

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 residing in a facility.

23 "Resident's representative" has the meaning given to that

1 term in (1) Section 1-123 of the Nursing Home Care Act if the
2 resident resides in a facility licensed under the Nursing Home
3 Care Act or (2) Section 1-123 of the ID/DD Community Care Act
4 if the resident resides in a facility licensed under the ID/DD
5 Community Care Act.

6 Section 10. Authorized electronic monitoring.

7 (a) A resident shall be permitted to conduct authorized
8 electronic monitoring of the resident's room through the use of
9 electronic monitoring devices placed in the room pursuant to
10 this Act.

11 (b) Nothing in this Act shall be construed to allow the use
12 of an electronic monitoring device to take still photographs or
13 for the nonconsensual interception of private communications.

14 Section 15. Consent.

15 (a) Except as otherwise provided in this subsection, a
16 resident, a resident's plenary guardian of the person, or the
17 parent of a resident under the age of 18 must consent in
18 writing on a notification and consent form prescribed by the
19 Department to the authorized electronic monitoring in the
20 resident's room. If the resident has not affirmatively objected
21 to the authorized electronic monitoring and the resident's
22 physician determines that the resident lacks the ability to
23 understand and appreciate the nature and consequences of
24 electronic monitoring, the following individuals may consent

1 on behalf of the resident, in order of priority:

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

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

6 (3) the resident's spouse;

7 (4) the resident's parent;

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

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

16 (a-5) Prior to another person, other than a resident's
17 plenary guardian of the person, consenting on behalf of a
18 resident 18 years of age or older in accordance with this
19 Section, the resident must be asked by that person, in the
20 presence of a facility employee, if he or she wants authorized
21 electronic monitoring to be conducted. The person must explain
22 to the resident:

23 (1) the type of electronic monitoring device to be
24 used;

25 (2) the standard conditions that may be placed on the
26 electronic monitoring device's use, including those listed

1 in paragraph (7) of subsection (b) of Section 20;

2 (3) with whom the recording may be shared according to
3 Section 45; and

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

5 For the purposes of this subsection, a resident
6 affirmatively objects when he or she orally, visually, or
7 through the use of auxiliary aids or services declines
8 authorized electronic monitoring. The resident's response must
9 be documented on the notification and consent form.

10 (b) A resident or roommate may consent to authorized
11 electronic monitoring with any conditions of the resident's
12 choosing, including, but not limited to, the list of standard
13 conditions provided in paragraph (7) of subsection (b) of
14 Section 20. A resident or roommate may request that the
15 electronic monitoring device be turned off or the visual
16 recording component of the electronic monitoring device be
17 blocked at any time.

18 (c) Prior to the authorized electronic monitoring, a
19 resident must obtain the written consent of any other resident
20 residing in the room on the notification and consent form
21 prescribed by the Department. Except as otherwise provided in
22 this subsection, a roommate, a roommate's plenary guardian of
23 the person, or the parent of a roommate under the age of 18
24 must consent in writing to the authorized electronic monitoring
25 in the resident's room. If the roommate has not affirmatively
26 objected to the authorized electronic monitoring in accordance

1 with subsection (a-5) and the roommate's physician determines
2 that the roommate lacks the ability to understand and
3 appreciate the nature and consequences of electronic
4 monitoring, the following individuals may consent on behalf of
5 the roommate, in order of priority:

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

8 (2) a roommate's resident's representative, as defined
9 in Section 5 of this Act;

10 (3) the roommate's spouse;

11 (4) the roommate's parent;

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

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

20 (c-5) Consent by a roommate under subsection (c) authorizes
21 the resident's use of any recording obtained under this Act, as
22 provided in Section 45 of this Act.

23 (c-7) Any resident previously conducting authorized
24 electronic monitoring must obtain consent from any new roommate
25 before the resident may resume authorized electronic
26 monitoring. If a new roommate does not consent to authorized

1 electronic monitoring and the resident conducting the
2 authorized electronic monitoring does not remove or disable the
3 electronic monitoring device, the facility may turn off the
4 device.

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

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

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

4 Section 20. Notice to the facility.

5 (a) Authorized electronic monitoring may begin only after a
6 notification and consent form prescribed by the Department has
7 been completed and submitted to the facility.

8 (b) A resident shall notify the facility in writing of his
9 or her intent to install an electronic monitoring device by
10 providing a completed notification and consent form prescribed
11 by the Department that must include, at minimum, the following
12 information:

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

18 (A) the date the resident was asked if he or she
19 wants authorized electronic monitoring to be conducted
20 in accordance with subsection (a-5) of Section 15;

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

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

25 (2) the resident's roommate's signed consent or the

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

6 (A) the date the roommate was asked if he or she
7 wants authorized electronic monitoring to be conducted
8 in accordance with subsection (a-5) of Section 15;

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

11 (C) an acknowledgement that the roommate did not
12 affirmatively object; and

13 (3) the type of electronic monitoring device to be
14 used;

15 (4) any installation needs, such as mounting of a
16 device to a wall or ceiling;

17 (5) the proposed date of installation for scheduling
18 purposes;

19 (6) a copy of any contract for maintenance of the
20 electronic monitoring device by a commercial entity;

21 (7) a list of standard conditions or restrictions that
22 the resident or a roommate may elect to place on use of the
23 electronic monitoring device, including, but not limited
24 to:

25 (A) prohibiting audio recording;

26 (B) prohibiting broadcasting of audio or video;

1 (C) turning off the electronic monitoring device
2 or blocking the visual recording component of the
3 electronic monitoring device for the duration of an
4 exam or procedure by a health care professional;

5 (D) turning off the electronic monitoring device
6 or blocking the visual recording component of the
7 electronic monitoring device while dressing or bathing
8 is performed; and

9 (E) turning the electronic monitoring device off
10 for the duration of a visit with a spiritual advisor,
11 ombudsman, attorney, financial planner, intimate
12 partner, or other visitor; and

13 (8) any other condition or restriction elected by the
14 resident or roommate on the use of an electronic monitoring
15 device.

16 (c) A copy of the completed notification and consent form
17 shall be placed in the resident's and any roommate's clinical
18 record and a copy shall be provided to the resident and his or
19 her roommate, if applicable.

20 (d) The Department shall prescribe the notification and
21 consent form required in this Section no later than 60 days
22 after the effective date of this Act. If the Department has not
23 prescribed such a form by that date, the Office of the Attorney
24 General shall post a notification and consent form on its
25 website for resident use until the Department has prescribed
26 the form.

1 Section 25. Cost and installation.

2 (a) A resident choosing to conduct authorized electronic
3 monitoring must do so at his or her own expense, including
4 paying purchase, installation, maintenance, and removal costs.

5 (b) If a resident chooses to install an electronic
6 monitoring device that uses Internet technology for visual or
7 audio monitoring, that resident is responsible for contracting
8 with an Internet service provider.

9 (c) The facility shall make a reasonable attempt to
10 accommodate the resident's installation needs, including, but
11 not limited to, allowing access to the facility's
12 telecommunications or equipment room. A facility has the burden
13 of proving that a requested accommodation is not reasonable.

14 (d) The electronic monitoring device must be placed in a
15 conspicuously visible location in the room.

16 (e) A facility may not charge the resident a fee for the
17 cost of electricity used by an electronic monitoring device.

18 (f) All electronic monitoring device installations and
19 supporting services shall comply with the requirements of the
20 National Fire Protection Association (NFPA) 101 Life Safety
21 Code (2000 edition).

22 Section 27. Assistance program.

23 (a) Subject to appropriation, the Department shall
24 establish a program to assist residents receiving medical

1 assistance under Article V of the Illinois Public Aid Code in
2 accessing authorized electronic monitoring.

3 (b) The Department shall distribute up to \$50,000 in funds
4 on an annual basis to residents receiving medical assistance
5 under Article V of the Illinois Public Aid Code for the
6 purchase and installation of authorized electronic monitoring
7 devices.

8 (c) Applications for funds and disbursement of funds must
9 be made in a manner prescribed by the Department.

10 Section 30. Notice to visitors.

11 (a) If a resident of a facility conducts authorized
12 electronic monitoring, a sign shall be clearly and
13 conspicuously posted at all building entrances accessible to
14 visitors. The notice must be entitled "Electronic Monitoring"
15 and must state, in large, easy-to-read type, "The rooms of some
16 residents may be monitored electronically by or on behalf of
17 the residents."

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

22 (c) The facility is responsible for installing and
23 maintaining the signage required in this Section.

24 Section 40. Obstruction of electronic monitoring devices.

1 (a) A person or entity is prohibited from knowingly
2 hampering, obstructing, tampering with, or destroying an
3 electronic monitoring device installed in a resident's room
4 without the permission of the resident or the individual who
5 consented on behalf of the resident in accordance with Section
6 15 of this Act.

7 (b) A person or entity is prohibited from knowingly
8 hampering, obstructing, tampering with, or destroying a video
9 or audio recording obtained in accordance with this Act without
10 the permission of the resident or the individual who consented
11 on behalf of the resident in accordance with Section 15 of this
12 Act.

13 (c) A person or entity that violates this Section is guilty
14 of a Class B misdemeanor. A person or entity that violates this
15 Section in the commission of or to conceal a misdemeanor
16 offense is guilty of a Class A misdemeanor. A person or entity
17 that violates this Section in the commission of or to conceal a
18 felony offense is guilty of a Class 4 felony.

19 (d) It is not a violation of this Section if a person or
20 facility turns off the electronic monitoring device or blocks
21 the visual recording component of the electronic monitoring
22 device at the direction of the resident or the person who
23 consented on behalf of the resident in accordance with Section
24 15 of this Act.

25 Section 45. Dissemination of recordings.

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

6 (b) Except as required under the Freedom of Information
7 Act, a recording or copy of a recording made pursuant to this
8 Act may only be disseminated for the purpose of addressing
9 concerns relating to the health, safety, or welfare of a
10 resident or residents.

11 (c) The resident or person who consented on behalf of the
12 resident in accordance with Section 15 of this Act shall
13 provide a copy of any video or audio recording to parties
14 involved in a civil, criminal, or administrative proceeding,
15 upon a party's request, if the video or audio recording was
16 made during the time period that the conduct at issue in the
17 proceeding allegedly occurred.

18 Section 50. Admissibility of evidence. Subject to
19 applicable rules of evidence and procedure, any video or audio
20 recording created through authorized electronic monitoring in
21 accordance with this Act may be admitted into evidence in a
22 civil, criminal, or administrative proceeding if the contents
23 of the recording have not been edited or artificially enhanced
24 and the video recording includes the date and time the events
25 occurred.

1 Section 55. Report. Each facility shall report to the
2 Department, in a manner prescribed by the Department, the
3 number of authorized electronic monitoring notification and
4 consent forms received annually. The Department shall report
5 the total number of authorized electronic monitoring
6 notification and consent forms received by facilities to the
7 Office of the Attorney General annually.

8 Section 60. Liability.

9 (a) A facility is not civilly or criminally liable for the
10 inadvertent or intentional disclosure of a recording by a
11 resident or a person who consents on behalf of the resident for
12 any purpose not authorized by this Act.

13 (b) A facility is not civilly or criminally liable for a
14 violation of a resident's right to privacy arising out of any
15 electronic monitoring conducted pursuant to this Act.

16 Section 65. Rules. The Department shall adopt rules
17 necessary to implement this Act.

18 Section 70. The Nursing Home Care Act is amended by
19 changing Section 3-318 and by adding Section 2-115 as follows:

20 (210 ILCS 45/2-115 new)

21 Sec. 2-115. Authorized electronic monitoring of a

1 resident's room. A resident shall be permitted to conduct
2 authorized electronic monitoring of the resident's room
3 through the use of electronic monitoring devices placed in the
4 room pursuant to the Authorized Electronic Monitoring in
5 Long-Term Care Facilities Act.

6 (210 ILCS 45/3-318) (from Ch. 111 1/2, par. 4153-318)

7 Sec. 3-318. (a) No person shall:

8 (1) Intentionally fail to correct or interfere
9 with the correction of a Type "AA", Type "A", or Type
10 "B" violation within the time specified on the notice
11 or approved plan of correction under this Act as the
12 maximum period given for correction, unless an
13 extension is granted and the corrections are made
14 before expiration of extension;

15 (2) Intentionally prevent, interfere with, or
16 attempt to impede in any way any duly authorized
17 investigation and enforcement of this Act;

18 (3) Intentionally prevent or attempt to prevent
19 any examination of any relevant books or records
20 pertinent to investigations and enforcement of this
21 Act;

22 (4) Intentionally prevent or interfere with the
23 preservation of evidence pertaining to any violation
24 of this Act or the rules promulgated under this Act;

25 (5) Intentionally retaliate or discriminate

1 against any resident or employee for contacting or
2 providing information to any state official, or for
3 initiating, participating in, or testifying in an
4 action for any remedy authorized under this Act;

5 (6) Wilfully file any false, incomplete or
6 intentionally misleading information required to be
7 filed under this Act, or wilfully fail or refuse to
8 file any required information; ~~or~~

9 (7) Open or operate a facility without a license; ~~or~~

10 (8) Intentionally retaliate or discriminate
11 against any resident for consenting to authorized
12 electronic monitoring under the Authorized Electronic
13 Monitoring in Long-Term Care Facilities Act; or

14 (9) Prevent the installation or use of an
15 electronic monitoring device by a resident who has
16 provided the facility with notice and consent as
17 required in Section 20 of the Authorized Electronic
18 Monitoring in Long-Term Care Facilities Act.

19 (b) A violation of this Section is a business offense,
20 punishable by a fine not to exceed \$10,000, except as otherwise
21 provided in subsection (2) of Section 3-103 as to submission of
22 false or misleading information in a license application.

23 (c) The State's Attorney of the county in which the
24 facility is located, or the Attorney General, shall be notified
25 by the Director of any violations of this Section.

26 (Source: P.A. 96-1372, eff. 7-29-10.)

1 Section 75. The ID/DD Community Care Act is amended by
2 changing Section 3-318 and by adding Section 2-116 as follows:

3 (210 ILCS 47/2-116 new)

4 Sec. 2-116. Authorized electronic monitoring of a
5 resident's room. A resident shall be permitted to conduct
6 authorized electronic monitoring of the resident's room
7 through the use of electronic monitoring devices placed in the
8 room pursuant to the Authorized Electronic Monitoring in
9 Long-Term Care Facilities Act.

10 (210 ILCS 47/3-318)

11 Sec. 3-318. Business offenses.

12 (a) No person shall:

13 (1) Intentionally fail to correct or interfere with the
14 correction of a Type "AA", Type "A", or Type "B" violation
15 within the time specified on the notice or approved plan of
16 correction under this Act as the maximum period given for
17 correction, unless an extension is granted and the
18 corrections are made before expiration of extension;

19 (2) Intentionally prevent, interfere with, or attempt
20 to impede in any way any duly authorized investigation and
21 enforcement of this Act;

22 (3) Intentionally prevent or attempt to prevent any
23 examination of any relevant books or records pertinent to

1 investigations and enforcement of this Act;

2 (4) Intentionally prevent or interfere with the
3 preservation of evidence pertaining to any violation of
4 this Act or the rules promulgated under this Act;

5 (5) Intentionally retaliate or discriminate against
6 any resident or employee for contacting or providing
7 information to any state official, or for initiating,
8 participating in, or testifying in an action for any remedy
9 authorized under this Act;

10 (6) Willfully file any false, incomplete or
11 intentionally misleading information required to be filed
12 under this Act, or willfully fail or refuse to file any
13 required information; ~~or~~

14 (7) Open or operate a facility without a license; ~~or~~

15 (8) Intentionally retaliate or discriminate against
16 any resident for consenting to authorized electronic
17 monitoring under the Authorized Electronic Monitoring in
18 Long-Term Care Facilities Act; or

19 (9) Prevent the installation or use of an electronic
20 monitoring device by a resident who has provided the
21 facility with notice and consent as required in Section 20
22 of the Authorized Electronic Monitoring in Long-Term Care
23 Facilities Act.

24 (b) A violation of this Section is a business offense,
25 punishable by a fine not to exceed \$10,000, except as otherwise
26 provided in subsection (2) of Section 3-103 as to submission of

1 false or misleading information in a license application.

2 (c) 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 any violations of this Section.

5 (Source: P.A. 96-339, eff. 7-1-10; 97-38, eff. 6-28-11.)

6 Section 99. Effective date. This Act takes effect January
7 1, 2016.