

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Bill No. 758, Page 2, Section 197.108, Line 29, by inserting after all of said section
2 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 may 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 if the facility in which the resident resides permits
22 electronic monitoring devices in its policies and procedures and if the electronic monitoring devices
23 comply with the facility's requirements therein.

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

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

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

35 (2) The resident's representative;

36 (3) The resident's spouse;

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1 (4) The resident's parent;

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

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

6 4. Prior to another person, other than a resident's representative, consenting on behalf of a
 7 resident eighteen years of age or older in accordance with the provisions of sections 198.610 to
 8 198.630, the resident shall be asked by that person, in the presence of a facility employee, if he or
 9 she wants authorized electronic monitoring to be conducted. The person shall explain to the
 10 resident:

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

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

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

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

16
 17 For the purposes of this subsection, a resident affirmatively objects if he or she orally, visually, or
 18 through the use of auxiliary aids or services declines authorized electronic monitoring. The
 19 resident's response shall be documented on the notification and consent form.

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

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

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

35 (2) The roommate's legal representative;

36 (3) The roommate's spouse;

37 (4) The roommate's parent;

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

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

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

45 8. Any resident previously conducting authorized electronic monitoring shall obtain consent
 46 from any new roommate before the resident may resume authorized electronic monitoring. If a new
 47 roommate does not consent to authorized electronic monitoring and the resident conducting the
 48 authorized electronic monitoring does not remove or disable the electronic monitoring device, the
 49 facility may turn off the device.

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

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 and the facility consents.

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 roommate 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 facility, resident, or 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 facility, 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 authorized 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 authorized to conduct authorized electronic monitoring chooses to install an
2 electronic monitoring device that uses internet technology for visual or audio monitoring, such
3 resident is responsible for contracting with an internet service provider.

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

6 4. No facility shall charge the resident a fee for the cost of electricity used by an electronic
7 monitoring device.

8 5. All electronic monitoring device installations and supporting services shall comply with
9 the requirements of the National Fire Protection Association (NFPA) 101 Life Safety Code (2015
10 edition).

11 198.618. 1. If a resident of a facility conducts authorized electronic monitoring, a sign shall
12 be clearly and conspicuously posted at all building entrances accessible to visitors. The notice shall
13 be entitled "Electronic Monitoring" and shall state in large, easy-to-read type: "The rooms of some
14 residents may be monitored electronically by or on behalf of the residents."

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

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

20 198.620. 1. No person or entity shall knowingly hamper, obstruct, tamper with, or destroy
21 an electronic monitoring device installed in a resident's room without the permission of the resident
22 or the individual who consented on behalf of the resident and the facility, in accordance with section
23 198.612.

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

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

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

36 198.622. 1. No facility shall access any video or audio recording created through authorized
37 electronic monitoring without the written consent of the resident or the person who consented on
38 behalf of the resident and the facility, in accordance with section 198.612.

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

42 3. The resident or person who consented on behalf of the resident in accordance with section
43 198.612 shall provide a copy of any video or audio recording to parties involved in a criminal or
44 administrative proceeding, upon a party's request, if the video or audio recording was made during
45 the time period that the conduct at issue in the proceeding allegedly occurred.

46 198.624. Any individual who has reasonable cause to believe, as a result of any video or
47 audio recording created through authorized electronic monitoring in accordance with the provisions
48 of sections 198.610 to 198.630, that a resident has been the victim of a sexual assault shall report
49 such suspected assault to a local law enforcement entity and provide such entity with a copy of the

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

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

198.628. 1. No facility shall be civilly or criminally liable for the inadvertent or intentional disclosure of a recording by a resident or a person who consents on behalf of the resident for any purpose not authorized by sections 198.610 to 198.630. Nothing in sections 198.610 to 198.630 shall permit or authorize a resident to use any device that in any way violates any other state or federal law or regulation.

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

3. The department shall promulgate rules to adopt the form described in subsection 2 of section 198.614. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2019, shall be invalid and void.

198.630. 1. No person shall:

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

(2) Prevent the installation or use of an electronic monitoring device by a resident who has received authorization from the facility with notice and consent as required under section 198.614 that otherwise meets the requirements of sections 198.610 to 198.630.

2. Sections 198.601 to 198.630 shall not be interpreted to allow any facility to prohibit the use of recording devices in a manner authorized under section 542.402."; and

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