

SECOND REGULAR SESSION

# HOUSE BILL NO. 1387

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MURPHY.

3240H.02I

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To amend chapter 198, RSMo, by adding thereto twelve new sections relating to the protection of residents living in long-term care facilities, with penalty provisions.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 198, RSMo, is amended by adding thereto twelve new sections, to be known as sections 198.610, 198.612, 198.614, 198.616, 198.618, 198.620, 198.622, 198.624, 198.626, 198.628, 198.630, and 198.632 to read as follows:

**198.610. 1. The provisions of sections 198.610 to 198.632 shall be known and may be cited as the "Authorized Electronic Monitoring in Long-Term Care Facilities Act".**

**2. For purposes of sections 198.610 to 198.632, the following terms shall mean:**

**(1) "Authorized electronic monitoring", the placement and use of an electronic monitoring device by a resident in his or her room in accordance with the provisions of sections 198.610 to 198.632;**

**(2) "Department", the department of health and senior services;**

**(3) "Electronic monitoring device", a surveillance instrument capable of recording or transmitting audio or video footage of any activity occurring in a resident's room;**

**(4) "Facility" or "long-term care facility", any residential care facility, assisted living facility, intermediate care facility, or skilled nursing facility, as such terms are defined in section 198.006;**

**(5) "Guardian", the same meaning as defined under section 475.010;**

**(6) "Legal representative", a person authorized under a durable power of attorney that complies with sections 404.700 to 404.737 to act on behalf of a resident of a facility;**

**(7) "Resident", a person residing in a facility.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

**198.612. 1. Residents of long-term care facilities in this state shall have the right to place in the resident's room an authorized electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative.**

**2. No facility shall be civilly or criminally liable for activity or action arising out of the use by any resident or any resident's guardian or legal representative of any electronic monitoring device, including the facility's inadvertent or intentional disclosure of a recording made by a resident, or by a person who consents on behalf of the resident, for any purpose not authorized under sections 198.610 to 198.632.**

**3. No facility shall be civilly or criminally liable for a violation of the Health Insurance Portability and Accountability Act (HIPAA) or any resident's right to privacy arising out of any electronic monitoring conducted under sections 198.610 to 198.632.**

**4. Except for cases of abuse and neglect, no person shall release any recording made under sections 198.610 to 198.632 without the written permission of the resident or the resident's guardian or legal representative and the long-term care facility.**

**5. The department shall promulgate rules to implement the provisions of sections 198.610 to 198.632. 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, 2020, shall be invalid and void.**

**198.614. 1. For purposes of sections 198.610 to 198.632, the placement and use of an electronic monitoring device in the room of a resident is considered to be unauthorized if:**

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

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

**2. The department and the facility shall be immune from civil liability in connection with the unauthorized placement or use of an electronic monitoring device in the room of a resident.**

**198.616. Each facility shall use an electronic monitoring device acknowledgment form developed by the department and adopted by regulation. The form shall be offered to any resident or resident's guardian or legal representative upon request. The form shall**

4 be completed and signed by or on behalf of a resident prior to the installation of, or any use  
5 of, an electronic monitoring device in the facility. The form shall state:

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

9 (2) That a person who, without authorization, places an electronic monitoring  
10 device in the room of a resident or who consents to or acquiesces in the unauthorized  
11 placement of the device in the room of a resident has waived any privacy right the person  
12 may have had in connection with images or sounds that may be acquired by the device;

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

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

19 (5) The manner in which sections 198.610 to 198.632 affect the legal requirement  
20 to report abuse or neglect when electronic monitoring is being conducted; and

21 (6) Any other information regarding authorized or unauthorized electronic  
22 monitoring that the department, by regulation, specifies should be included on the form.

198.618. 1. If a resident has capacity to request electronic monitoring and has not  
2 been judicially declared to lack the required capacity, only the resident may request  
3 authorized electronic monitoring under sections 198.610 to 198.632, notwithstanding the  
4 terms of any durable power of attorney, general power of attorney, or similar instrument.

5 2. If a resident has been judicially declared to lack the capacity required for taking  
6 an action such as requesting electronic monitoring, only the guardian of the resident may  
7 request electronic monitoring under sections 198.610 to 198.632.

8 3. If a resident has been determined by a physician to lack capacity to request  
9 electronic monitoring but has not been judicially declared to lack the required capacity,  
10 only the legal representative of the resident may request electronic monitoring under  
11 sections 198.610 to 198.632.

198.620. 1. A resident or the guardian or legal representative of a resident who  
2 wishes to conduct authorized electronic monitoring shall make the request to the facility  
3 on an electronic monitoring request form prescribed by the department and provided to  
4 the resident by the facility.

5 2. The form shall require the resident or the resident's guardian or legal  
6 representative to:

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

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

12           **(3) Obtain the consent of other residents residing in the room, using a form**  
13 **prescribed for such purpose by the department.**

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

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

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

18           **(3) By the legal representative of a person described under subdivision (1) of**  
19 **subsection 3 of this section, if the person does not have capacity to sign the form but has**  
20 **not been judicially declared to lack the required capacity.**

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

25           **5. Another resident in the room may:**

26           **(1) If the proposed electronic monitoring device is a video surveillance camera,**  
27 **condition his or her consent on the camera being pointed away from the consenting**  
28 **resident; and**

29           **(2) Condition his or her consent on the use of an audio electronic monitoring device**  
30 **being limited or prohibited.**

31           **6. If authorized electronic monitoring is being conducted in the room of a resident**  
32 **and another resident is moved into the room who has not yet consented to the electronic**  
33 **monitoring, authorized electronic monitoring shall cease until the new resident has**  
34 **consented in accordance with this section.**

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

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

41           **9. Authorized electronic monitoring:**

42           (1) Shall not commence nor an electronic monitoring device installed until all  
43 request and consent forms required by this section have been completed and returned to  
44 the facility;

45           (2) Shall be conducted in accordance with any limitation placed on the monitoring  
46 as a condition of the consent given by or on behalf of another resident in the room; and

47           (3) Shall be installed and conducted only in a fixed position.

48           10. The facility shall be granted access to all footage made by an electronic  
49 monitoring device at the facility's expense.

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

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

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

11           4. A facility shall not refuse to admit an individual to residency in the facility and  
12 shall not remove a resident from the facility because of a request to conduct authorized  
13 electronic monitoring. A facility shall not remove a resident from the facility because  
14 unauthorized electronic monitoring is being conducted by or on behalf of a resident.

15           5. A facility shall make reasonable physical accommodation for authorized  
16 electronic monitoring, including:

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

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

21           6. The resident or the resident's guardian or legal representative shall pay for all  
22 costs associated with conducting electronic monitoring, except for the costs of electricity.  
23 The resident or the resident's guardian or legal representative shall be responsible for:

24           (1) All costs associated with installation of equipment incurred by the resident or  
25 the facility; and

26           (2) Maintaining the equipment.

27           7. A facility shall require an electronic monitoring device to be installed in a  
28 manner that is safe for residents, employees, or visitors who may be moving about the

29 room. The department shall adopt rules regarding the safe placement of an electronic  
30 monitoring device.

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

34 9. A facility shall not be required to provide internet service or network access to  
35 any electronic monitoring device. Any internet service for an electronic monitoring device  
36 shall be the sole responsibility of the resident or the resident's guardian or legal  
37 representative.

38 10. A facility may move a resident to a comparable room to accommodate a request  
39 to conduct authorized electronic monitoring.

198.624. 1. If a resident who has capacity to determine that he or she has been  
2 abused or neglected and who is conducting electronic monitoring under sections 198.610  
3 to 198.632 gives footage made by the electronic monitoring device to a person and directs  
4 the person to view or listen to the footage to determine whether abuse or neglect has  
5 occurred, the person to whom the resident gives the footage is considered to have viewed  
6 or listened to the footage on or before the seventh day after the date the person receives the  
7 footage for the purposes of reporting abuse or neglect.

8 2. A person is required to report abuse based on the person's viewing of, or  
9 listening to, footage only if the incident of abuse is acquired on the footage. A person is  
10 required to report neglect based on the person's viewing of, or listening to, footage only if  
11 it is clear from viewing or listening to the footage that neglect has occurred.

12 3. If abuse or neglect of the resident is reported to the facility, and the facility  
13 requests a copy of any relevant footage made by an electronic monitoring device, the  
14 person who possesses the footage shall provide the facility with a copy at the facility's  
15 expense.

198.626. 1. Subject to applicable rules of evidence and procedure and the  
2 requirements of this section, footage created through the use of unauthorized or authorized  
3 electronic monitoring described by sections 198.610 to 198.632 may be admitted into  
4 evidence in a civil or criminal court action or administrative proceeding, provided that a  
5 proper foundation is offered to support its admission.

6 2. A court or administrative agency shall not admit into evidence footage created  
7 through the use of unauthorized or authorized electronic monitoring or take or authorize  
8 action based on the footage unless:

9 (1) If the footage is a videotape or recording, the footage shows the time and date  
10 that the events acquired on the footage occurred;

11           (2) The contents of the footage have not been edited or artificially enhanced; and

12           (3) If the contents of the footage have been transferred from the original format to  
13 another technological format, the transfer was done by a qualified professional and the  
14 contents of the footage were not altered.

15           3. A person who sends more than one specimen of footage to the department shall  
16 identify for the department each specimen on which the person believes that an incident  
17 of abuse or evidence of neglect may be found. The department may adopt rules  
18 encouraging persons who send footage to the department to identify the place on the  
19 footage that an incident of abuse or evidence of neglect may be found.

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

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

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

5           (2) Refuses to admit an individual to residency or allows the removal of a resident  
6 from the institution solely because of a request to conduct authorized electronic monitoring  
7 by a resident or a resident's guardian or legal representative;

8           (3) Allows the removal of a resident from the facility solely because unauthorized  
9 electronic monitoring is being conducted by or on behalf of the resident; or

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

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

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

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

16          (3) Allows the removal of a resident from the facility solely because unauthorized  
17 electronic monitoring is being conducted by, or on behalf of, the resident; or

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

          198.632. 1. A person who intentionally hampers, obstructs, tampers with, or  
2 destroys an electronic monitoring device installed in a resident's room in accordance with  
3 sections 198.610 to 198.632 or who destroys or corrupts any data collected by the device is  
4 guilty of a class B misdemeanor.

5           **2. Evidence that the person had the consent of the resident or the resident's**  
6 **guardian or legal representative to engage in the conduct described in subsection 1 of this**  
7 **section shall be an affirmative defense to any prosecution brought under the provisions of**  
8 **subsection 1 of this section.**

9           **3. A person other than a resident of the facility who, without authorization, places**  
10 **an electronic monitoring device in the room of a resident or who consents to or acquiesces**  
11 **in the unauthorized placement of the device in the room of a resident is guilty of a class B**  
12 **misdemeanor if the person continues the conduct after a written warning to cease and**  
13 **desist from that conduct.**

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