

HOUSE AMENDMENT NO. \_\_\_\_  
TO  
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Offered By \_\_\_\_\_

1 AMEND House Amendment No. \_\_\_\_ to House Committee Substitute for Senate Substitute for  
2 Senate Bill No. 621, Page 2, Line 13, by deleting all of said line and inserting in lieu thereof the  
3 following:

4  
5 "provisions of this section.

6 198.575. 1. Sections 198.575 to 198.605 shall be known and may be cited as the "Patient  
7 Monitoring Care Act".

8 2. As used in sections 198.575 to 198.605, the following terms shall mean:

9 (1) "Department", the department of health and senior services;

10 (2) "Facility", any residential care facility, assisted living facility, intermediate care facility,  
11 or skilled nursing facility;

12 (3) "Monitoring device", a surveillance instrument that broadcasts or records activity, but  
13 does not include a still camera;

14 (4) "Patient", a person who is a resident of a facility;

15 (5) "State ombudsman", the office of state ombudsman for long-term care facility residents  
16 created under section 192.2305;

17 (6) "Surrogate", a legal guardian or legally appointed health care proxy who is authorized to  
18 act on behalf of a patient.

19 198.578. 1. A patient or a surrogate may authorize the installation and use of a monitoring  
20 device in a facility provided that:

21 (1) The facility is given notice of the installation;

22 (2) If the monitoring device records activity visually, such recording shall include a record  
23 of the date and time;

24 (3) The monitoring device and all installation and maintenance costs are paid for by the  
25 patient; and

26 (4) Written consent is given by each patient or surrogate of each patient occupying the same  
27 room.

28 2. The patient may establish and the facility shall accommodate limits on the use including  
29 the time of operation, direction, focus, or volume of a monitoring device.

30 198.581. 1. At the time of admission to a facility, a patient shall be offered the option to  
31 have a monitoring device, and a record of the patient's authorization or choice not to have a  
32 monitoring device shall be kept by the facility and shall be made accessible to the state ombudsman.

33 2. After authorization, consent, and notice, a patient or surrogate may install, operate, and

Standing Action Taken \_\_\_\_\_ Date \_\_\_\_\_

Select Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1 maintain a monitoring device in the patient's room at the patient's expense.

2 3. The facility shall cooperate to accommodate the installation of the monitoring device,  
3 provided the installation does not place undue burden on the facility.

4 4. The patient or surrogate shall be responsible for removal of the monitoring device, at the  
5 patient's or surrogate's expense, upon discharge of the patient from the facility or upon the death of  
6 the patient.

7 198.584. 1. Consent to the authorization for the installation and use of a monitoring device  
8 may be given only by the patient or the surrogate.

9 2. Consent to the authorization for the installation and use of a monitoring device shall  
10 include a release of liability for the facility for a violation of the patient's right to privacy insofar as  
11 the use of the monitoring device is concerned.

12 3. A patient or the surrogate may reverse a choice to have or not have a monitoring device  
13 installed and used at any time, after notice to the facility and to the state ombudsman upon a form  
14 prescribed by the department.

15 198.587. The form for the authorization of installation and use of a monitoring device shall  
16 provide for:

17 (1) Consent of the patient or the surrogate authorizing the installation and use of the  
18 monitoring device;

19 (2) Notice to the facility of the patient's installation of a monitoring device and specifics as  
20 to its type, function, and use;

21 (3) Consent of any other patient or that patient's surrogate sharing the same room;

22 (4) Notice of release from liability for privacy violations through the use of the monitoring  
23 device; and

24 (5) Waiver of the patient's right to privacy in conjunction with the use of the monitoring  
25 device.

26 198.590. 1. In any civil action against the facility, material obtained through the use of a  
27 monitoring device shall not be used if the monitoring device was installed or used without the  
28 knowledge of the facility or without the prescribed form.

29 2. Compliance with the provisions of sections 198.575 to 198.605 shall be a complete  
30 defense against any civil or criminal action brought against the patient, surrogate, or facility for the  
31 use or presence of a monitoring device.

32 198.593. Within six months of the effective date of sections 198.575 to 198.605, all  
33 facilities shall provide to each patient or surrogate a form prescribed by the department explaining  
34 the provisions of sections 198.575 to 198.605 and giving each patient or surrogate a choice to have a  
35 monitoring device installed in the patient's room. Copies of the completed form shall be kept by the  
36 facility and shall be made accessible to the state ombudsman.

37 198.596. The facility shall post a notice in a conspicuous place at the entrance to a room  
38 with a monitoring device that a monitoring device is in use in that room of the facility.

39 198.599. The department shall promulgate rules to implement the provisions of sections  
40 198.575 to 198.605. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
41 created under the authority delegated in sections 198.575 to 198.605 shall become effective only if  
42 it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section  
43 536.028. Sections 198.575 to 198.605 and chapter 536 are nonseverable, and if any of the powers  
44 vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to  
45 disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking  
46 authority and any rule proposed or adopted after August 28, 2016, shall be invalid and void.

47 198.602. No person or patient shall be denied admission to or discharged from a facility or  
48 be otherwise discriminated against or retaliated against because of a choice to authorize installation

1 and use of a monitoring device. Any person who violates this section shall be subject to a civil  
 2 penalty of up to ten thousand dollars per occurrence.

3 198.605. Any person other than a patient or surrogate found guilty of intentionally  
 4 hampering, obstructing, tampering with, or destroying a monitoring device or a recording made by a  
 5 monitoring device installed in a facility under sections 198.575 to 198.605 is guilty of a class D  
 6 felony until December 31, 2016, and a class E felony beginning January 1, 2017.

7 198.610. 1. The provisions of sections 198.610 to 198.630 shall be known and may be cited  
 8 as the “Authorized Electronic Monitoring in Long-Term Care Facilities Act”.

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

10 (1) “Authorized electronic monitoring”, the placement and use of an electronic monitoring  
 11 device by a resident in his or her room in accordance with the provisions of sections 198.610 to  
 12 198.630;

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

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

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

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

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

22 198.612. 1. A resident shall be permitted to conduct authorized electronic monitoring of the  
 23 resident’s room through the use of electronic monitoring devices placed in the room under the  
 24 provisions of sections 198.610 to 198.630.

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

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

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

36 (2) A resident’s representative;

37 (3) The resident’s spouse;

38 (4) The resident’s parent;

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

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

43 4. Prior to another person, other than a resident’s representative, consenting on behalf of a  
 44 resident eighteen years of age or older in accordance with the provisions of sections 198.610 to  
 45 198.630, the resident shall be asked by that person, in the presence of a facility employee, if he or  
 46 she wants authorized electronic monitoring to be conducted. The person shall explain to the  
 47 resident:

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

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

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

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

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

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

14       6. Prior to the authorized electronic monitoring, a resident shall obtain the written consent  
 15 of any other resident residing in the room on the notification and consent form prescribed by the  
 16 department. Except as otherwise provided in this subsection, a roommate, a roommate's legal  
 17 representative, or the parent of a roommate under eighteen years of age shall consent in writing to  
 18 the authorized electronic monitoring in the resident's room. If the roommate has not affirmatively  
 19 objected to the authorized electronic monitoring in accordance with subsection 4 of this section and  
 20 the roommate's physician determines that the roommate lacks the ability to understand and  
 21 appreciate the nature and consequences of electronic monitoring, the following individuals may  
 22 consent on behalf of the roommate, in order of priority:

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

24       (2) A roommate's legal representative;

25       (3) The roommate's spouse;

26       (4) The roommate's parent;

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

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

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

33       8. Any resident previously conducting authorized electronic monitoring shall obtain consent  
 34 from any new roommate before the resident may resume authorized electronic monitoring. If a new  
 35 roommate does not consent to authorized electronic monitoring and the resident conducting the  
 36 authorized electronic monitoring does not remove or disable the electronic monitoring device, the  
 37 facility may turn off the device.

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

42       10. If a resident who is residing in a shared room wants to conduct authorized electronic  
 43 monitoring and another resident living in or moving into the same shared room refuses to consent to  
 44 the use of an electronic monitoring device, the facility shall make a reasonable attempt to  
 45 accommodate the resident who wants to conduct authorized electronic monitoring. A facility has  
 46 met the requirement to make a reasonable attempt to accommodate a resident who wants to conduct  
 47 authorized electronic monitoring if, upon notification that a roommate has not consented to the use  
 48 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 resident 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:

(a) The date the roommate 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 roommate was asked; and

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

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

(4) Any installation needs such as mounting of a device to a wall or ceiling;

(5) The proposed date of installation for scheduling purposes;

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

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

(a) Prohibiting audio recording;

(b) Prohibiting broadcasting of audio or video; or

(c) Turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device for the duration of an exam or procedure by a health care professional; while dressing or bathing is performed; or for the duration of a visit with a spiritual advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor; and

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

3. A copy of the completed notification and consent form shall be placed in the resident's and any roommate's clinical record and a copy shall be provided to the resident and his or her roommate, if applicable.

4. The department shall prescribe the notification and consent form required in this section no later than sixty days after the effective date of sections 198.610 to 198.630. If the department has not prescribed such a form by that date, the attorney general shall post a notification and consent form on its website for resident use until the department has prescribed the form.

198.616. 1. A resident choosing to conduct authorized electronic monitoring shall do so at his or her own expense including paying purchase, installation, maintenance, and removal costs.

1        2. If a resident chooses to install an electronic monitoring device that uses internet  
2 technology for visual or audio monitoring, such resident is responsible for contracting with an  
3 internet service provider.

4        3. The facility shall make a reasonable attempt to accommodate the resident's installation  
5 needs including, but not limited to, allowing access to the facility's telecommunications or  
6 equipment room. A facility has the burden of proving that a requested accommodation is not  
7 reasonable.

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

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

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

15       198.618. 1. If a resident of a facility conducts authorized electronic monitoring, a sign shall  
16 be clearly and conspicuously posted at all building entrances accessible to visitors. The notice shall  
17 be entitled "Electronic Monitoring" and shall state in large, easy-to-read type, "The rooms of some  
18 residents may be monitored electronically by or on behalf of the residents."

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

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

24       198.620. 1. No person or entity shall knowingly hamper, obstruct, tamper with, or destroy  
25 an electronic monitoring device installed in a resident's room without the permission of the resident  
26 or the individual who consented on behalf of the resident in accordance with section 198.612.

27       2. No person or entity shall knowingly hamper, obstruct, tamper with, or destroy a video or  
28 audio recording obtained in accordance with sections 198.610 to 198.630 without the permission of  
29 the resident or the individual who consented on behalf of the resident in accordance with section  
30 198.612.

31       3. A person or entity that violates this section is guilty of a class B misdemeanor. A person  
32 or entity that violates this section in the commission of or to conceal a misdemeanor offense is  
33 guilty of a class A misdemeanor. A person or entity that violates this section in the commission of  
34 or to conceal a felony offense is guilty of a class D felony.

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

39       198.622. 1. No facility shall access any video or audio recording created through  
40 authorized electronic monitoring without the written consent of the resident or the person who  
41 consented on behalf of the resident in accordance with section 198.612.

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

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

1       198.624. Subject to applicable rules of evidence and procedure, any video or audio  
2 recording created through authorized electronic monitoring in accordance with the provisions of  
3 sections 198.610 to 198.630 may be admitted into evidence in a civil, criminal, or administrative  
4 proceeding if the contents of the recording have not been edited or artificially enhanced and the  
5 video recording includes the date and time the events occurred.

6       198.626. Each facility shall report to the department, in a manner prescribed by the  
7 department, the number of authorized electronic monitoring notification and consent forms received  
8 annually. The department shall report the total number of authorized electronic monitoring  
9 notification and consent forms received from facilities to the attorney general annually.

10       198.628. 1. No facility shall be civilly or criminally liable for the inadvertent or intentional  
11 disclosure of a recording by a resident or a person who consents on behalf of the resident for any  
12 purpose not authorized by sections 198.610 to 198.630.

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

15       3. The department shall promulgate rules to implement the provisions of sections 198.610 to  
16 198.630. Any rule or portion of a rule, as that term is defined in section 536.010, that is created  
17 under the authority delegated in this section shall become effective only if it complies with and is  
18 subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and  
19 chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to  
20 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently  
21 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after  
22 August 28, 2016, shall be invalid and void.

23       198.630. No person shall:

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

26       (2) Prevent the installation or use of an electronic monitoring device by a resident who has  
27 provided the facility with notice and consent as required under section 198.614."; and"; and  
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29 AMENDMENT TO AMENDMENT NO: 4556H07.25H

30  
31 Further amend said bill by amending the title, enacting clause, and intersectional references  
32 accordingly.  
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