

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Substitute for Senate Bill No. 5, Page 33, Section
2 197.295, Line 17, by inserting after all of said section and line the following:

3
4 "198.610. 1. The provisions of sections 198.610 to 198.630 shall be known and may be
5 cited as the "Authorized Electronic Monitoring in Long-Term Care Facilities Act".

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

7 (1) "Authorized electronic monitoring", the placement and use of an electronic monitoring
8 device by a resident in his or her room in accordance with the provisions of sections 198.610 to
9 198.630;

10 (2) "Department", the department of health and senior services;

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

15 (4) "Facility", any residential care facility, assisted living facility, intermediate care facility,
16 or skilled nursing facility;

17 (5) "Resident", a person residing in a facility;

18 (6) "Resident's representative", a resident's legal representative.

19 198.612. 1. A resident shall be permitted to conduct authorized electronic monitoring of the
20 resident's room through the use of electronic monitoring devices placed in the room under the
21 provisions of sections 198.610 to 198.630.

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

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

Action Taken _____ Date _____

1 individuals may consent on behalf of the resident in order of priority:

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

3 (2) The resident's representative;

4 (3) The resident's spouse;

5 (4) The resident's parent;

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

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

10 4. Prior to another person, other than a resident's representative, consenting on behalf of a
11 resident eighteen years of age or older in accordance with the provisions of sections 198.610 to
12 198.630, the resident shall be asked by that person, in the presence of a facility employee, if he or
13 she wants authorized electronic monitoring to be conducted. The person shall explain to the
14 resident:

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

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

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

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

20
21 For the purposes of this subsection, a resident affirmatively objects if he or she orally, visually, or
22 through the use of auxiliary aids or services declines authorized electronic monitoring. The
23 resident's response shall be documented on the notification and consent form.

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

29 6. Prior to the authorized electronic monitoring, a resident shall obtain the written consent
30 of any other resident residing in the room on the notification and consent form prescribed by the
31 department. Except as otherwise provided in this subsection, a roommate, a roommate's legal
32 representative, or the parent of a roommate under eighteen years of age shall consent in writing to
33 the authorized electronic monitoring in the resident's room. If the roommate has not affirmatively
34 objected to the authorized electronic monitoring in accordance with subsection 4 of this section and
35 the roommate's physician determines that the roommate lacks the ability to understand and
36 appreciate the nature and consequences of electronic monitoring, the following individuals may
37 consent on behalf of the roommate, in order of priority:

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

39 (2) The roommate's legal representative;

40 (3) The roommate's spouse;

41 (4) The roommate's parent;

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

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

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

8 8. Any resident previously conducting authorized electronic monitoring shall obtain consent
9 from any new roommate before the resident may resume authorized electronic monitoring. If a new
10 roommate does not consent to authorized electronic monitoring and the resident conducting the
11 authorized electronic monitoring does not remove or disable the electronic monitoring device, the
12 facility may turn off the device.

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

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

28 198.614. 1. Authorized electronic monitoring may begin only after a notification and
29 consent form prescribed by the department has been completed and submitted to the facility.

30 2. A resident shall notify the facility in writing of his or her intent to install an electronic
31 monitoring device by providing a completed notification and consent form prescribed by the
32 department that shall include at minimum the following information:

33 (1) The resident's signed consent to electronic monitoring or the signature of the person
34 consenting on behalf of the resident in accordance with section 198.612. If a person other than the
35 resident signs the consent form, the form shall document the following:

36 (a) The date the resident was asked if he or she wants authorized electronic monitoring to be
37 conducted in accordance with subsection 4 of section 198.612;

38 (b) Who was present when the resident was asked; and

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

40 (2) The resident's roommate's signed consent or the signature of the person consenting on
41 behalf of the roommate in accordance with section 198.612, if applicable, and any conditions placed

1 on the roommate's consent. If a person other than the roommate signs the consent form, the form
2 shall document the following:

3 (a) The date the roommate was asked if he or she wants authorized electronic monitoring to
4 be conducted in accordance with subsection 4 of section 198.612;

5 (b) Who was present when the roommate was asked; and

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

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

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

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

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

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

14 (a) Prohibiting audio recording;

15 (b) Prohibiting broadcasting of audio or video; or

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

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

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

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

29 198.616. 1. A resident choosing to conduct authorized electronic monitoring shall do so at
30 his or her own expense including paying purchase, installation, maintenance, and removal costs.

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

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

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

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

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

4 198.618. 1. If a resident of a facility conducts authorized electronic monitoring, a sign shall
5 be clearly and conspicuously posted at all building entrances accessible to visitors. The notice shall
6 be entitled "Electronic Monitoring" and shall state in large, easy-to-read type, "The rooms of some
7 residents may be monitored electronically by or on behalf of the residents."

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

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

13 198.620. 1. No person or entity shall knowingly hamper, obstruct, tamper with, or destroy
14 an electronic monitoring device installed in a resident's room without the permission of the resident
15 or the individual who consented on behalf of the resident in accordance with section 198.612.

16 2. No person or entity shall knowingly hamper, obstruct, tamper with, or destroy a video or
17 audio recording obtained in accordance with sections 198.610 to 198.630 without the permission of
18 the resident or the individual who consented on behalf of the resident in accordance with section
19 198.612.

20 3. A person or entity that violates this section is guilty of a class B misdemeanor. A person
21 or entity that violates this section in the commission of or to conceal a misdemeanor offense is
22 guilty of a class A misdemeanor. A person or entity that violates this section in the commission of
23 or to conceal a felony offense is guilty of a class D felony.

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

28 198.622. 1. No facility shall access any video or audio recording created through
29 authorized electronic monitoring without the written consent of the resident or the person who
30 consented on behalf of the resident in accordance with section 198.612.

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

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

38 198.624. Subject to applicable rules of evidence and procedure, any video or audio
39 recording created through authorized electronic monitoring in accordance with the provisions of
40 sections 198.610 to 198.630 may be admitted into evidence in a civil, criminal, or administrative
41 proceeding if the contents of the recording have not been edited or artificially enhanced and the

1 video recording includes the date and time the events occurred.

2 198.626. Each facility shall report to the department, in a manner prescribed by the
3 department, the number of authorized electronic monitoring notification and consent forms received
4 annually. The department shall report the total number of authorized electronic monitoring
5 notification and consent forms received from facilities to the attorney general annually.

6 198.628. 1. No facility shall be civilly or criminally liable for the inadvertent or intentional
7 disclosure of a recording by a resident or a person who consents on behalf of the resident for any
8 purpose not authorized by sections 198.610 to 198.630.

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

11 3. The department shall promulgate rules to implement the provisions of sections 198.610 to
12 198.630. Any rule or portion of a rule, as that term is defined in section 536.010, that is created
13 under the authority delegated in this section shall become effective only if it complies with and is
14 subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and
15 chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to
16 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
17 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after
18 August 28, 2017, shall be invalid and void.

19 198.630. No person shall:

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

22 (2) Prevent the installation or use of an electronic monitoring device by a resident who has
23 provided the facility with notice and consent as required under section 198.614."; and

24
25 Further amend said bill by amending the title, enacting clause, and intersectional references
26 accordingly.