



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB2519

Introduced 2/16/2016, by Sen. Terry Link

SYNOPSIS AS INTRODUCED:

See Index

Amends the Authorized Electronic Monitoring in Long-Term Care Facilities Act. Adds references to facilities licensed under the MC/DD Act to the definitions of "facility" and "resident's representative". In a provision that requires a resident conducting authorized electronic monitoring to obtain the consent of any new roommate, provides that 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 shall (instead of may) turn off the device. Provides that all electronic monitoring device installations and supporting services shall comply with the requirements of the 2012 edition (instead of the 2000 edition) of the National Fire Protection Association (NFPA) 101 Life Safety Code. Provides that the Department of Public Health's distribution of up to \$50,000 in funds to certain residents for the purchase and installation of authorized electronic monitoring devices is subject to appropriation. Amends the MC/DD Act. Provides that a resident shall be permitted to conduct authorized electronic monitoring of the resident's room. Provides that it is a business offense for a person to intentionally retaliate or discriminate against any resident for consenting to authorized electronic monitoring under the Authorized Electronic Monitoring in Long-Term Care Facilities Act. Provides that it is a business offense for a facility to prevent the installation or use of an electronic monitoring device by a resident who has provided the facility with the required notice and consent.

LRB099 20188 MJP 44643 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 5. The Authorized Electronic Monitoring in
5 Long-Term Care Facilities Act is amended by changing Sections
6 5, 15, 25, and 27 as follows:

7 (210 ILCS 32/5)

8 Sec. 5. Definitions. As used in this Act:

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

12 "Department" means the Department of Public Health.

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

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

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

2 "Resident's representative" has the meaning given to that
3 term in (1) Section 1-123 of the Nursing Home Care Act if the
4 resident resides in a facility licensed under the Nursing Home
5 Care Act, ~~or~~ (2) Section 1-123 of the ID/DD Community Care Act
6 if the resident resides in a facility licensed under the ID/DD
7 Community Care Act, or (3) Section 1-123 of the MC/DD Act if
8 the resident resides in a facility licensed under the MC/DD
9 Act.

10 (Source: P.A. 99-430, eff. 1-1-16.)

11 (210 ILCS 32/15)

12 Sec. 15. Consent.

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

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

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

3 (3) the resident's spouse;

4 (4) the resident's parent;

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

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

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

20 (1) the type of electronic monitoring device to be
21 used;

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

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

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

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

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

15 (c) Prior to the authorized electronic monitoring, a
16 resident must obtain the written consent of any other resident
17 residing in the room on the notification and consent form
18 prescribed by the Department. Except as otherwise provided in
19 this subsection, a roommate, a roommate's plenary guardian of
20 the person, or the parent of a roommate under the age of 18
21 must consent in writing to the authorized electronic monitoring
22 in the resident's room. If the roommate has not affirmatively
23 objected to the authorized electronic monitoring in accordance
24 with subsection (a-5) and the roommate's physician determines
25 that the roommate lacks the ability to understand and
26 appreciate the nature and consequences of electronic

1 monitoring, the following individuals may consent on behalf of
2 the roommate, in order of priority:

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

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

7 (3) the roommate's spouse;

8 (4) the roommate's parent;

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

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

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

20 (c-7) Any resident previously conducting authorized
21 electronic monitoring must obtain consent from any new roommate
22 before the resident may resume authorized electronic
23 monitoring. If a new roommate does not consent to authorized
24 electronic monitoring and the resident conducting the
25 authorized electronic monitoring does not remove or disable the
26 electronic monitoring device, the facility shall ~~may~~ turn off

1 the device.

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

9 (e) If a resident who is residing in a shared room wants to
10 conduct authorized electronic monitoring and another resident
11 living in or moving into the same shared room refuses to
12 consent to the use of an electronic monitoring device, the
13 facility shall make a reasonable attempt to accommodate the
14 resident who wants to conduct authorized electronic
15 monitoring. A facility has met the requirement to make a
16 reasonable attempt to accommodate a resident who wants to
17 conduct authorized electronic monitoring when upon
18 notification that a roommate has not consented to the use of an
19 electronic monitoring device in his or her room, the facility
20 offers to move either resident to another shared room that is
21 available at the time of the request. If a resident chooses to
22 reside in a private room in order to accommodate the use of an
23 electronic monitoring device, the resident must pay the private
24 room rate. If a facility is unable to accommodate a resident
25 due to lack of space, the facility must reevaluate the request
26 every 2 weeks until the request is fulfilled.

1 (Source: P.A. 99-430, eff. 1-1-16.)

2 (210 ILCS 32/25)

3 Sec. 25. Cost and installation.

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

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

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

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

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

20 (f) All electronic monitoring device installations and
21 supporting services shall comply with the requirements of the
22 National Fire Protection Association (NFPA) 101 Life Safety
23 Code (2012 ~~2000~~ edition).

24 (Source: P.A. 99-430, eff. 1-1-16.)

1 (210 ILCS 32/27)

2 Sec. 27. Assistance program.

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

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

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

14 (Source: P.A. 99-430, eff. 1-1-16.)

15 Section 10. The MC/DD Act is amended by adding Section
16 2-116 and by changing Section 3-318 as follows:

17 (210 ILCS 46/2-116 new)

18 Sec. 2-116. Authorized electronic monitoring of a
19 resident's room. A resident shall be permitted to conduct
20 authorized electronic monitoring of the resident's room
21 through the use of electronic monitoring devices placed in the
22 room pursuant to the Authorized Electronic Monitoring in
23 Long-Term Care Facilities Act.

1 (210 ILCS 46/3-318)

2 Sec. 3-318. Business offenses.

3 (a) No person shall:

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

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

13 (3) Intentionally prevent or attempt to prevent any
14 examination of any relevant books or records pertinent to
15 investigations and enforcement of this Act;

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

19 (5) Intentionally retaliate or discriminate against
20 any resident or employee for contacting or providing
21 information to any state official, or for initiating,
22 participating in, or testifying in an action for any remedy
23 authorized under this Act;

24 (6) Willfully file any false, incomplete or
25 intentionally misleading information required to be filed
26 under this Act, or willfully fail or refuse to file any

1 required information; ~~or~~

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

3 (8) Intentionally retaliate or discriminate against
4 any resident for consenting to authorized electronic
5 monitoring under the Authorized Electronic Monitoring in
6 Long-Term Care Facilities Act.

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

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

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

19 (Source: P.A. 99-180, eff. 7-29-15.)

1 INDEX

2 Statutes amended in order of appearance

3 210 ILCS 32/5

4 210 ILCS 32/15

5 210 ILCS 32/25

6 210 ILCS 32/27

7 210 ILCS 46/2-116 new

8 210 ILCS 46/3-318