

House File 772

H-1373

1 Amend House File 772 as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <Section 1. Section 135C.1, Code 2021, is amended by adding
5 the following new subsections:

6 NEW SUBSECTION. 6A. "*Electronic monitoring*" means the
7 placement and use of an electronic monitoring device by
8 a resident in the resident's room in accordance with this
9 subchapter.

10 NEW SUBSECTION. 6B. "*Electronic monitoring device*" means a
11 camera or other device that captures, records, or broadcasts
12 audio, video, or both, that is placed in a resident's room and
13 is used to monitor the resident or activities in the room.

14 NEW SUBSECTION. 21A. "*Resident representative*" means one of
15 the following in the order of priority listed, to the extent
16 the person may reasonably be identified and located:

17 a. The attorney in fact designated to make treatment
18 decisions for the resident in accordance with chapter 144B.

19 b. The guardian of the resident if one has been appointed
20 pursuant to chapter 633.

21 c. The resident's spouse.

22 d. An adult child of the resident or, if the resident has
23 more than one adult child, a majority of the adult children who
24 are reasonably available.

25 e. A parent of the resident, or parents if both are
26 reasonably available.

27 f. An adult sibling of the resident.

28 Sec. 2. NEW SECTION. 135C.49 **Electronic monitoring.**

29 1. A resident or a resident representative may conduct
30 electronic monitoring of the resident's room through the use of
31 an electronic monitoring device placed in the resident's room
32 pursuant to this subchapter.

33 2. Nothing in this section precludes the use of electronic
34 monitoring otherwise allowed by law.

35 Sec. 3. NEW SECTION. 135C.50 **Consent to electronic**

1 monitoring.

2 1. Except as otherwise provided in this subchapter,
3 a resident must consent to electronic monitoring in the
4 resident's room in writing on a notification and consent
5 form prescribed by the department. If the resident has
6 not affirmatively objected to electronic monitoring and the
7 resident's medical professional determines that the resident
8 lacks the ability to understand and appreciate the nature
9 and consequences of electronic monitoring, the resident
10 representative may consent on behalf of the resident. For
11 purposes of this subsection, a resident affirmatively objects
12 when the resident orally, visually, or through the use of
13 auxiliary aids or services declines electronic monitoring. The
14 resident's response shall be documented on the notification and
15 consent form.

16 2. Prior to a resident representative consenting on behalf
17 of a resident, the resident shall be asked if the resident
18 wants electronic monitoring to be conducted. The resident
19 representative shall explain all of the following to the
20 resident:

21 a. The type of electronic monitoring device to be used.

22 b. The standard conditions or restrictions that may be
23 placed on the electronic monitoring device's use including as
24 specified in the list of standard conditions or restrictions
25 contained in the notification and consent form completed by the
26 resident as provided in section 135C.53.

27 c. The dissemination and use of any recording as provided
28 under section 135C.57 or 135C.58.

29 d. The resident's ability to decline all recordings.

30 3. A resident, or resident representative when consenting
31 on behalf of the resident, may consent to electronic monitoring
32 with any conditions or restrictions of the resident's or
33 resident representative's choosing, including the list
34 of standard conditions or restrictions contained in the
35 notification and consent form completed by the resident

1 as provided in section 135C.53. A resident, or resident
2 representative when consenting on behalf of the resident, may
3 request that the electronic monitoring device be turned off
4 or the visual or audio recording component of the electronic
5 monitoring device be blocked at any time.

6 4. Prior to implementing electronic monitoring, a resident,
7 or resident representative when acting on behalf of the
8 resident, shall obtain the written consent on the notification
9 and consent form of any other resident who is a roommate
10 residing in the shared room. A roommate's or roommate's
11 resident representative's written consent shall comply with
12 the requirements of this section. Consent by a roommate or
13 a roommate's resident representative under this subsection
14 authorizes the resident's use of any recording obtained under
15 this section as provided under sections 135C.57 and 135C.58.

16 5. Any resident conducting electronic monitoring shall
17 immediately remove or disable an electronic monitoring device
18 prior to a new resident who will be a roommate moving into
19 a shared room, unless the resident conducting electronic
20 monitoring obtains the new roommate's or new roommate's
21 resident representative's written consent as provided under
22 this section prior to the new roommate moving into the shared
23 room. Upon obtaining the new roommate's or new roommate's
24 resident representative's signed notification and consent form
25 and submitting the form to the nursing facility as required
26 under section 135C.52, the resident may resume electronic
27 monitoring.

28 6. The resident or roommate, or the resident representative
29 or roommate's resident representative if the representative is
30 consenting on behalf of the resident or roommate, may withdraw
31 consent at any time and the withdrawal of consent shall be
32 documented on the original consent form as provided under
33 section 135C.52.

34 Sec. 4. NEW SECTION. 135C.51 Refusal of roommate to
35 consent.

1 If a resident of a nursing facility who is residing in a
2 shared room, or the resident representative of such a resident
3 when acting on behalf of the resident, wants to conduct
4 electronic monitoring and another resident living in or moving
5 into the same shared room refuses to consent to the use of an
6 electronic monitoring device, the nursing facility shall make
7 a reasonable attempt to accommodate the resident who wants to
8 conduct electronic monitoring. A nursing facility has met
9 the requirement to make a reasonable attempt to accommodate
10 a resident or resident representative who wants to conduct
11 electronic monitoring when, upon notification that a roommate
12 has not consented to the use of an electronic monitoring device
13 in the resident's room, the nursing facility offers to move one
14 of the residents to another shared room that is available at
15 the time of the request that accommodates the resident. If
16 a resident chooses to reside in a private room in order to
17 accommodate the use of an electronic monitoring device, the
18 resident shall be subject to a private room rate. If a nursing
19 facility is unable to accommodate a resident due to lack of
20 space, the nursing facility shall reevaluate the request
21 periodically until the request is fulfilled.

22 Sec. 5. NEW SECTION. 135C.52 Notice and consent form
23 submitted to nursing facility.

24 1. Electronic monitoring may begin only after the resident
25 or resident representative who intends to place an electronic
26 monitoring device in the resident's room and any roommate or
27 roommate's resident representative completes a notification and
28 consent form and submits the form to the nursing facility.

29 2. Upon receipt of the required, completed notification and
30 consent form, the nursing facility shall place the original
31 form in the resident's file, and a copy of the form in any
32 roommate's file. The nursing facility shall provide a copy to
33 the resident and the resident's roommate, as applicable.

34 3. If a resident or roommate, or the resident representative
35 or roommate's resident representative if the representative

1 is consenting on behalf of the resident or roommate, chooses
2 to alter the conditions under which consent to electronic
3 monitoring is given or chooses to withdraw consent to
4 electronic monitoring, the nursing facility shall make
5 available the original notification and consent form so that
6 the original form may be updated. Upon receipt of the updated
7 original form, the nursing facility shall place the updated
8 original form in the resident's file. The nursing facility
9 shall provide a copy of the updated form to the resident and
10 the resident's roommate, as applicable.

11 4. If a new roommate, or the new roommate's resident
12 representative when consenting on behalf of the new roommate,
13 does not consent to electronic monitoring and submit a
14 completed notification and consent form to the nursing
15 facility, and the resident conducting the electronic monitoring
16 does not remove or disable an existing electronic monitoring
17 device, the nursing facility shall remove the electronic
18 monitoring device.

19 5. If a roommate, or the roommate's resident representative
20 when withdrawing consent on behalf of the roommate, submits
21 an updated notification and consent form withdrawing consent
22 and the resident conducting electronic monitoring does not
23 remove or disable the electronic monitoring device, the nursing
24 facility shall remove the electronic monitoring device.

25 Sec. 6. NEW SECTION. 135C.53 Notification and consent form
26 requirements.

27 1. The notification and consent form completed by the
28 resident shall include, at a minimum, all of the following
29 information:

30 a. The resident's signed consent to electronic monitoring or
31 the signature of the resident representative, if applicable.
32 If a resident representative signs the consent form, the form
33 shall document all of the following:

34 (1) The date the resident was asked if the resident wants
35 electronic monitoring to be conducted.

1 (2) Any person present when the resident was asked.
2 (3) An acknowledgment that the resident did not
3 affirmatively object.
4 (4) The source of authority allowing the resident
5 representative to sign the notification and consent form on the
6 resident's behalf.
7 *b.* The resident's roommate's signed consent or the signature
8 of the roommate's resident representative, if applicable. If a
9 roommate's resident representative signs the consent form, the
10 form shall document all of the following:
11 (1) The date the roommate was asked if the roommate wants
12 electronic monitoring to be conducted.
13 (2) Any person present when the roommate was asked.
14 (3) An acknowledgment that the roommate did not
15 affirmatively object.
16 (4) The source of authority allowing the resident
17 representative to sign the notification and consent form on the
18 roommate's behalf.
19 *c.* The type of electronic monitoring device to be used.
20 *d.* Any installation needs, such as mounting of a device to
21 a wall or ceiling.
22 *e.* The proposed date of installation for scheduling
23 purposes.
24 *f.* A copy of any contract for maintenance of the electronic
25 monitoring device by a commercial entity.
26 *g.* A list of standard conditions or restrictions that the
27 resident or a roommate may elect to place on the use of the
28 electronic monitoring device including but not limited to all
29 of the following:
30 (1) Prohibiting audio recording.
31 (2) Prohibiting video recording.
32 (3) Prohibiting broadcasting of audio or video.
33 (4) Turning off the electronic monitoring device or
34 blocking the visual recording component of the electronic
35 monitoring device for the duration of an exam or procedure by a

1 health care professional.

2 (5) Turning off the electronic monitoring device or
3 blocking the visual recording component of the electronic
4 monitoring device while dressing or bathing is performed.

5 (6) Turning off the electronic monitoring device for
6 the duration of a visit with a spiritual adviser, ombudsman,
7 attorney, financial planner, intimate partner, or other
8 visitor.

9 *h.* Any other condition or restriction elected by the
10 resident or roommate on the use of an electronic monitoring
11 device.

12 *i.* A statement of the circumstances under which a recording
13 may be disseminated under section 135C.57.

14 *j.* A signature box to document if the resident or roommate
15 withdraws consent.

16 2. A nursing facility shall make the notification and
17 consent form available to the residents and inform residents of
18 the option to conduct electronic monitoring of the resident's
19 room.

20 Sec. 7. NEW SECTION. 135C.54 Cost and installation.

21 1. A resident who chooses to conduct electronic monitoring
22 shall do so at the resident's own expense, including payment of
23 any purchase, installation, maintenance, and removal costs.

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

28 3. The nursing facility shall make a reasonable attempt
29 to accommodate the resident's installation needs, including
30 allowing access to the nursing facility's public-use internet
31 or wi-fi systems when available for other public uses.

32 4. All electronic monitoring device installations and
33 supporting services shall comply with the requirements of the
34 national fire protection association 101 life safety code.

35 5. A nursing facility shall not charge a resident a fee

1 for the costs of electricity used by the electronic monitoring
2 device.

3 **Sec. 8. NEW SECTION. 135C.55 Notice to visitors.**

4 1. A nursing facility shall post a sign at each nursing
5 facility entrance accessible to visitors that states
6 "Electronic monitoring devices may be present in the rooms of
7 residents to record persons and activities".

8 2. A nursing facility shall post a sign clearly and
9 conspicuously at the entrance to a resident's room where
10 electronic monitoring is being conducted. The notice shall
11 state "This room is electronically monitored".

12 3. The nursing facility is responsible for installing and
13 maintaining the signage required in this section.

14 **Sec. 9. NEW SECTION. 135C.56 Obstruction of electronic
15 monitoring devices.**

16 1. A person shall not knowingly hamper, obstruct, tamper
17 with, or destroy an electronic monitoring device placed in
18 a resident's room without the permission of the resident or
19 resident representative.

20 2. A person shall not knowingly hamper, obstruct, tamper
21 with, or destroy a video or audio recording obtained through
22 the use of an electronic monitoring device in accordance with
23 this subchapter.

24 3. It is not a violation of this section for a person to
25 turn off the electronic monitoring device or block the visual
26 recording component of the electronic monitoring device at the
27 direction of the resident or resident representative, or if
28 consent has been withdrawn.

29 4. A person who violates this section is guilty of a serious
30 misdemeanor.

31 **Sec. 10. NEW SECTION. 135C.57 Dissemination of recordings.**

32 1. A person shall not access any video or audio recording
33 created through electronic monitoring under this subchapter
34 without the written consent of the resident or resident
35 representative.

1 2. Except as otherwise required by law, a recording or copy
2 of a recording created as provided in this subchapter may only
3 be disseminated for the purpose of addressing health, safety,
4 or welfare concerns of a resident.

5 3. A person accessing or disseminating a recording or copy
6 of a recording created as provided in this section in violation
7 of this section is guilty of a serious misdemeanor.

8 Sec. 11. NEW SECTION. 135C.58 **Admissibility of evidence.**

9 Subject to applicable rules of evidence and procedure, any
10 video or audio recording created through electronic monitoring
11 under this subchapter may be admitted into evidence in a civil,
12 criminal, or administrative proceeding if the contents of the
13 recording have not been edited or artificially enhanced and the
14 recording includes the date and time the events occurred.

15 Sec. 12. NEW SECTION. 135C.59 **Liability — penalties.**

16 1. A nursing facility is not civilly or criminally liable
17 for the disclosure of a recording by a resident or a person who
18 consents on behalf of a resident for any purpose not authorized
19 by this subchapter.

20 2. A nursing facility is not civilly or criminally liable
21 for a violation of a resident's right to privacy arising out
22 of any electronic monitoring conducted in accordance and in
23 compliance with this subchapter.

24 3. A nursing facility that knowingly violates this
25 subchapter shall be subject to licensee discipline.

26 Sec. 13. NEW SECTION. 135C.60 **Resident protections.**

27 1. A nursing facility shall not do any of the following:

28 *a.* Refuse to admit a potential resident or remove a resident
29 because the nursing facility disagrees with the potential
30 resident's or the resident's decisions regarding electronic
31 monitoring, whether the decision is made by a resident or a
32 resident representative acting on behalf of the resident.

33 *b.* Retaliate or discriminate against any resident for
34 consenting or refusing to consent to electronic monitoring.

35 *c.* Prevent the placement or use of an electronic monitoring

1 device by a resident who has provided the nursing facility
2 with the notification and consent form as required under this
3 subchapter.

4 2. Any contractual provision prohibiting, limiting,
5 or otherwise modifying the rights and obligations in this
6 subchapter is contrary to public policy and is void and
7 unenforceable.

8 Sec. 14. NEW SECTION. 135C.61 **Report to department.**

9 A nursing facility shall report to the department, in a
10 manner prescribed by the department, the number of electronic
11 monitoring device notification and consent forms received by
12 the nursing facility on an annual basis.

13 Sec. 15. **DIRECTIVE TO DEPARTMENT OF INSPECTIONS AND**
14 **APPEALS.** The department of inspections and appeals shall
15 prescribe by rule pursuant to chapter 17A the notification and
16 consent form described in this Act, and shall make the form
17 available on the department's internet site.

18 Sec. 16. **CODE EDITOR DIRECTIVE.** The Code editor may codify
19 the provisions of this Act as a new subchapter of chapter 135C
20 entitled "Electronic Monitoring".>

21 2. Title page, by striking lines 1 through 5 and inserting
22 <An Act relating to the requirements for authorized electronic
23 monitoring in nursing facilities, and providing penalties.>

B. MEYER of Polk