

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 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 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  
 26 of 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

1 facility may turn off the device.

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 Consent may be withdrawn by the resident or roommate at any time, and the withdrawal  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

6 198.614. 1. Authorized electronic monitoring may begin only after a notification and  
7 consent form prescribed by the department has been completed and submitted to the facility, and the  
8 facility consents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (a) Prohibiting audio recording;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48       198.624. Any individual who has reasonable cause to believe, as a result of any video or

1 audio recording created through authorized electronic monitoring in accordance with the provisions  
2 of sections 198.610 to 198.630, that a resident has been the victim of a sexual assault shall report  
3 such suspected assault to a local law enforcement entity and provide such entity with a copy of the  
4 video or audio recording. Subject to applicable rules of evidence and procedure, any video or audio  
5 recording created through authorized electronic monitoring in accordance with the provisions of  
6 sections 198.610 to 198.630 may be admitted into evidence in a civil, criminal, or administrative  
7 proceeding if the contents of the recording have not been edited or artificially enhanced and the  
8 video recording includes the date and time the events occurred.

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

13 198.628. 1. No facility shall be civilly or criminally liable for the inadvertent or intentional  
14 disclosure of a recording by a resident or a person who consents on behalf of the resident for any  
15 purpose not authorized by sections 198.610 to 198.630. Nothing in sections 198.610 to 198.630  
16 shall permit or authorize a resident to use any device that in any way violates any other state or  
17 federal law or regulation.

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

20 3. The department shall promulgate rules to adopt the form described in subsection 2 of  
21 section 198.614. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
22 created under the authority delegated in this section shall become effective only if it complies with  
23 and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This  
24 section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly  
25 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are  
26 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or  
27 adopted after August 28, 2018, shall be invalid and void.

28 198.630. No person shall:

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

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

34  
35 Further amend said bill by amending the title, enacting clause, and intersectional references  
36 accordingly.  
37