



Sen. Terry Link

Filed: 5/8/2015

09900HB2462sam001

LRB099 06604 RPS 35366 a

1 AMENDMENT TO HOUSE BILL 2462

2 AMENDMENT NO. _____. Amend House Bill 2462 by replacing
3 everything after the enacting clause with the following:

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.

1 "Facility" means an intermediate care facility for the
2 developmentally disabled licensed under the ID/DD Community
3 Care Act that has 30 beds or more, a long-term care for under
4 age 22 facility licensed under the ID/DD Community Care Act, or
5 a facility licensed under the Nursing Home Care Act.

6 "Resident" means a person residing in a facility.

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

13 Section 10. Authorized electronic monitoring.

14 (a) A resident shall be permitted to conduct authorized
15 electronic monitoring of the resident's room through the use of
16 electronic monitoring devices placed in the room pursuant to
17 this Act.

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

21 Section 15. Consent.

22 (a) Except as otherwise provided in this subsection, a
23 resident, a resident's plenary guardian of the person, or the
24 parent of a resident under the age of 18 must consent in

1 writing on a notification and consent form prescribed by the
2 Department to the authorized electronic monitoring in the
3 resident's room. If the resident has not affirmatively objected
4 to the authorized electronic monitoring and the resident's
5 physician determines that the resident lacks the ability to
6 understand and appreciate the nature and consequences of
7 electronic monitoring, the following individuals may consent
8 on behalf of the resident, in order of priority:

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

11 (2) a resident's representative, as defined in Section
12 5 of this Act;

13 (3) the resident's spouse;

14 (4) the resident's parent;

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

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

23 (a-5) Prior to another person, other than a resident's
24 plenary guardian of the person, consenting on behalf of a
25 resident 18 years of age or older in accordance with this
26 Section, the resident must be asked by that person, in the

1 presence of a facility employee, if he or she wants authorized
2 electronic monitoring to be conducted. The person must explain
3 to the resident:

4 (1) the type of electronic monitoring device to be
5 used;

6 (2) the standard conditions that may be placed on the
7 electronic monitoring device's use, including those listed
8 in paragraph (7) of subsection (b) of Section 20;

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

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

12 For the purposes of this subsection, a resident
13 affirmatively objects when he or she orally, visually, or
14 through the use of auxiliary aids or services declines
15 authorized electronic monitoring. The resident's response must
16 be documented on the notification and consent form.

17 (b) A resident may consent to authorized electronic
18 monitoring with any conditions of the resident's choosing,
19 including, but not limited to, the list of standard conditions
20 provided in paragraph (7) of subsection (b) of Section 20. A
21 resident may request that the electronic monitoring device be
22 turned off or the visual recording component of the electronic
23 monitoring device be blocked at any time.

24 (c) Prior to the authorized electronic monitoring, a
25 resident must obtain the written consent of any other resident
26 residing in the room on the notification and consent form

1 prescribed by the Department. Except as otherwise provided in
2 this subsection, a roommate, a roommate's plenary guardian of
3 the person, or the parent of a roommate under the age of 18
4 must consent in writing to the authorized electronic monitoring
5 in the resident's room. If the roommate has not affirmatively
6 objected to the authorized electronic monitoring in accordance
7 with subsection (a-5) and the roommate's physician determines
8 that the roommate lacks the ability to understand and
9 appreciate the nature and consequences of electronic
10 monitoring, the following individuals may consent on behalf of
11 the roommate, in order of priority:

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

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

16 (3) the roommate's spouse;

17 (4) the roommate's parent;

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

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

26 (c-5) Consent by a roommate under subsection (c) authorizes

1 the resident's use of any recording obtained under this Act, as
2 provided in Section 45 of this Act.

3 (c-7) Any resident previously conducting authorized
4 electronic monitoring must obtain consent from any new roommate
5 before the resident may resume authorized electronic
6 monitoring. If a new roommate does not consent to authorized
7 electronic monitoring and the resident conducting the
8 authorized electronic monitoring does not remove or disable the
9 electronic monitoring device, the facility may turn off the
10 device.

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

18 (e) If a resident who is residing in a shared room wants to
19 conduct authorized electronic monitoring and another resident
20 living in or moving into the same shared room refuses to
21 consent to the use of an electronic monitoring device, the
22 facility shall make a reasonable attempt to accommodate the
23 resident who wants to conduct authorized electronic
24 monitoring. A facility has met the requirement to make a
25 reasonable attempt to accommodate a resident who wants to
26 conduct authorized electronic monitoring when upon

1 notification that a roommate has not consented to the use of an
2 electronic monitoring device in his or her room, the facility
3 offers to move either resident to another shared room that is
4 available at the time of the request. If a resident chooses to
5 reside in a private room in order to accommodate the use of an
6 electronic monitoring device, the resident must pay the private
7 room rate. If a facility is unable to accommodate a resident
8 due to lack of space, the facility must reevaluate the request
9 every 2 weeks until the request is fulfilled.

10 Section 20. Notice to the facility.

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

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

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

24 (A) the date the resident was asked if he or she
25 wants authorized electronic monitoring to be conducted

1 in accordance with subsection (a-5) of Section 15;

2 (B) who was present when the resident was asked;

3 and

4 (C) an acknowledgement that the resident did not
5 affirmatively object; and

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

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

15 (B) who was present when the roommate was asked;
16 and

17 (C) an acknowledgement that the roommate did not
18 affirmatively object; and

19 (3) the type of electronic monitoring device to be
20 used;

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

23 (5) the proposed date of installation for scheduling
24 purposes;

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

1 (7) a list of standard conditions or restrictions that
2 the resident or a roommate may elect to place on use of the
3 electronic monitoring device, including, but not limited
4 to:

5 (A) prohibiting audio recording;

6 (B) prohibiting broadcasting of audio or video;

7 (C) turning off the electronic monitoring device
8 or blocking the visual recording component of the
9 electronic monitoring device for the duration of an
10 exam or procedure by a health care professional;

11 (D) turning off the electronic monitoring device
12 or blocking the visual recording component of the
13 electronic monitoring device while dressing or bathing
14 is performed; and

15 (E) turning the electronic monitoring device off
16 for the duration of a visit with a spiritual advisor,
17 ombudsman, attorney, financial planner, intimate
18 partner, or other visitor; and

19 (8) any other condition or restriction elected by the
20 resident or roommate on the use of an electronic monitoring
21 device.

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

26 (d) The Department shall prescribe the notification and

1 consent form required in this Section no later than 60 days
2 after the effective date of this Act. If the Department has not
3 prescribed such a form by that date, a resident may create his
4 or her own notification and consent form to meet the
5 requirements of this Act until the Department has prescribed
6 the form.

7 Section 25. Cost and installation.

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

11 (b) If a resident chooses to install an electronic
12 monitoring device that uses Internet technology for visual or
13 audio monitoring, that resident is responsible for contracting
14 with an Internet service provider.

15 (c) The facility shall make a reasonable attempt to
16 accommodate the resident's installation needs, including, but
17 not limited to, allowing access to the facility's
18 telecommunications or equipment room. A facility has the burden
19 of proving that a requested accommodation is not reasonable.

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

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

24 (f) All electronic monitoring device installations and
25 supporting services shall comply with the requirements of the

1 National Fire Protection Association (NFPA) 101 Life Safety
2 Code (2000 edition).

3 Section 27. Assistance program.

4 (a) Subject to appropriation, the Department shall
5 establish a program to assist residents receiving medical
6 assistance under Article V of the Illinois Public Aid Code in
7 accessing authorized electronic monitoring.

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

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

15 Section 30. Notice to visitors.

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

23 (b) A sign shall be clearly and conspicuously posted at the
24 entrance to a resident's room where authorized electronic

1 monitoring is being conducted. The notice must state, in large,
2 easy-to-read type, "This room is electronically monitored."

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

5 Section 40. Obstruction of electronic monitoring devices.

6 (a) A person or entity is prohibited from knowingly
7 hampering, obstructing, tampering with, or destroying an
8 electronic monitoring device installed in a resident's room
9 without the permission of the resident or the individual who
10 consented on behalf of the resident in accordance with Section
11 15 of this Act.

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

18 (c) A person or entity that violates this Section is guilty
19 of a Class B misdemeanor. A person or entity that violates this
20 Section in the commission of or to conceal a misdemeanor
21 offense is guilty of a Class A misdemeanor. A person or entity
22 that violates this Section in the commission of or to conceal a
23 felony offense is guilty of a Class 4 felony.

24 (d) It shall be an affirmative defense to a violation of
25 this Section that the person or facility acted with the

1 permission of the resident or the person who consented on
2 behalf of the resident in accordance with Section 15 of this
3 Act.

4 Section 45. Dissemination of recordings.

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

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

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

22 Section 50. Admissibility of evidence. Subject to
23 applicable rules of evidence and procedure, any video or audio
24 recording created through authorized electronic monitoring in

1 accordance with this Act may be admitted into evidence in a
2 civil, criminal, or administrative proceeding if the contents
3 of the recording have not been edited or artificially enhanced
4 and the video recording includes the date and time the events
5 occurred.

6 Section 55. Report. Each facility shall report to the
7 Department, in a manner prescribed by the Department, the
8 number of authorized electronic monitoring notification and
9 consent forms received annually. The Department shall report
10 the total number of authorized electronic monitoring
11 notification and consent forms received by facilities to the
12 Office of the Attorney General annually.

13 Section 60. Liability.

14 (a) A facility is not civilly or criminally liable for the
15 inadvertent or intentional disclosure of a recording by a
16 resident or a person who consents on behalf of the resident for
17 any purpose not authorized by this Act.

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

21 Section 65. Rules. The Department shall adopt rules
22 necessary to implement this Act.

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

3 (210 ILCS 45/2-115 new)

4 Sec. 2-115. 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 45/3-318) (from Ch. 111 1/2, par. 4153-318)

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

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

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

22 (3) Intentionally prevent or attempt to prevent
23 any examination of any relevant books or records
24 pertinent to investigations and enforcement of this

1 Act;

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

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

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

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

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

19 (9) Prevent the installation or use of an
20 electronic monitoring device by a resident who has
21 provided the facility with notice and consent as
22 required in Section 20 of the Authorized Electronic
23 Monitoring in Long-Term Care 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. 96-1372, eff. 7-29-10.)

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

8 (210 ILCS 47/2-116 new)

9 Sec. 2-116. Authorized electronic monitoring of a
10 resident's room. A resident shall be permitted to conduct
11 authorized electronic monitoring of the resident's room
12 through the use of electronic monitoring devices placed in the
13 room pursuant to the Authorized Electronic Monitoring in
14 Long-Term Care Facilities Act.

15 (210 ILCS 47/3-318)

16 Sec. 3-318. Business offenses.

17 (a) No person shall:

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

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

4 (3) Intentionally prevent or attempt to prevent any
5 examination of any relevant books or records pertinent to
6 investigations and enforcement of this Act;

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

10 (5) Intentionally retaliate or discriminate against
11 any resident or employee for contacting or providing
12 information to any state official, or for initiating,
13 participating in, or testifying in an action for any remedy
14 authorized under this Act;

15 (6) Willfully file any false, incomplete or
16 intentionally misleading information required to be filed
17 under this Act, or willfully fail or refuse to file any
18 required information; ~~or~~

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

20 (8) Intentionally retaliate or discriminate against
21 any resident for consenting to authorized electronic
22 monitoring under the Authorized Electronic Monitoring in
23 Long-Term Care Facilities Act; or

24 (9) Prevent the installation or use of an electronic
25 monitoring device by a resident who has provided the
26 facility with notice and consent as required in Section 20

1 of the Authorized Electronic Monitoring in Long-Term Care
2 Facilities Act.

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

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

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

11 Section 99. Effective date. This Act takes effect January
12 1, 2016."