



Rep. Greg Harris

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1 AMENDMENT TO HOUSE BILL 2462

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2462, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 1. Short title. This Act may be cited as the  
6 Authorized Electronic Monitoring in Long-Term Care Facilities  
7 Act.

8 Section 5. Definitions. As used in this Act:

9 "Authorized electronic monitoring" means the placement and  
10 use of an electronic monitoring device by a resident in his or  
11 her room in accordance with this Act.

12 "Department" means the Department of Public Health.

13 "Electronic monitoring device" means a surveillance  
14 instrument with a fixed position video camera or an audio  
15 recording device, or a combination thereof, that is installed  
16 in a resident's room under the provisions of this Act and

1 broadcasts or records activity or sounds occurring in the room.

2 "Facility" means an intermediate care facility for the  
3 developmentally disabled licensed under the ID/DD Community  
4 Care Act that has 30 beds or more, a long-term care for under  
5 age 22 facility licensed under the ID/DD Community Care Act, or  
6 a facility licensed under the Nursing Home Care Act.

7 "Resident" means a person receiving personal or medical  
8 care, including, but not limited to, habilitation, mental  
9 health treatment, psychiatric rehabilitation, psychiatric  
10 services, therapeutic services, physical rehabilitation, or  
11 assistance with activities of daily living, from a facility.

12 "Resident's representative" has the meaning given to that  
13 term in (1) Section 1-123 of the Nursing Home Care Act if the  
14 resident resides in a facility licensed under the Nursing Home  
15 Care Act or (2) Section 1-123 of the ID/DD Community Care Act  
16 if the resident resides in a facility licensed under the ID/DD  
17 Community Care Act.

18 Section 10. Authorized electronic monitoring. A resident  
19 shall be permitted to conduct authorized electronic monitoring  
20 of the resident's room through the use of electronic monitoring  
21 devices placed in the room pursuant to this Act.

22 Section 15. Consent.

23 (a) Except as otherwise provided in this subsection, a  
24 resident or the parent or legal guardian of a resident under

1 the age of 18 must consent in writing to the authorized  
2 electronic monitoring in the resident's room. If the resident  
3 has not affirmatively objected to the authorized electronic  
4 monitoring and lacks the ability to understand and appreciate  
5 the nature and consequences of electronic monitoring, the  
6 following individuals may consent on behalf of the resident:

7 (1) a person appointed as a guardian of the resident  
8 under the Probate Act of 1975;

9 (2) a health care agent named under the Illinois Power  
10 of Attorney Act;

11 (3) a resident's representative, as defined in Section  
12 5 of this Act; or

13 (4) if the resident's physician determines that the  
14 resident lacks the ability to understand and appreciate the  
15 nature and consequences of electronic monitoring, a person  
16 from the following list, in order of priority:

17 (A) the resident's spouse;

18 (B) the resident's parent; or

19 (C) the resident's adult child who has the written  
20 consent of the other adult children of the resident to  
21 act as the sole decision maker regarding authorized  
22 electronic monitoring.

23 Prior to another person consenting on behalf of a resident  
24 18 years of age or older in accordance with this Section, the  
25 resident must be asked by that person, in the presence of a  
26 facility employee, if he or she wants authorized electronic

1 monitoring to be conducted. For the purposes of this  
2 subsection, a resident affirmatively objects when he or she  
3 verbally declines authorized electronic monitoring. The  
4 resident's response must be documented on the consent form.

5 (b) A resident may consent to authorized electronic  
6 monitoring with any conditions of the resident's choosing,  
7 including, but not limited to, prohibiting audio monitoring.

8 (c) Prior to the authorized electronic monitoring, a  
9 resident must obtain the written consent of any other resident  
10 residing in the room on the consent form. Consent by a roommate  
11 under this subsection authorizes the resident's use of any  
12 recording obtained under this Act, as provided in Section 45 of  
13 this Act. Any resident previously conducting authorized  
14 electronic monitoring must obtain consent from any new roommate  
15 before the resident may resume authorized electronic  
16 monitoring.

17 (d) Consent may be withdrawn at any time, and the  
18 withdrawal of consent shall be documented in the resident's  
19 file. If a roommate withdraws consent, or a new roommate does  
20 not consent to authorized electronic monitoring, and the  
21 resident conducting the authorized electronic monitoring does  
22 not remove or disable the electronic monitoring device, the  
23 facility may turn off the device.

24 (e) If a resident who is residing in a shared room wants to  
25 conduct authorized electronic monitoring and another resident  
26 living in the same shared room refuses to consent to the use of

1 an electronic monitoring device, the facility shall make a  
2 reasonable attempt to accommodate the resident who wants to  
3 conduct authorized electronic monitoring. A facility has met  
4 the requirement to make a reasonable attempt to accommodate a  
5 resident who wants to conduct authorized electronic monitoring  
6 when upon notification that a roommate has not consented to the  
7 use an electronic monitoring device in his or her room, the  
8 facility offers to move either resident to another room that is  
9 available at the time of the request. If a facility is unable  
10 to accommodate a resident due to lack of space, the facility  
11 must reevaluate the request every 2 weeks until the request is  
12 fulfilled.

13 Section 20. Notice to the facility.

14 (a) Authorized electronic monitoring may begin only after  
15 the required consent form specified in Section 15 of this Act  
16 has been completed and submitted to the facility.

17 (b) A resident shall notify the facility in writing of his  
18 or her intent to install an electronic monitoring device by  
19 providing a completed consent form. Notice shall be given on a  
20 consent form prescribed by the Department that must include the  
21 following:

22 (1) the resident's signed consent to electronic  
23 monitoring or the signature of the person consenting on  
24 behalf of the resident in accordance with Section 15 of  
25 this Act; if a person other than the resident signs the

1 consent form, the form must document the following:

2 (A) the date the resident was asked if he or she  
3 wants authorized electronic monitoring to be  
4 conducted;

5 (B) who was present when the resident was asked;  
6 and

7 (C) an acknowledgement that the resident did not  
8 affirmatively object; and

9 (2) the resident's roommate's signed consent or the  
10 signature of the person consenting on behalf of the  
11 resident in accordance with Section 15 of this Act, if  
12 applicable, and any conditions placed on the roommate's  
13 consent; if a person other than the roommate signs the  
14 consent form, the form must document the following:

15 (A) the date the roommate was asked if he or she  
16 wants authorized electronic monitoring to be  
17 conducted;

18 (B) who was present when the roommate was asked;  
19 and

20 (C) an acknowledgement that the roommate did not  
21 affirmatively object.

22 (c) A copy of the consent form shall be placed in the  
23 resident's file and a copy shall be provided to the resident.

24 (d) The Department shall prescribe the form required in  
25 this Section no later than 60 days after the effective date of  
26 this Act. If the Department has not prescribed such a form by

1 that date, a resident may create his or her own consent form to  
2 meet the requirements of this Act until the Department has  
3 prescribed the form.

4 Section 25. Cost and installation.

5 (a) A resident choosing to conduct authorized electronic  
6 monitoring must do so at his or her own expense.

7 (b) If a resident chooses to install an electronic  
8 monitoring device that uses Internet technology for visual or  
9 audio monitoring, that resident is responsible for contracting  
10 with an Internet service provider and the facility shall make a  
11 reasonable attempt to accommodate the resident, including, but  
12 not limited to, allowing access to the facility's  
13 telecommunications or equipment room. A facility has the burden  
14 of proving that a requested accommodation is not reasonable.

15 (c) The electronic monitoring device must be placed in a  
16 conspicuously visible location in the room.

17 (d) A facility may not charge the resident a fee for the  
18 cost of electricity used by an electronic monitoring device.

19 Section 27. Assistance program. The Department shall  
20 establish a program to assist residents receiving medical  
21 assistance under Article V of the Illinois Public Aid Code in  
22 accessing authorized electronic monitoring.

23 (1) The Department shall distribute up to \$50,000 in funds  
24 on an annual basis to residents receiving medical assistance

1 under Article V of the Illinois Public Aid Code for the  
2 purchase and installation of authorized electronic monitoring  
3 devices.

4 (2) Applications for funds must be made in a manner  
5 prescribed by the Department and the funds shall be disbursed  
6 by means of a lottery.

7 Section 30. Notice to visitors.

8 (a) If a resident of a facility conducts authorized  
9 electronic monitoring, a sign shall be clearly and  
10 conspicuously posted at all building entrances accessible to  
11 visitors. The notice must be entitled "Electronic Monitoring"  
12 and must state, in large, easy-to-read type, "The rooms of some  
13 residents may be monitored electronically by or on behalf of  
14 the residents."

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

19 Section 32. Enforcement. The Department is authorized to  
20 accept and investigate complaints regarding compliance with  
21 the provisions of this Act following the procedures prescribed  
22 in Section 3-702 of the Nursing Home Care Act and Section 3-702  
23 of the ID/DD Community Care Act. The Department may assess  
24 compliance with the Act during any inspection conducted in

1 accordance with Section 3-212 of the Nursing Home Care Act or  
2 Section 3-212 of the ID/DD Community Care Act.

3 Section 35. Prohibited acts.

4 (a) A prospective resident or resident shall not be denied  
5 admission to or discharged from a facility or be otherwise  
6 discriminated against or retaliated against for consenting to  
7 authorized electronic monitoring. A violation of this  
8 subsection is a business offense punishable by a fine not to  
9 exceed \$10,000. The State's Attorney of the county in which the  
10 facility is located, or the Attorney General, shall be notified  
11 by the Director of Public Health of any violations of this  
12 subsection.

13 (b) A facility shall not prevent the installation of an  
14 electronic monitoring device by a resident who has provided the  
15 facility with consent as required in Section 15 of this Act. A  
16 violation of this subsection is a petty offense punishable by a  
17 fine not to exceed \$1,000. The State's Attorney of the county  
18 in which the facility is located, or the Attorney General,  
19 shall be notified by the Director of Public Health of any  
20 violations of this subsection.

21 Section 40. Obstruction of electronic monitoring devices.

22 (a) A person or entity is prohibited from knowingly  
23 hampering, obstructing, tampering with, or destroying an  
24 electronic monitoring device installed in a resident's room

1 without the permission of the resident or the individual who  
2 consented on behalf of the resident in accordance with Section  
3 15 of this Act.

4 (b) A person or entity is prohibited from knowingly  
5 hampering, obstructing, tampering with, or destroying a video  
6 or audio recording obtained in accordance with this Act without  
7 the permission of the resident or the individual who consented  
8 on behalf of the resident in accordance with Section 15 of this  
9 Act.

10 (c) A person or entity that violates this Section is guilty  
11 of a Class B misdemeanor. A person or entity that violates this  
12 Section in the commission of or to conceal a misdemeanor  
13 offense is guilty of a Class A misdemeanor. A person or entity  
14 that violates this Section in the commission of or to conceal a  
15 felony offense is guilty of a Class 4 felony.

16 (d) It shall be an affirmative defense to a violation of  
17 this Section that the person or facility acted with the consent  
18 of the resident or the person who consented on behalf of the  
19 resident in accordance with Section 15 of this Act.

20 Section 45. Access to recordings.

21 (a) A facility may not access any video or audio recording  
22 created through authorized electronic monitoring without the  
23 written consent of the resident or the person who consented on  
24 behalf of the resident in accordance with Section 15 of this  
25 Act.

1           (b) Any recording created through authorized electronic  
2 monitoring may be disseminated by the resident or the person  
3 who consented on behalf of the resident in accordance with  
4 Section 15 of this Act to only the following:

5           (1) the facility;

6           (2) the Department;

7           (3) a representative of the Office of the State Long  
8 Term Care Ombudsman;

9           (4) a law enforcement agency;

10          (5) an attorney representing the resident; or

11          (6) any other person as required by a court.

12          (c) A violation of this Section is a Class B misdemeanor.

13           Section 50. Admissibility of evidence. Any video or audio  
14 recording created through authorized electronic monitoring in  
15 accordance with this Act may be admitted into evidence in a  
16 civil, criminal, or administrative proceeding if the contents  
17 of the recording have not been edited or artificially enhanced  
18 and the video recording includes the date and time the events  
19 occurred.

20           Section 55. Report. Each facility shall report to the  
21 Department, in a manner prescribed by the Department, the  
22 number of authorized electronic monitoring consent forms  
23 received annually. The Department shall report the total number  
24 of authorized electronic monitoring consent forms received by

1 facilities to the Office of the Attorney General annually.

2 Section 60. Liability. A facility is not civilly or  
3 criminally liable for the inadvertent or intentional  
4 disclosure of a recording made pursuant to this Act by a  
5 resident or a person who consents on behalf of the resident to  
6 any individual not authorized by this Act.

7 Section 65. Rules. The Department shall adopt rules  
8 necessary to implement this Act.

9 Section 99. Effective date. This Act takes effect January  
10 1, 2016."