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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO HEALTH AND SAFETY -- ELECTRONIC MONITORING IN NURSING  
AND ASSISTED LIVING FACILITIES

Introduced By: Representatives McEntee, Craven, Fogarty, Knight, Shanley, and Batista

Date Introduced: February 12, 2021

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby  
2 amended by adding thereto the following chapter:

3 CHAPTER 17.28

4 ELECTRONIC MONITORING IN NURSING AND ASSISTED LIVING FACILITIES

5 **23-17.28-1. Definitions.**

6 As used in this chapter:

7 (1) "Department" means the Rhode Island department of health.

8 (2) "Director" means the director of the Rhode Island department of health.

9 (3) "Electronic monitoring" means the placement and use of an electronic monitoring  
10 device by a resident or the resident representative in the resident's room or private living unit in  
11 accordance with this chapter.

12 (4) "Electronic monitoring device" means a camera or other device that captures, records,  
13 or broadcasts audio, video, or both, that is placed in a resident's room or private living unit and is  
14 used to monitor the resident or activities in the room or private living unit.

15 (5) "Facility" means a facility that is:

16 (i) Licensed as a health care facility under § 23-17-10 and the regulations for Licensing of  
17 Nursing Facilities (216-RICR-40-10-1);

18 (ii) Licensed as an assisted living residence under § 23-17.4-1, et seq. and the regulations

1 for Licensing Assisted Living Residence (216-RICR-40-10-2).

2 (6) "Resident" means a person eighteen (18) years of age or older residing in a facility.

3 (7) "Resident representative" means one of the following, to the extent the person may  
4 reasonably be identified and located:

5 (i) A court-appointed guardian;

6 (ii) A health care agent or agent acting pursuant to a durable power of attorney as executed  
7 pursuant to chapter 4.10 of title 23; or

8 (iii) A person who is not an agent of a facility who is designated in writing by the resident  
9 and maintained in the resident's records on file with the facility.

10 **23-17.28-2. Authorization of electronic monitoring.**

11 (a) A resident or a resident representative may conduct electronic monitoring of the  
12 resident's room or private living unit through the use of electronic monitoring devices placed in the  
13 resident's room or private living unit as provided in this chapter.

14 (b) Nothing in this chapter precludes the use of electronic monitoring of health care as  
15 authorized pursuant to state or federal law.

16 **23-17.28-3. Consent to electronic monitoring.**

17 (a) Except as otherwise provided in this section, a resident or the resident's representative  
18 must consent to electronic monitoring in the resident's room or private living unit in writing on a  
19 notification and consent form. If the resident has not affirmatively objected to electronic monitoring  
20 and the resident's health care provider determines that the resident currently lacks the ability to  
21 understand and appreciate the nature and consequences of electronic monitoring, the resident  
22 representative may consent on behalf of the resident. For purposes of this section, a resident  
23 affirmatively objects when the resident verbally, visually, or through the use of auxiliary aids or  
24 services declines electronic monitoring. The resident's response must be documented on the  
25 notification and consent form.

26 (b) Prior to a resident representative consenting on behalf of a resident, the resident  
27 representative shall inquire of the resident if the resident wants electronic monitoring to be  
28 conducted. The resident representative must explain to the resident:

29 (1) The type of electronic monitoring device to be used;

30 (2) The standard conditions that may be placed on the electronic monitoring device's use,  
31 including those set forth in § 23-17.28-6;

32 (3) With whom the recording may be shared under §§ 23-17.28-10 and 23-17.28-11; and

33 (4) The resident's ability to decline all recording.

34 (c) A resident or resident representative, when consenting on behalf of the resident, may

1 consent to electronic monitoring with any conditions of the resident's or resident representative's  
2 choosing, including the list of standard conditions provided in § 23-17.28-6. A resident, or resident  
3 representative when consenting on behalf of the resident, may request that the electronic monitoring  
4 device be turned off or the visual or audio recording component of the electronic monitoring device  
5 be blocked at any time.

6 (d) Prior to implementing electronic monitoring, a resident, or resident representative when  
7 acting on behalf of the resident, must obtain the written consent on the notification and consent  
8 form of any other resident residing in the shared room or shared private living unit. A roommate's  
9 or roommate's resident representative's written consent must comply with the requirements of  
10 subsections (a) through (c) of this section. Consent by a roommate or a roommate's resident  
11 representative under this section authorizes the resident's use of any recording obtained under this  
12 chapter, as provided under §§ 23-17.28-10 and 23-17.28-11.

13 (e) Any resident conducting electronic monitoring must immediately remove or disable an  
14 electronic monitoring device prior to a new roommate moving into a shared room or shared private  
15 living unit, unless the resident obtains the roommate's or roommate's resident representative's  
16 written consent as provided under subsection (d) of this section prior to the roommate moving into  
17 the shared room or shared private living unit. Upon obtaining the new roommate's signed  
18 notification and consent form and submitting the form to the facility pursuant to § 23-17.28-5, the  
19 resident may resume electronic monitoring.

20 (f) The resident or roommate, or the resident representative of the resident or roommate, if  
21 the representative is consenting on behalf of the resident or roommate, may withdraw consent at  
22 any time and the withdrawal of consent shall be documented on the original consent form as  
23 provided under § 23-17.28-5(d).

24 **23-17.28-4. Refusal of roommate to consent.**

25 If a resident of a facility who is residing in a shared room or shared living unit, or the  
26 resident representative of such a resident when acting on behalf of the resident, wants to conduct  
27 electronic monitoring and another resident living in or moving into the same shared room or shared  
28 living unit refuses to consent to the use of an electronic monitoring device, the facility shall make  
29 a reasonable attempt to accommodate the resident who wants to conduct electronic monitoring. A  
30 facility has met the requirement to make a reasonable attempt to accommodate a resident or resident  
31 representative who wants to conduct electronic monitoring when, upon notification that a roommate  
32 has not consented to the use of an electronic monitoring device in the resident's room, the facility  
33 offers to move the resident to another shared room or shared living unit that is available at the time  
34 of the request. If a resident chooses to reside in a private room or private living unit in a facility in

1 order to accommodate the use of an electronic monitoring device, the resident must pay either the  
2 private room rate in a nursing home setting, or the applicable rent in a housing with services  
3 establishment or assisted living facility. If a facility is unable to accommodate a resident due to  
4 lack of space, the facility must reevaluate the request every two (2) weeks until the request is  
5 fulfilled. A facility is not required to provide a private room, a single-bed room, or a private living  
6 unit to a resident who is unable to pay.

7 **23-17.28-5. Notice to facility.**

8 (a) Electronic monitoring may begin only after the resident or resident representative who  
9 intends to place an electronic monitoring device and any roommate or roommate's resident  
10 representative completes the notification and consent form and submits the form to the facility.

11 (b) Notwithstanding subsection (a) of this section, the resident or resident representative  
12 who intends to place an electronic monitoring device may do so without submitting a notification  
13 and consent form to the facility for up to fourteen (14) days:

14 (1) If the resident or the resident representative reasonably fears retaliation against the  
15 resident by the facility and timely submits a Rhode Island department of health complaint or police  
16 report, or both, upon evidence from the electronic monitoring device that suspected maltreatment  
17 has occurred;

18 (2) If there has not been a timely written response from the facility to a written  
19 communication from the resident or resident representative expressing a concern prompting the  
20 desire for placement of an electronic monitoring device; or

21 (3) If the resident or resident representative has already submitted a Rhode Island  
22 department of health complaint or police report regarding the resident's concerns prompting the  
23 desire for placement of an electronic monitoring device.

24 (c) Upon receipt of any completed notification and consent form, the facility must place  
25 the original form in the resident's file or file the original form with the resident's housing with  
26 services contract. The facility must provide a copy to the resident and the resident's roommate, if  
27 applicable.

28 (d) If a resident is conducting electronic monitoring according to subsection (b) of this  
29 section and a new roommate moves into the room or living unit, the resident or resident  
30 representative must submit the signed notification and consent form to the facility. In the event that  
31 a resident or roommate, or the resident representative or roommate's resident representative if the  
32 representative is consenting on behalf of the resident or roommate, chooses to alter the conditions  
33 under which consent to electronic monitoring is given or chooses to withdraw consent to electronic  
34 monitoring, the facility must make available the original notification and consent form so that it

1 may be updated. Upon receipt of the updated form, the facility must place the updated form in the  
2 resident's file or file the original form with the resident's housing with services contract. The facility  
3 must provide a copy of the updated form to the resident and the resident's roommate, if applicable.

4 (e) If a new roommate, or the new roommate's resident representative when consenting on  
5 behalf of the new roommate, does not submit to the facility a completed notification and consent  
6 form and the resident conducting the electronic monitoring does not remove or disable the  
7 electronic monitoring device, the facility must remove the electronic monitoring device.

8 (f) If a roommate, or the roommate's resident representative when withdrawing consent on  
9 behalf of the roommate, submits an updated notification and consent form withdrawing consent  
10 and the resident conducting electronic monitoring does not remove or disable the electronic  
11 monitoring device, the facility must remove the electronic monitoring device.

12 **23-17.28-6. Notification and consent form requirements.**

13 (a) The notification and consent form completed by the resident must include, at a  
14 minimum, the following information:

15 (1) The resident's signed consent to electronic monitoring or the signature of the resident  
16 representative, if applicable. If a person other than the resident signs the consent form, the form  
17 must document the following:

18 (i) The date the resident was asked if the resident wants electronic monitoring to be  
19 conducted;

20 (ii) Who was present when the resident was asked;

21 (iii) An acknowledgment that the resident did not affirmatively object; and

22 (iv) The source of authority allowing the resident representative to sign the notification and  
23 consent form on the resident's behalf;

24 (2) The resident's roommate's signed consent or the signature of the roommate's resident  
25 representative, if applicable. If a roommate's resident representative signs the consent form, the  
26 form must document the following:

27 (i) The date the roommate was asked if the roommate wants electronic monitoring to be  
28 conducted;

29 (ii) Who was present when the roommate was asked;

30 (iii) An acknowledgment that the roommate did not affirmatively object; and

31 (iv) The source of authority allowing the resident representative to sign the notification and  
32 consent form on the roommate's behalf;

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

34 (4) A list of standard conditions or restrictions that the resident or a roommate may elect

1 to place on the use of the electronic monitoring device, including, but not limited to:

2 (i) Prohibiting audio recording;

3 (ii) Prohibiting video recording;

4 (iii) Prohibiting broadcasting of audio or video;

5 (iv) Turning off the electronic monitoring device or blocking the visual recording  
6 component of the electronic monitoring device for the duration of an exam or procedure by a health  
7 care professional;

8 (v) Turning off the electronic monitoring device or blocking the visual recording  
9 component of the electronic monitoring device while dressing or bathing is performed; and

10 (vi) Turning off the electronic monitoring device for the duration of a visit with a spiritual  
11 adviser, ombudsman, attorney, financial planner, intimate partner, or other visitor;

12 (5) Any other condition or restriction elected by the resident or roommate on the use of an  
13 electronic monitoring device;

14 (6) A statement of the circumstances under which a recording may be disseminated under  
15 § 23-17.28-10; and

16 (7) A signature box for documenting that the resident or roommate has withdrawn consent.

17 (b) Facilities must make the notification and consent form available to the residents and  
18 inform residents of their option to conduct electronic monitoring of their rooms or private living  
19 unit.

20 **23-17.28-7. Costs and installation.**

21 (a) A resident or resident representative choosing to conduct electronic monitoring must  
22 do so at the resident's own expense, including the purchase, installation, maintenance, and removal  
23 costs.

24 (b) If a resident chooses to place an electronic monitoring device that uses Internet  
25 technology for visual or audio monitoring, the resident may be responsible for contracting with an  
26 Internet service provider.

27 (c) The facility shall make a reasonable attempt to accommodate the resident's installation  
28 needs, including allowing access to the facility's public-use Internet or Wi-Fi systems when  
29 available for other public uses. A facility has the burden of proving that a requested accommodation  
30 is not reasonable.

31 (d) All electronic monitoring device installations and supporting services must be UL-  
32 listed.

33 **23-17.28-8. Notice to visitors.**

34 (a) A facility must post a sign at each facility entrance accessible to visitors that states:

1 "Electronic monitoring devices, including security cameras and audio devices, may be present to  
2 record persons and activities."

3 (b) The facility is responsible for installing and maintaining the signage required pursuant  
4 to subsection (a) of this section.

5 **23-17.28-9. Obstruction of electronic monitoring devices.**

6 (a) A person must not knowingly hamper, obstruct, tamper with, or destroy an electronic  
7 monitoring device placed in a resident's room or private living unit without the permission of the  
8 resident or resident representative. Checking the electronic monitoring device by facility staff for  
9 the make and model number does not constitute tampering under this section.

10 (b) It is not a violation of subsection (a) of this section if a person turns off the electronic  
11 monitoring device or blocks the visual recording component of the electronic monitoring device at  
12 the direction of the resident or resident representative, or if consent has been withdrawn.

13 **23-17.28-10. Dissemination of recordings.**

14 (a) No person, facility, or facility representative may access any video or audio recording  
15 created through authorized electronic monitoring without the written consent of the resident or  
16 resident representative.

17 (b) Except as prohibited by any other state or federal law, a recording or copy of a recording  
18 made as provided in this chapter may only be disseminated for the purpose of addressing health,  
19 safety, or welfare concerns of one or more residents.

20 (c) A person disseminating a recording or copy of a recording made as provided in this  
21 chapter in violation of subsection (b) of this section may be civilly or criminally liable.

22 **23-17.28-11. Admissibility of evidence.**

23 Subject to applicable rules of evidence and procedure, any video or audio recording created  
24 through electronic monitoring under this chapter may be admitted into evidence in any civil,  
25 criminal, or administrative proceeding.

26 **23-17.28-12. Liability.**

27 (a) The mere presence of an electronic monitoring device in a resident's room or private  
28 living unit is not a violation of the resident's right to privacy under § 23-17.5-14.

29 (b) A facility or home care provider is not civilly or criminally liable for the mere disclosure  
30 by a resident or a resident representative of a recording.

31 **23-17.28-13. Resident protections.**

32 (a) A facility shall not:

33 (1) Refuse to admit a potential resident or remove a resident because the facility disagrees  
34 with the decision of the potential resident, the resident, or a resident representative acting on behalf

1 of the resident regarding electronic monitoring; or

2 (2) Retaliate or discriminate against any resident for consenting or refusing to consent to  
3 electronic monitoring.

4 (b) Any contractual provision prohibiting, limiting, or otherwise modifying the rights and  
5 obligations in this chapter is contrary to public policy and is void and unenforceable.

6 **23-17.28-14. Employee discipline.**

7 (a) An employee of the facility or an employee of a contractor providing services at the  
8 facility, including an arranged home care, who is the subject of proposed disciplinary action based  
9 upon evidence obtained by electronic monitoring, must be given access to that evidence for  
10 purposes of defending against the proposed action.

11 (b) An employee who obtains a recording or a copy of the recording must treat the  
12 recording or copy confidentially and must not further disseminate it to any other person except as  
13 required pursuant to applicable law. Any copy of the recording must be returned to the facility or  
14 resident who provided the copy when it is no longer needed for purposes of defending against a  
15 proposed action.

16 **23-17.28-15. Penalties.**

17 (a) The director may issue a statement of deficiency, upon a finding that the facility has  
18 failed to comply with any provisions of this chapter.

19 (b) For each violation of this chapter, any licensed facility shall be guilty of a misdemeanor  
20 for each violation punishable by a fine of not more than five hundred dollars (\$500).

21 (c) Any person convicted of a violation pursuant to § 23-17.28-10(c), shall be guilty of a  
22 misdemeanor for each violation punishment by a fine of not more than five hundred dollars (\$500),  
23 or shall be imprisoned not more than six (6) months, or both.

24 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- ELECTRONIC MONITORING IN NURSING  
AND ASSISTED LIVING FACILITIES

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1           This act would allow for the use of electronic monitoring of a resident's room or private  
2 living unit within a nursing home or assisted living facility, provided that the resident or resident  
3 representative acting on behalf of the resident, as well as the resident's roommate or roommate's  
4 representative acting on behalf of the roommate, consent to such electronic monitoring in writing  
5 in accordance with the applicable form.

6           This act would take effect upon passage.

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