

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Authorized Electronic Monitoring in
5 Long-Term Care Facilities Act is amended by changing Sections
6 5, 15, 20, 25, 30, 40, 45, 55, and 60 as follows:

7 (210 ILCS 32/5)

8 Sec. 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
17 broadcasts or records activity or sounds occurring in the
18 room.

19 "Establishment" means an assisted living establishment as
20 defined in the Assisted Living and Shared Housing Act.

21 "Facility" means an intermediate care facility for the
22 developmentally disabled licensed under the ID/DD Community
23 Care Act that has 30 beds or more, a facility licensed under

1 the MC/DD Act, a long-term care facility licensed under the
2 Nursing Home Care Act, or a facility that provides housing to
3 individuals with dementia, as defined in Section 3 of the
4 Alzheimer's Disease Assistance Act.

5 "Resident" means a person residing in a facility or
6 establishment.

7 "Resident's representative" has the meaning given to that
8 term in (1) Section 1-123 of the Nursing Home Care Act if the
9 resident resides in a facility licensed under the Nursing Home
10 Care Act, (2) Section 1-123 of the ID/DD Community Care Act if
11 the resident resides in a facility licensed under the ID/DD
12 Community Care Act, (3) Section 9-10 of the Assisted Living
13 and Shared Housing Act if the resident resides in an
14 establishment under the Assisted Living and Shared Housing
15 Act, or (4) ~~(3)~~ Section 1-123 of the MC/DD Act if the resident
16 resides in a facility licensed under the MC/DD Act.

17 "Room" means a resident's designated private or shared
18 living space, apartment, or living unit designed for personal
19 use and sleeping.

20 (Source: P.A. 101-160, eff. 7-26-19.)

21 (210 ILCS 32/15)

22 Sec. 15. Consent.

23 (a) Except as otherwise provided in this subsection, a
24 resident, a resident's plenary guardian of the person, or the
25 parent of a resident under the age of 18 must consent in

1 writing on a notification and consent form prescribed by the
2 Department to the authorized electronic monitoring in the
3 resident's room. If the resident has not affirmatively
4 objected to the authorized electronic monitoring and the
5 resident's physician determines that the resident lacks the
6 ability to understand and appreciate the nature and
7 consequences of electronic monitoring, the following
8 individuals may consent on behalf of the resident, in order of
9 priority:

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

12 (2) a resident's representative, as defined in Section
13 5 of this Act;

14 (3) the resident's spouse;

15 (4) the resident's parent;

16 (5) the resident's adult child who has the written
17 consent of the other adult children of the resident to act
18 as the sole decision maker regarding authorized electronic
19 monitoring; or

20 (6) the resident's adult brother or sister who has the
21 written consent of the other adult siblings of the
22 resident to act as the sole decision maker regarding
23 authorized electronic monitoring.

24 (a-5) Prior to another person, other than a resident's
25 plenary guardian of the person, consenting on behalf of a
26 resident 18 years of age or older in accordance with this

1 Section, the resident must be asked by that person, in the
2 presence of a facility or establishment employee, if he or she
3 wants authorized electronic monitoring to be conducted. The
4 person must explain to the resident:

5 (1) the type of electronic monitoring device to be
6 used;

7 (2) the standard conditions that may be placed on the
8 electronic monitoring device's use, including those listed
9 in paragraph (7) of subsection (b) of Section 20;

10 (3) with whom the recording may be shared according to
11 Section 45; and

12 (4) the resident's ability to decline all recording.

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

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

26 (c) Prior to the authorized electronic monitoring, a

1 resident must obtain the written consent of any other resident
2 residing in the room on the notification and consent form
3 prescribed by the Department. Except as otherwise provided in
4 this subsection, a roommate, a roommate's plenary guardian of
5 the person, or the parent of a roommate under the age of 18
6 must consent in writing to the authorized electronic
7 monitoring in the resident's room. If the roommate has not
8 affirmatively objected to the authorized electronic monitoring
9 in accordance with subsection (a-5) and the roommate's
10 physician determines that the roommate lacks the ability to
11 understand and appreciate the nature and consequences of
12 electronic monitoring, the following individuals may consent
13 on behalf of the roommate, in order of priority:

14 (1) a health care agent named under the Illinois Power
15 of Attorney Act;

16 (2) a roommate's resident's representative, as defined
17 in Section 5 of this Act;

18 (3) the roommate's spouse;

19 (4) the roommate's parent;

20 (5) the roommate's adult child who has the written
21 consent of the other adult children of the resident to act
22 as the sole decision maker regarding authorized electronic
23 monitoring; or

24 (6) the roommate's adult brother or sister who has the
25 written consent of the other adult siblings of the
26 resident to act as the sole decision maker regarding

1 authorized electronic monitoring.

2 (c-5) Consent by a roommate under subsection (c)
3 authorizes the resident's use of any recording obtained under
4 this Act, as provided in Section 45 of this Act.

5 (c-7) Any resident previously conducting authorized
6 electronic monitoring must obtain consent from any new
7 roommate before the resident may resume authorized electronic
8 monitoring. If a new roommate does not consent to authorized
9 electronic monitoring and the resident conducting the
10 authorized electronic monitoring does not remove or disable
11 the electronic monitoring device, the facility or
12 establishment shall turn off the device.

13 (d) Consent may be withdrawn by the resident or roommate
14 at any time, and the withdrawal of consent shall be documented
15 in the resident's clinical record. If a roommate withdraws
16 consent and the resident conducting the authorized electronic
17 monitoring does not remove or disable the electronic
18 monitoring device, the facility or establishment may turn off
19 the electronic monitoring device.

20 (e) If a resident who is residing in a shared room wants to
21 conduct authorized electronic monitoring and another resident
22 living in or moving into the same shared room refuses to
23 consent to the use of an electronic monitoring device, the
24 facility or establishment shall make a reasonable attempt to
25 accommodate the resident who wants to conduct authorized
26 electronic monitoring. A facility or establishment has met the

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

14 (Source: P.A. 99-430, eff. 1-1-16; 99-784, eff. 1-1-17.)

15 (210 ILCS 32/20)

16 Sec. 20. Notice to the facility or establishment.

17 (a) Authorized electronic monitoring may begin only after
18 a notification and consent form prescribed by the Department
19 has been completed and submitted to the facility or
20 establishment.

21 (b) A resident shall notify the facility or establishment
22 in writing of his or her intent to install an electronic
23 monitoring device by providing a completed notification and
24 consent form prescribed by the Department that must include,
25 at minimum, the following information:

1 (1) the resident's signed consent to electronic
2 monitoring or the signature of the person consenting on
3 behalf of the resident in accordance with Section 15 of
4 this Act; if a person other than the resident signs the
5 consent form, the form must document the following:

6 (A) the date the resident was asked if he or she
7 wants authorized electronic monitoring to be conducted
8 in accordance with subsection (a-5) of Section 15;

9 (B) who was present when the resident was asked;
10 and

11 (C) an acknowledgement that the resident did not
12 affirmatively object; and

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

19 (A) the date the roommate was asked if he or she
20 wants authorized electronic monitoring to be conducted
21 in accordance with subsection (a-5) of Section 15;

22 (B) who was present when the roommate was asked;
23 and

24 (C) an acknowledgement that the roommate did not
25 affirmatively object; and

26 (3) the type of electronic monitoring device to be

1 used;

2 (4) any installation needs, such as mounting of a
3 device to a wall or ceiling;

4 (5) the proposed date of installation for scheduling
5 purposes;

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

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

12 (A) prohibiting audio recording;

13 (B) prohibiting broadcasting of audio or video;

14 (C) turning off the electronic monitoring device
15 or blocking the visual recording component of the
16 electronic monitoring device for the duration of an
17 exam or procedure by a health care professional;

18 (D) turning off the electronic monitoring device
19 or blocking the visual recording component of the
20 electronic monitoring device while dressing or bathing
21 is performed; and

22 (E) turning the electronic monitoring device off
23 for the duration of a visit with a spiritual advisor,
24 ombudsman, attorney, financial planner, intimate
25 partner, or other visitor; and

26 (8) any other condition or restriction elected by the

1 resident or roommate on the use of an electronic
2 monitoring device.

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

7 (d) The Department shall prescribe the notification and
8 consent form required in this Section no later than 60 days
9 after the effective date of this Act. If the Department has not
10 prescribed such a form by that date, the Office of the Attorney
11 General shall post a notification and consent form on its
12 website for resident use until the Department has prescribed
13 the form.

14 (Source: P.A. 99-430, eff. 1-1-16.)

15 (210 ILCS 32/25)

16 Sec. 25. Cost and installation.

17 (a) A resident choosing to conduct authorized electronic
18 monitoring must do so at his or her own expense, including
19 paying purchase, installation, maintenance, and removal costs.

20 (b) If a resident chooses to install an electronic
21 monitoring device that uses Internet technology for visual or
22 audio monitoring, that resident is responsible for contracting
23 with an Internet service provider.

24 (c) The facility or establishment shall make a reasonable
25 attempt to accommodate the resident's installation needs,

1 including, but not limited to, allowing access to the
2 facility's or establishment's telecommunications or equipment
3 room. A facility or establishment has the burden of proving
4 that a requested accommodation is not reasonable.

5 (d) The electronic monitoring device must be placed in a
6 conspicuously visible location in the room.

7 (e) A facility or establishment may not charge the
8 resident a fee for the cost of electricity used by an
9 electronic monitoring device.

10 (f) All electronic monitoring device installations and
11 supporting services shall comply with the requirements of the
12 edition of the National Fire Protection Association (NFPA) 101
13 Life Safety Code in force at the time of installation and shall
14 remain in compliance with that or any subsequent edition of
15 NFPA 101 enforced pursuant to Part 483 of Title 42 of the Code
16 of Federal Regulations.

17 (Source: P.A. 99-430, eff. 1-1-16; 99-784, eff. 1-1-17.)

18 (210 ILCS 32/30)

19 Sec. 30. Notice to visitors.

20 (a) If a resident of a facility conducts authorized
21 electronic monitoring, a sign shall be clearly and
22 conspicuously posted at all building entrances accessible to
23 visitors. The notice must be entitled "Electronic Monitoring"
24 and must state, in large, easy-to-read type, "The rooms of
25 some residents may be monitored electronically by or on behalf

1 of the residents." An assisted living establishment shall not
2 be required to post the notice described in this Section at
3 building entrances.

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

9 (c) The facility or establishment is responsible for
10 installing and maintaining the signage required in this
11 Section.

12 (Source: P.A. 99-430, eff. 1-1-16.)

13 (210 ILCS 32/40)

14 Sec. 40. Obstruction of electronic monitoring devices.

15 (a) A person or entity is prohibited from knowingly
16 hampering, obstructing, tampering with, or destroying an
17 electronic monitoring device installed in a resident's room
18 without the permission of the resident or the individual who
19 consented on behalf of the resident in accordance with Section
20 15 of this Act.

21 (b) A person or entity is prohibited from knowingly
22 hampering, obstructing, tampering with, or destroying a video
23 or audio recording obtained in accordance with this Act
24 without the permission of the resident or the individual who
25 consented on behalf of the resident in accordance with Section

1 15 of this Act.

2 (c) A person or entity that violates this Section is
3 guilty of a Class B misdemeanor. A person or entity that
4 violates this Section in the commission of or to conceal a
5 misdemeanor offense is guilty of a Class A misdemeanor. A
6 person or entity that violates this Section in the commission
7 of or to conceal a felony offense is guilty of a Class 4
8 felony.

9 (d) It is not a violation of this Section if a person or
10 facility or establishment turns off the electronic monitoring
11 device or blocks the visual recording component of the
12 electronic monitoring device at the direction of the resident
13 or the person who consented on behalf of the resident in
14 accordance with Section 15 of this Act.

15 (Source: P.A. 99-430, eff. 1-1-16.)

16 (210 ILCS 32/45)

17 Sec. 45. Dissemination of recordings.

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

23 (b) Except as required under the Freedom of Information
24 Act, a recording or copy of a recording made pursuant to this
25 Act may only be disseminated for the purpose of addressing

1 concerns relating to the health, safety, or welfare of a
2 resident or residents.

3 (c) The resident or person who consented on behalf of the
4 resident in accordance with Section 15 of this Act shall
5 provide a copy of any video or audio recording to parties
6 involved in a civil, criminal, or administrative proceeding,
7 upon a party's request, if the video or audio recording was
8 made during the time period that the conduct at issue in the
9 proceeding allegedly occurred.

10 (Source: P.A. 99-430, eff. 1-1-16.)

11 (210 ILCS 32/55)

12 Sec. 55. Report. Each facility or establishment shall
13 report to the Department, in a manner prescribed by the
14 Department, the number of authorized electronic monitoring
15 notification and consent forms received annually. The
16 Department shall report the total number of authorized
17 electronic monitoring notification and consent forms received
18 by facilities or establishment to the Office of the Attorney
19 General annually.

20 (Source: P.A. 99-430, eff. 1-1-16.)

21 (210 ILCS 32/60)

22 Sec. 60. Liability.

23 (a) A facility or establishment is not civilly or
24 criminally liable for the inadvertent or intentional

1 disclosure of a recording by a resident or a person who
2 consents on behalf of the resident for any purpose not
3 authorized by this Act.

4 (b) A facility or establishment is not civilly or
5 criminally liable for a violation of a resident's right to
6 privacy arising out of any electronic monitoring conducted
7 pursuant to this Act.

8 (Source: P.A. 99-430, eff. 1-1-16.)