

HB 399 -- AUTHORIZED ELECTRONIC MONITORING IN LONG-TERM CARE FACILITIES ACT

SPONSOR: McDaniel

This bill creates the "Authorized Electronic Monitoring in Long-Term Care Facilities Act."

The bill permits a resident of any residential care facility, assisted living facility, intermediate care facility, or skilled nursing facility to conduct authorized electronic monitoring of the resident's room using electronic monitoring devices. The bill requires a resident, his or her representative, or his or her parent, if the resident is under 18 years of age, to consent in writing to electronic monitoring before electronic monitoring can occur in a resident's room. The bill delineates who may consent on behalf of a resident if the resident lacks the capacity to understand the nature and consequences of electronic monitoring and how such consent must be obtained. A resident or roommate may consent to monitoring with any conditions he or she may choose and may request the device be turned off or blocked at any time. Prior to electronic monitoring a resident must obtain written consent of any other resident residing in the room and must obtain written consent of any new roommate before recording can resume. Consent may be withdrawn by a resident or roommate at any time and such withdrawal must be noted in the resident's clinical record. As specified in the bill, a facility must make a reasonable attempt to accommodate a resident who wants electronic monitoring but whose roommate will not consent to monitoring (Section 198.612, RSMo).

The bill permits electronic monitoring to begin only after a notification and consent form has been completed and submitted to the facility. A resident must notify the facility in writing of his or her intent to install an electronic monitoring device. The bill specifies what must be included in a notification and consent form and requires the Department of Health and Senior Services to create such form within 60 days of the effective date of these provisions. If the department fails to timely create the form, the Attorney General must create a form to be used until the department creates a form (Section 198.614).

The bill requires a resident who elects to conduct electronic monitoring to do so at his or her own expense. If the monitoring system requires Internet, it is the responsibility of the resident to contract with an Internet provider for such services. The facility must make a reasonable attempt to accommodate a resident's installation needs. The electronic monitoring device must be in a conspicuously visible location and a facility is prohibited from charging a resident a fee for the electricity used by a device

(Section 198.616).

If a resident of a facility conducts electronic monitoring, a sign must be clearly and conspicuously posted at all building entrances accessible to visitors and at the entrance to a resident's room where such monitoring is occurring. Such signs must state specified information and a facility is responsible for installing and maintaining the signage (Section 198.618).

The bill prohibits any person or entity from knowingly hampering, obstructing, tampering with, or destroying an electronic monitoring device installed in a resident's room or any video or audio recording obtained from such device without the permission of the resident. Violation of this provision is a class B misdemeanor. A person or entity who violates this provision in the commission of or to conceal a misdemeanor offense is guilty of a class A misdemeanor. A person or entity who violates this provision in the commission of or to conceal a felony offense is guilty of a class D felony (Section 198.620).

The bill prohibits a facility from accessing any video or audio recording through an authorized electronic monitoring device without the written consent of the resident. Except as required by the Freedom of Information Act, a recording or copy of a recording must only be disseminated for the purpose of addressing concerns relating to the health, safety, or welfare of a resident. The bill requires a resident to provide a copy of any video or audio recording to parties involved in a civil, criminal, or administrative proceeding, upon a party's request, if the recording was made during the time period that the conduct at issue occurred (Section 198.622).

Subject to rules of evidence and procedure, any recording created through authorized electronic monitoring under the provisions of the bill 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 includes the date and time events occurred (Section 198.624).

Each facility must report to the department the number of authorized electronic monitoring notification and consent forms received annually and the department must report the total number of forms received annually to the Attorney General (Section 198.626).

The bill prohibits a facility from being civilly or criminally liable for the inadvertent or intentional disclosure of a recording by a resident for any purpose not authorized by these provisions. No facility must be held civilly or criminally liable for a

violation of a resident's right to privacy arising out of any electronic monitoring conducted in accordance with these provisions (Section 198.628).

The bill prohibits a person from intentionally retaliating or discriminating against any resident for consenting to authorized electronic monitoring under these provisions or preventing the installation or use of an electronic monitoring device by a resident who has provided the facility with notice and consent as required under these provisions (Section 198.630).

The bill contains a referendum clause and will not become effective unless approved by the voters of this state.

This bill is similar to HB 398 (2017) and HB 1652 (2016).