comply with the requirements of the National Fire Protection Association (NFPA) 101 Life
17 Safety Code (2015 edition).

198.618. 1. If a resident of a facility conducts authorized electronic monitoring, a
2 sign shall be clearly and conspicuously posted at all building entrances accessible to
3 visitors. The notice shall be entitled "Electronic Monitoring" and shall state in large, easy-
4 to-read type, "The rooms of some residents may be monitored electronically by or on
5 behalf of the residents."

6 2. A sign shall be clearly and conspicuously posted at the entrance to a resident's
7 room where authorized electronic monitoring is being conducted. The notice shall state
8 in large, easy-to-read type, "This room is electronically monitored."

9 3. The facility is responsible for installing and maintaining the signage required in
10 this section.

198.620. 1. No person or entity shall knowingly hamper, obstruct, tamper with, or
2 destroy an electronic monitoring device installed in a resident's room without the
3 permission of the resident or the individual who consented on behalf of the resident in
4 accordance with section 198.612.

5 2. No person or entity shall knowingly hamper, obstruct, tamper with, or destroy
6 a video or audio recording obtained in accordance with sections 198.610 to 198.630 without
7 the permission of the resident or the individual who consented on behalf of the resident in
8 accordance with section 198.612.

9 3. A person or entity that violates this section is guilty of a class B misdemeanor.
10 A person or entity that violates this section in the commission of or to conceal a
11 misdemeanor offense is guilty of a class A misdemeanor. A person or entity that violates
12 this section in the commission of or to conceal a felony offense is guilty of a class D felony.

13 4. It is not a violation of this section if a person or facility turns off the electronic
14 monitoring device or blocks the visual recording component of the electronic monitoring
15 device at the direction of the resident or the person who consented on behalf of the resident
16 in accordance with section 198.612.

198.622. 1. No facility shall access any video or audio recording created through authorized electronic monitoring without the written consent of the resident or the person who consented on behalf of the resident in accordance with section 198.612.

2. Except as required under the Freedom of Information Act, a recording or copy of a recording made under sections 198.610 to 198.630 shall only be disseminated for the purpose of addressing concerns relating to the health, safety, or welfare of a resident or residents.

3. The resident or person who consented on behalf of the resident in accordance with section 198.612 shall provide a copy of any video or audio recording to parties involved in a civil, criminal, or administrative proceeding, upon a party's request, if the video or audio recording was made during the time period that the conduct at issue in the proceeding allegedly occurred.

198.624. Subject to applicable rules of evidence and procedure, any video or audio recording created through authorized electronic monitoring in accordance with the provisions of sections 198.610 to 198.630 may be admitted into evidence in a civil, criminal, or administrative proceeding if the contents of the recording have not been edited or artificially enhanced and the video recording includes the date and time the events occurred.

198.626. Each facility shall report to the department, in a manner prescribed by the department, the number of authorized electronic monitoring notification and consent forms received annually. The department shall report the total number of authorized electronic monitoring notification and consent forms received from facilities to the attorney general annually.

198.628. 1. No facility shall be civilly or criminally liable for the inadvertent or intentional disclosure of a recording by a resident or a person who consents on behalf of the resident for any purpose not authorized by sections 198.610 to 198.630.

2. No facility shall be civilly or criminally liable for a violation of a resident's right to privacy arising out of any electronic monitoring conducted under sections 198.610 to 198.630.

3. The department shall promulgate rules to implement the provisions of sections 198.610 to 198.630. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the

14 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2017,**
15 **shall be invalid and void.**

198.630. No person shall:

2 **(1) Intentionally retaliate or discriminate against any resident for consenting to**
3 **authorized electronic monitoring under sections 198.610 to 198.630; or**

4 **(2) Prevent the installation or use of an electronic monitoring device by a resident**
5 **who has provided the facility with notice and consent as required under section 198.614.**

Section B. Section A of this act is hereby submitted to the qualified voters of this state
2 for approval or rejection at an election which is hereby ordered and which shall be held and
3 conducted on the Tuesday immediately following the first Monday in November, 2018, or at a
4 special election to be called by the governor for that purpose, under the applicable laws and
5 constitutional provisions of this state for the submission of referendum measures by the general
6 assembly, and it shall become effective when approved by a majority of the votes cast thereon
7 at such election and not otherwise.

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