

House _____ Amendment NO. _____

Offered By

1 AMEND Senate Bill No. 358, Page 2, Section 191.607, Line 16, by inserting after said section and
2 line the following:

3
4 "198.008. 1. Residents of long-term care facilities in this state shall have the following
5 rights:

6 (1) To be free of abuse and exploitation;

7 (2) To safe, decent, and clean conditions;

8 (3) To be treated with courtesy, consideration, and respect;

9 (4) To not be subjected to discrimination based on age, race, religion, sex, nationality, or
10 disability and to practice the resident's own religious beliefs;

11 (5) To place in the resident's room an electronic monitoring device that is owned and
12 operated by the resident or provided by the resident's guardian or legal representative;

13 (6) To privacy, including privacy during visits and telephone calls;

14 (7) To complain about the institution and to organize or participate in any program that
15 presents residents' concerns to the administrator of the long-term care facility;

16 (8) To have information about the resident in the possession of the long-term care facility
17 maintained as confidential;

18 (9) To retain the services of a physician the resident chooses, at the resident's own expense
19 or through a health care plan, and to have a physician explain to the resident, in language that the
20 resident understands, the resident's complete medical condition, the recommended treatment, and
21 the expected results of the treatment, including reasonably expected effects, side effects, and risks
22 associated with psychoactive medications;

23 (10) To participate in developing a plan of care, to refuse treatment, and to refuse to
24 participate in experimental research;

25 (11) To a written statement or admission agreement describing the services provided by the
26 long-term care facility and the related charges;

27 (12) To manage the resident's own finances or to delegate that responsibility to another
28 person;

29 (13) To access moneys and property that the resident has deposited with the long-term care
30 facility and to an accounting of the resident's moneys and property that are deposited with the long-
31 term care facility and all of the financial transactions made with or on behalf of the resident;

32 (14) To keep and use personal property, secure from theft or loss;

33 (15) To not be relocated within the long-term care facility;

34 (16) To receive visitors;

35 (17) To receive unopened mail and to receive assistance in reading or writing
36 correspondence;

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- 1 (18) To participate in activities inside and outside the long-term care facility;
 2 (19) To wear the resident's own clothes;
 3 (20) To discharge himself or herself from the long-term care facility unless the resident is an
 4 adjudicated mental incompetent;
 5 (21) To not be discharged from the long-term care facility except as provided in the
 6 standards adopted under section 198.088;
 7 (22) To be free from any physical or chemical restraints imposed for the purposes of
 8 discipline or convenience, and not required to treat the resident's medical symptoms; and
 9 (23) To receive information about prescribed psychoactive medication from the person
 10 prescribing the medication or that person's designee, to have any psychoactive medications
 11 prescribed and administered in a responsible manner, and to refuse to consent to the prescription of
 12 psychoactive medications.
- 13 2. A right of a resident may be restricted only to the extent necessary to protect:
 14 (1) A right of another resident, particularly a right of the other resident relating to privacy
 15 and confidentiality; or
 16 (2) The resident or another person from danger or harm.
 17 3. The department of health and senior services may adopt rights of residents in addition to
 18 those required by this section and may consider additional rights applicable to residents in other
 19 jurisdictions.
- 20 198.610. 1. The provisions of sections 198.610 to 198.632 shall be known and may be cited
 21 as the "Authorized Electronic Monitoring in Long-Term Care Facilities Act".
 22 2. For purposes of sections 198.610 to 198.632, the following terms shall mean:
 23 (1) "Authorized electronic monitoring", the placement and use of an electronic monitoring
 24 device by a resident in his or her room in accordance with the provisions of sections 198.610 to
 25 198.632;
 26 (2) "Department", the department of health and senior services;
 27 (3) "Electronic monitoring device", a surveillance instrument with a fixed-position video
 28 camera or an audio recording device, or a combination thereof, that is installed in a resident's room
 29 under the provisions of sections 198.610 to 198.632 and broadcasts or records activity or sounds
 30 occurring in the room;
 31 (4) "Facility" or "Long-term care facility", any residential care facility, assisted living
 32 facility, intermediate care facility, or skilled nursing facility, as defined in section 198.006;
 33 (5) "Guardian", the same meaning as defined under section 475.010;
 34 (6) "Resident", a person residing in a facility.
- 35 198.612. 1. No facility shall be civilly or criminally liable for the inadvertent or intentional
 36 disclosure of a recording by a resident or a person who consents on behalf of the resident for any
 37 purpose not authorized by sections 198.610 to 198.632.
 38 2. No facility shall be civilly or criminally liable for a violation of a resident's right to
 39 privacy arising out of any electronic monitoring conducted under sections 198.610 to 198.632.
 40 3. The department shall promulgate rules to implement the provisions of sections 198.610 to
 41 198.632. Any rule or portion of a rule, as that term is defined in section 536.010, that is created
 42 under the authority delegated in this section shall become effective only if it complies with and is
 43 subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and
 44 chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to
 45 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
 46 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after
 47 August 28, 2019, shall be invalid and void.
- 48 198.614. 1. For purposes of this chapter, the placement and use of an electronic monitoring
 49 device in the room of a resident is considered to be covert if:

1 (1) The placement and use of the device is not open and obvious; and

2 (2) The facility and the department are not informed about the device by the resident, by a
3 person who placed the device in the room, or by a person who is using the device.

4 2. The department and the facility shall not be held to be civilly liable in connection with the
5 covert placement or use of an electronic monitoring device in the room of a resident.

6 198.616. The department shall promulgate rules that prescribe the form that shall be
7 completed and signed on a resident's admission to a facility by or on behalf of the resident. The form
8 shall state:

9 (1) That a person who places an electronic monitoring device in the room of a resident or
10 who uses or discloses a tape or other recording made by the device may be civilly liable for any
11 unlawful violation of the privacy rights of another;

12 (2) That a person who covertly places an electronic monitoring device in the room of a
13 resident or who consents to or acquiesces in the covert placement of the device in the room of a
14 resident has waived any privacy right the person may have had in connection with images or sounds
15 that may be acquired by the device;

16 (3) That a resident or the resident's guardian or legal representative is entitled to conduct
17 authorized electronic monitoring, and that if the facility refuses to permit the electronic monitoring
18 or fails to make reasonable physical accommodations for the authorized electronic monitoring that
19 the person should contact the department;

20 (4) The basic procedures that shall be followed to request authorized electronic monitoring;

21 (5) The manner in which this chapter affects the legal requirement to report abuse or neglect
22 when electronic monitoring is being conducted; and

23 (6) Any other information regarding covert or authorized electronic monitoring that the
24 department considers advisable to include on the form.

25 198.618. 1. If a resident has capacity to request electronic monitoring and has not been
26 judicially declared to lack the required capacity, only the resident may request authorized electronic
27 monitoring under this chapter, notwithstanding the terms of any durable power of attorney or similar
28 instrument.

29 2. If a resident has been judicially declared to lack the capacity required for taking an action
30 such as requesting electronic monitoring, only the guardian of the resident may request electronic
31 monitoring under this chapter.

32 3. If a resident does not have capacity to request electronic monitoring but has not been
33 judicially declared to lack the required capacity, only the legal representative of the resident may
34 request electronic monitoring under this chapter. The department by rule shall prescribe:

35 (1) Guidelines that will assist facilities, family members of residents, advocates for
36 residents, and other interested persons to determine if a resident lacks the required capacity; and

37 (2) Who shall be considered to be a resident's legal representative for purposes of this
38 chapter, including:

39 (a) Persons who shall be considered the legal representative under the terms of an
40 instrument executed by the resident when the resident had capacity; and

41 (b) Persons who shall become the legal representative for the limited purpose of this chapter
42 under a procedure prescribed by the department.

43 198.620. 1. A resident or the guardian or legal representative of a resident who wishes to
44 conduct authorized electronic monitoring shall make the request to the facility on a form prescribed
45 by the department.

46 2. The form prescribed by the department shall require the resident or the resident's guardian
47 or legal representative to:

48 (1) Release the facility from any civil liability for a violation of the resident's privacy rights
49 in connection with the use of the electronic monitoring device;

1 (2) Choose, if the electronic monitoring device is a video surveillance camera, whether the
2 camera will always be unobstructed, or whether the camera should be obstructed in specified
3 circumstances to protect the dignity of the resident; and

4 (3) Obtain the consent of other residents in the room, using a form prescribed for the
5 purpose by department, if the resident resides in a multiperson room.

6 3. Consent under subdivision (3) of subsection 2 of this section shall be given only:

7 (1) By the other resident or residents in the room;

8 (2) By the guardian of a person described by subdivision (1) of subsection 3 of this section,
9 if the person has been judicially declared to lack the required capacity; or

10 (3) By the legal representative who, under section 198.618, shall request electronic
11 monitoring on behalf of a person described by subdivision (1) of subsection 3 of this section, if the
12 person does not have capacity to sign the form but has not been judicially declared to lack the
13 required capacity.

14 4. The form prescribed by the department under subdivision (3) of subsection 2 of this
15 section shall require any other resident in the room to consent to release the facility from any civil
16 liability for a violation of the resident's privacy rights in connection with the use of the electronic
17 monitoring device.

18 5. Another resident in the room may:

19 (1) If the proposed electronic monitoring device is a video surveillance camera, condition
20 consent on the camera being pointed away from the consenting resident; and

21 (2) Condition consent on the use of an audio electronic monitoring device being limited or
22 prohibited.

23 6. If authorized electronic monitoring is being conducted in the room of a resident and
24 another resident is moved into the room who has not yet consented to the electronic monitoring,
25 authorized electronic monitoring shall cease until the new resident has consented in accordance with
26 this section.

27 7. The department shall include other information that the department considers to be
28 appropriate on either of the forms that the department is required to prescribe under this section.

29 8. The department shall adopt rules prescribing the place or places that a form signed under
30 this section shall be maintained and the period for which it shall be maintained.

31 9. Authorized electronic monitoring:

32 (1) Shall not commence until all request and consent forms required by this section have
33 been completed and returned to the facility; and

34 (2) Shall be conducted in accordance with any limitation placed on the monitoring as a
35 condition of the consent given by or on behalf of another resident in the room.

36 198.622. 1. A facility shall permit a resident or the resident's guardian or legal
37 representative to monitor the room of the resident through the use of electronic monitoring devices.

38 2. The facility shall require a resident who conducts authorized electronic monitoring, or the
39 resident's guardian or legal representative, to post and maintain a conspicuous notice at the entrance
40 to the resident's room. The notice shall state that the room is being monitored by an electronic
41 monitoring device.

42 3. Authorized electronic monitoring conducted under sections 198.610 to 198.632 shall not
43 be compulsory and shall be conducted only at the request of the resident or the resident's guardian or
44 legal representative.

45 4. A facility shall not refuse to admit an individual to residency in the facility and shall not
46 remove a resident from the facility because of a request to conduct authorized electronic monitoring.
47 A facility shall not remove a resident from the facility because covert electronic monitoring is being
48 conducted by or on behalf of a resident.

49 5. A facility shall make reasonable physical accommodation for authorized electronic

1 monitoring, including:

2 (1) Providing a reasonably secure place to mount the video surveillance camera or other
3 electronic monitoring device; and

4 (2) Providing access to power sources for the video surveillance camera or other electronic
5 monitoring device.

6 6. The resident or the resident's guardian or legal representative shall pay for all costs
7 associated with conducting electronic monitoring, other than the costs of electricity. The resident or
8 the resident's guardian or legal representative shall be responsible for:

9 (1) All costs associated with installation of equipment; and

10 (2) Maintaining the equipment.

11 7. A facility shall require an electronic monitoring device to be installed in a manner that is
12 safe for residents, employees, or visitors who may be moving about the room. The department shall
13 adopt rules regarding the safe placement of an electronic monitoring device.

14 8. If authorized electronic monitoring is conducted, the facility shall require the resident or
15 the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

16 9. A facility may, but is not required to, place a resident in a different room to accommodate
17 a request to conduct authorized electronic monitoring.

18 198.624. 1. For purposes of reporting abuse and neglect, a person who is conducting
19 electronic monitoring on behalf of a resident under this chapter is considered to have viewed or
20 listened to a tape or recording made by the electronic monitoring device on or before the fourteenth
21 day after the date the tape or recording is made.

22 2. If a resident who has capacity to determine that the resident has been abused or neglected
23 and who is conducting electronic monitoring under sections 198.610 to 198.632 gives a tape or
24 recording made by the electronic monitoring device to a person and directs the person to view or
25 listen to the tape or recording to determine whether abuse or neglect has occurred, the person to
26 whom the resident gives the tape or recording is considered to have viewed or listened to the tape or
27 recording on or before the seventh day after the date the person receives the tape or recording for the
28 purposes of reporting abuse or neglect.

29 3. A person is required to report abuse based on the person's viewing of, or listening to, a
30 tape or recording only if the incident of abuse is acquired on the tape or recording. A person is
31 required to report neglect based on the person's viewing of, or listening to, a tape or recording only
32 if it is clear from viewing or listening to the tape or recording that neglect has occurred.

33 4. If abuse or neglect of the resident is reported to the facility and the facility requests a
34 copy of any relevant tape or recording made by an electronic monitoring device, the person who
35 possesses the tape or recording shall provide the facility with a copy at the facility's expense.

36 198.626. 1. Subject to applicable rules of evidence and procedure and the requirements of
37 this section, a tape or recording created through the use of covert or authorized electronic
38 monitoring described by sections 198.610 to 198.632 may be admitted into evidence in a civil or
39 criminal court action or administrative proceeding.

40 2. A court or administrative agency shall not admit into evidence a tape or recording created
41 through the use of covert or authorized electronic monitoring or take or authorize action based on
42 the tape or recording unless:

43 (1) If the tape or recording is a videotape or recording, the tape or recording shows the time
44 and date that the events acquired on the tape or recording occurred;

45 (2) The contents of the tape or recording have not been edited or artificially enhanced; and

46 (3) If the contents of the tape or recording have been transferred from the original format to
47 another technological format, the transfer was done by a qualified professional and the contents of
48 the tape or recording were not altered.

49 3. A person who sends more than one tape or recording to the department shall identify for

1 the department each tape or recording on which the person believes that an incident of abuse or
2 evidence of neglect may be found. The department may adopt rules encouraging persons who send
3 a tape or recording to the department to identify the place on the tape or recording that an incident of
4 abuse or evidence of neglect may be found.

5 198.628. Each facility shall post a notice at the entrance to the facility stating that the rooms
6 of some residents may be being monitored electronically by, or on behalf of, the residents and that
7 the monitoring is not necessarily open and obvious. The department by rule shall prescribe the
8 format and the precise content of the notice.

9 198.630. 1. The department may impose appropriate sanctions under this chapter on an
10 administrator of a facility who knowingly:

11 (1) Refuses to permit a resident or the resident's guardian or legal representative to conduct
12 authorized electronic monitoring;

13 (2) Refuses to admit an individual to residency or allows the removal of a resident from the
14 institution because of a request to conduct authorized electronic monitoring;

15 (3) Allows the removal of a resident from the facility because covert electronic monitoring
16 is being conducted by or on behalf of the resident; or

17 (4) Violates another provision of sections 198.610 to 198.632.

18 2. The department may assess an administrative penalty against a facility that:

19 (1) Refuses to permit a resident or the resident's guardian or legal representative to conduct
20 authorized electronic monitoring;

21 (2) Refuses to admit an individual to residency or allows the removal of a resident from the
22 institution because of a request to conduct authorized electronic monitoring;

23 (3) Allows the removal of a resident from the facility because covert electronic monitoring
24 is being conducted by, or on behalf of, the resident; or

25 (4) Violates another provision of sections 198.610 to 198.632.

26 198.632. 1. A person who intentionally hampers, obstructs, tampers with, or destroys an
27 electronic monitoring device installed in a resident's room in accordance with sections 198.610 to
28 198.632 or a tape or recording made by the device commits an offense. An offense under this
29 section is a class B misdemeanor.

30 2. It is a defense to prosecution under subsection 1 of this section that the person who took
31 the action with the effective consent of the resident on whose behalf the electronic monitoring
32 device was installed, or the resident's guardian or legal representative."; and
33

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