

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for House Bill No. 1635, Page 3, Section 198.070, Line 81,
2 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
31 individuals may consent on behalf of the resident in order of priority:

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

33 (2) The resident's representative;

34 (3) The resident's spouse;

35 (4) The resident's parent;

36 (5) The resident's adult child who has the written consent of all other adult children of the

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

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

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

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

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

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

14
 15 For the purposes of this subsection, a resident affirmatively objects if he or she orally, visually, or
 16 through the use of auxiliary aids or services declines authorized electronic monitoring. The
 17 resident's response shall be documented on the notification and consent form.

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

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

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

33 (2) The roommate's legal representative;

34 (3) The roommate's spouse;

35 (4) The roommate's parent;

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

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

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

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

48 9. Consent may be withdrawn by the resident or roommate at any time, and the withdrawal

1 of consent shall be documented in the resident's clinical record. If a roommate withdraws consent
2 and the resident conducting the authorized electronic monitoring does not remove or disable the
3 electronic monitoring device, the facility may turn off the electronic monitoring device.

4 10. If a resident who is residing in a shared room wants to conduct authorized electronic
5 monitoring and another resident living in or moving into the same shared room refuses to consent to
6 the use of an electronic monitoring device, the facility shall make a reasonable attempt to
7 accommodate the resident who wants to conduct authorized electronic monitoring. A facility has
8 met the requirement to make a reasonable attempt to accommodate a resident who wants to conduct
9 authorized electronic monitoring if, upon notification that a roommate has not consented to the use
10 of an electronic monitoring device in his or her room, the facility offers to move either resident to
11 another shared room that is available at the time of the request. If a resident chooses to reside in a
12 private room in order to accommodate the use of an electronic monitoring device, the resident shall
13 pay the private room rate. If a facility is unable to accommodate a resident due to lack of space, the
14 facility shall reevaluate the request every two weeks until the request is fulfilled.

15 198.614. 1. Authorized electronic monitoring may begin only after a notification and
16 consent form prescribed by the department has been completed and submitted to the facility.

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

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

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

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

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

27 (2) The resident's roommate's signed consent or the signature of the person consenting on
28 behalf of the roommate in accordance with section 198.612, if applicable, and any conditions placed
29 on the roommate's consent. If a person other than the roommate signs the consent form, the form
30 shall document the following:

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

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

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

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

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

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

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

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

42 (a) Prohibiting audio recording;

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

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

48 (8) Any other condition or restriction elected by the resident or roommate on the use of an

1 electronic monitoring device.

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

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

9 198.616. 1. A resident choosing to conduct authorized electronic monitoring shall do so at
10 his or her own expense, including paying purchase, installation, maintenance, and removal costs.

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

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

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

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

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

25 198.618. 1. If a resident of a facility conducts authorized electronic monitoring, a sign shall
26 be clearly and conspicuously posted at all building entrances accessible to visitors. The notice shall
27 be entitled "Electronic Monitoring" and shall state in large, easy-to-read type, "The rooms of some
28 residents may be monitored electronically by or on behalf of the residents."

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

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

34 198.620. 1. No person or entity shall knowingly hamper, obstruct, tamper with, or destroy
35 an electronic monitoring device installed in a resident's room without the permission of the resident
36 or the individual who consented on behalf of the resident in accordance with section 198.612.

37 2. No person or entity shall knowingly hamper, obstruct, tamper with, or destroy a video or
38 audio recording obtained in accordance with sections 198.610 to 198.630 without the permission of
39 the resident or the individual who consented on behalf of the resident in accordance with section
40 198.612.

41 3. A person or entity that violates this section is guilty of a class B misdemeanor. A person
42 or entity that violates this section in the commission of or to conceal a misdemeanor offense is
43 guilty of a class A misdemeanor. A person or entity that violates this section in the commission of
44 or to conceal a felony offense is guilty of a class D felony.

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

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

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

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

11 198.624. Any individual who has reasonable cause to believe, as a result of any video or
12 audio recording created through authorized electronic monitoring in accordance with the provisions
13 of sections 198.610 to 198.630, that a resident has been the victim of a sexual assault shall report
14 such suspected assault to a local law enforcement entity and provide such entity with a copy of the
15 video or audio recording. Subject to applicable rules of evidence and procedure, any video or audio
16 recording created through authorized electronic monitoring in accordance with the provisions of
17 sections 198.610 to 198.630 may be admitted into evidence in a civil, criminal, or administrative
18 proceeding if the contents of the recording have not been edited or artificially enhanced and the
19 video recording includes the date and time the events occurred.

20 198.626. Each facility shall report to the department, in a manner prescribed by the
21 department, the number of authorized electronic monitoring notification and consent forms received
22 annually. The department shall report the total number of authorized electronic monitoring
23 notification and consent forms received from facilities to the attorney general annually.

24 198.628. 1. No facility shall be civilly or criminally liable for the inadvertent or intentional
25 disclosure of a recording by a resident or a person who consents on behalf of the resident for any
26 purpose not authorized by sections 198.610 to 198.630.

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

29 3. The department shall promulgate rules to implement the provisions of sections 198.610 to
30 198.630. Any rule or portion of a rule, as that term is defined in section 536.010, that is created
31 under the authority delegated in this section shall become effective only if it complies with and is
32 subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and
33 chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to
34 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
35 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after
36 August 28, 2018, shall be invalid and void.

37 198.630. No person shall:

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

40 (2) Prevent the installation or use of an electronic monitoring device by a resident who has
41 provided the facility with notice and consent as required under section 198.614."; and
42

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