

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Authorized Electronic Monitoring in Long-Term Care Facilities
6 Act.

7 Section 5. Definitions. As used in this Act:

8 "Authorized electronic monitoring" means the placement and
9 use of an electronic monitoring device by a resident in his or
10 her room in accordance with this Act.

11 "Department" means the Department of Public Health.

12 "Electronic monitoring device" means a surveillance
13 instrument with a fixed position video camera or an audio
14 recording device, or a combination thereof, that is installed
15 in a resident's room under the provisions of this Act and
16 broadcasts or records activity or sounds occurring in the room.

17 "Facility" means an intermediate care facility for the
18 developmentally disabled licensed under the ID/DD Community
19 Care Act that has 30 beds or more, a long-term care for under
20 age 22 facility licensed under the ID/DD Community Care Act, or
21 a facility licensed under the Nursing Home Care Act.

22 "Resident" means a person receiving personal or medical
23 care, including, but not limited to, habilitation, mental

1 health treatment, psychiatric rehabilitation, psychiatric
2 services, therapeutic services, physical rehabilitation, or
3 assistance with activities of daily living, from a facility.

4 "Resident's representative" has the meaning given to that
5 term in (1) Section 1-123 of the Nursing Home Care Act if the
6 resident resides in a facility licensed under the Nursing Home
7 Care Act or (2) Section 1-123 of the ID/DD Community Care Act
8 if the resident resides in a facility licensed under the ID/DD
9 Community Care Act.

10 Section 10. Authorized electronic monitoring. A resident
11 shall be permitted to conduct authorized electronic monitoring
12 of the resident's room through the use of electronic monitoring
13 devices placed in the room pursuant to this Act.

14 Section 15. Consent.

15 (a) Except as otherwise provided in this subsection, a
16 resident or the parent or legal guardian of a resident under
17 the age of 18 must consent in writing to the authorized
18 electronic monitoring in the resident's room. If the resident
19 has not affirmatively objected to the authorized electronic
20 monitoring and lacks the ability to understand and appreciate
21 the nature and consequences of electronic monitoring, the
22 following individuals may consent on behalf of the resident:

23 (1) a person appointed as a guardian of the resident
24 under the Probate Act of 1975;

1 (2) a health care agent named under the Illinois Power
2 of Attorney Act;

3 (3) a resident's representative, as defined in Section
4 5 of this Act; or

5 (4) if the resident's physician determines that the
6 resident lacks the ability to understand and appreciate the
7 nature and consequences of electronic monitoring, a person
8 from the following list, in order of priority:

9 (A) the resident's spouse;

10 (B) the resident's parent; or

11 (C) the resident's adult child who has the written
12 consent of the other adult children of the resident to
13 act as the sole decision maker regarding authorized
14 electronic monitoring.

15 Prior to another person consenting on behalf of a resident
16 18 years of age or older in accordance with this Section, the
17 resident must be asked by that person, in the presence of a
18 facility employee, if he or she wants authorized electronic
19 monitoring to be conducted. For the purposes of this
20 subsection, a resident affirmatively objects when he or she
21 verbally declines authorized electronic monitoring. The
22 resident's response must be documented on the consent form.

23 (b) A resident may consent to authorized electronic
24 monitoring with any conditions of the resident's choosing,
25 including, but not limited to, prohibiting audio monitoring.

26 (c) Prior to the authorized electronic monitoring, a

1 resident must obtain the written consent of any other resident
2 residing in the room on the consent form. Consent by a roommate
3 under this subsection authorizes the resident's use of any
4 recording obtained under this Act, as provided in Section 45 of
5 this Act. Any resident previously conducting authorized
6 electronic monitoring must obtain consent from any new roommate
7 before the resident may resume authorized electronic
8 monitoring.

9 (d) Consent may be withdrawn at any time, and the
10 withdrawal of consent shall be documented in the resident's
11 file. If a roommate withdraws consent, or a new roommate does
12 not consent to authorized electronic monitoring, and the
13 resident conducting the authorized electronic monitoring does
14 not remove or disable the electronic monitoring device, the
15 facility may turn off the device.

16 (e) If a resident who is residing in a shared room wants to
17 conduct authorized electronic monitoring and another resident
18 living in the same shared room refuses to consent to the use of
19 an electronic monitoring device, the facility shall make a
20 reasonable attempt to accommodate the resident who wants to
21 conduct authorized electronic monitoring. A facility has met
22 the requirement to make a reasonable attempt to accommodate a
23 resident who wants to conduct authorized electronic monitoring
24 when upon notification that a roommate has not consented to the
25 use of an electronic monitoring device in his or her room, the
26 facility offers to move either resident to another room that is

1 available at the time of the request. If a facility is unable
2 to accommodate a resident due to lack of space, the facility
3 must reevaluate the request every 2 weeks until the request is
4 fulfilled.

5 Section 20. Notice to the facility.

6 (a) Authorized electronic monitoring may begin only after
7 the required consent form specified in Section 15 of this Act
8 has been completed and submitted to the facility.

9 (b) A resident shall notify the facility in writing of his
10 or her intent to install an electronic monitoring device by
11 providing a completed consent form. Notice shall be given on a
12 consent form prescribed by the Department that must include the
13 following:

14 (1) the resident's signed consent to electronic
15 monitoring or the signature of the person consenting on
16 behalf of the resident in accordance with Section 15 of
17 this Act; if a person other than the resident signs the
18 consent form, the form must document the following:

19 (A) the date the resident was asked if he or she
20 wants authorized electronic monitoring to be
21 conducted;

22 (B) who was present when the resident was asked;
23 and

24 (C) an acknowledgement that the resident did not
25 affirmatively object; and

1 (2) the resident's roommate's signed consent or the
2 signature of the person consenting on behalf of the
3 resident in accordance with Section 15 of this Act, if
4 applicable, and any conditions placed on the roommate's
5 consent; if a person other than the roommate signs the
6 consent form, the form must document the following:

7 (A) the date the roommate was asked if he or she
8 wants authorized electronic monitoring to be
9 conducted;

10 (B) who was present when the roommate was asked;
11 and

12 (C) an acknowledgement that the roommate did not
13 affirmatively object.

14 (c) A copy of the consent form shall be placed in the
15 resident's file and a copy shall be provided to the resident.

16 (d) The Department shall prescribe the form required in
17 this Section no later than 60 days after the effective date of
18 this Act. If the Department has not prescribed such a form by
19 that date, a resident may create his or her own consent form to
20 meet the requirements of this Act until the Department has
21 prescribed the form.

22 Section 25. Cost and installation.

23 (a) A resident choosing to conduct authorized electronic
24 monitoring must do so at his or her own expense.

25 (b) If a resident chooses to install an electronic

1 monitoring device that uses Internet technology for visual or
2 audio monitoring, that resident is responsible for contracting
3 with an Internet service provider and the facility shall make a
4 reasonable attempt to accommodate the resident, including, but
5 not limited to, allowing access to the facility's
6 telecommunications or equipment room. A facility has the burden
7 of proving that a requested accommodation is not reasonable.

8 (c) The electronic monitoring device must be placed in a
9 conspicuously visible location in the room.

10 (d) A facility may not charge the resident a fee for the
11 cost of electricity used by an electronic monitoring device.

12 Section 27. Assistance program. The Department shall
13 establish a program to assist residents receiving medical
14 assistance under Article V of the Illinois Public Aid Code in
15 accessing authorized electronic monitoring.

16 (1) The Department shall distribute up to \$50,000 in funds
17 on an annual basis to residents receiving medical assistance
18 under Article V of the Illinois Public Aid Code for the
19 purchase and installation of authorized electronic monitoring
20 devices.

21 (2) Applications for funds must be made in a manner
22 prescribed by the Department and the funds shall be disbursed
23 by means of a lottery.

24 Section 30. Notice to visitors.

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

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

12 Section 32. Enforcement. The Department is authorized to
13 accept and investigate complaints regarding compliance with
14 the provisions of this Act following the procedures prescribed
15 in Section 3-702 of the Nursing Home Care Act and Section 3-702
16 of the ID/DD Community Care Act. The Department may assess
17 compliance with the Act during any inspection conducted in
18 accordance with Section 3-212 of the Nursing Home Care Act or
19 Section 3-212 of the ID/DD Community Care Act.

20 Section 35. Prohibited acts.

21 (a) A prospective resident or resident shall not be denied
22 admission to or discharged from a facility or be otherwise
23 discriminated against or retaliated against for consenting to
24 authorized electronic monitoring. A violation of this

1 subsection is a business offense punishable by a fine not to
2 exceed \$10,000. The State's Attorney of the county in which the
3 facility is located, or the Attorney General, shall be notified
4 by the Director of Public Health of any violations of this
5 subsection.

6 (b) A facility shall not prevent the installation of an
7 electronic monitoring device by a resident who has provided the
8 facility with consent as required in Section 15 of this Act. A
9 violation of this subsection is a petty offense punishable by a
10 fine not to exceed \$1,000. The State's Attorney of the county
11 in which the facility is located, or the Attorney General,
12 shall be notified by the Director of Public Health of any
13 violations of this subsection.

14 Section 40. Obstruction of electronic monitoring devices.

15 (a) A person or entity is prohibited from knowingly
16 hampering, obstructing, tampering with, or destroying an
17 electronic monitoring device installed in a resident's room
18 without the permission of the resident or the individual who
19 consented on behalf of the resident in accordance with Section
20 15 of this Act.

21 (b) A person or entity is prohibited from knowingly
22 hampering, obstructing, tampering with, or destroying a video
23 or audio recording obtained in accordance with this Act without
24 the permission of the resident or the individual who consented
25 on behalf of the resident in accordance with Section 15 of this

1 Act.

2 (c) A person or entity that violates this Section is guilty
3 of a Class B misdemeanor. A person or entity that violates this
4 Section in the commission of or to conceal a misdemeanor
5 offense is guilty of a Class A misdemeanor. A person or entity
6 that violates this Section in the commission of or to conceal a
7 felony offense is guilty of a Class 4 felony.

8 (d) It shall be an affirmative defense to a violation of
9 this Section that the person or facility acted with the consent
10 of the resident or the person who consented on behalf of the
11 resident in accordance with Section 15 of this Act.

12 Section 45. Access to recordings.

13 (a) A facility may not access any video or audio recording
14 created through authorized electronic monitoring without the
15 written consent of the resident or the person who consented on
16 behalf of the resident in accordance with Section 15 of this
17 Act.

18 (b) Any recording created through authorized electronic
19 monitoring may be disseminated by the resident or the person
20 who consented on behalf of the resident in accordance with
21 Section 15 of this Act to only the following:

22 (1) the facility;

23 (2) the Department;

24 (3) a representative of the Office of the State Long
25 Term Care Ombudsman;

- 1 (4) a law enforcement agency;
- 2 (5) an attorney representing the resident; or
- 3 (6) any other person as required by a court.
- 4 (c) A violation of this Section is a Class B misdemeanor.

5 Section 50. Admissibility of evidence. Any video or audio
6 recording created through authorized electronic monitoring in
7 accordance with this Act may be admitted into evidence in a
8 civil, criminal, or administrative proceeding if the contents
9 of the recording have not been edited or artificially enhanced
10 and the video recording includes the date and time the events
11 occurred.

12 Section 55. Report. Each facility shall report to the
13 Department, in a manner prescribed by the Department, the
14 number of authorized electronic monitoring consent forms
15 received annually. The Department shall report the total number
16 of authorized electronic monitoring consent forms received by
17 facilities to the Office of the Attorney General annually.

18 Section 60. Liability. A facility is not civilly or
19 criminally liable for the inadvertent or intentional
20 disclosure of a recording made pursuant to this Act by a
21 resident or a person who consents on behalf of the resident to
22 any individual not authorized by this Act.

1 Section 65. Rules. The Department shall adopt rules
2 necessary to implement this Act.

3 Section 99. Effective date. This Act takes effect January
4 1, 2016.