

Senate File 2229 - Introduced

SENATE FILE 2229

BY CARLIN

A BILL FOR

1 An Act relating to the requirements for authorized electronic
2 monitoring in nursing facilities, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135C.1, Code 2020, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 5A. "*Electronic monitoring*" means the
4 placement and use of an electronic monitoring device by
5 a resident in the resident's room in accordance with this
6 subchapter.

7 NEW SUBSECTION. 5B. "*Electronic monitoring device*" means a
8 camera or other device that captures, records, or broadcasts
9 audio, video, or both, that is placed in a resident's room and
10 is used to monitor the resident or activities in the room.

11 NEW SUBSECTION. 20A. "*Resident representative*" means one of
12 the following in the order of priority listed, to the extent
13 the person may reasonably be identified and located:

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

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

18 c. The resident's spouse.

19 d. An adult child of the resident or, if the resident has
20 more than one adult child, a majority of the adult children who
21 are reasonably available.

22 e. A parent of the resident, or parents if both are
23 reasonably available.

24 f. An adult sibling of the resident.

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

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

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

32 Sec. 3. NEW SECTION. 135C.50 **Consent to electronic
33 monitoring.**

34 1. Except as otherwise provided in this subchapter,
35 a resident must consent to electronic monitoring in the

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

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

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

19 b. The standard conditions or restrictions that may be
20 placed on the electronic monitoring device's use including as
21 specified in the list of standard conditions or restrictions
22 provided in section 135C.53.

23 c. The dissemination and use of any recording under section
24 135C.57 or 135C.58.

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

26 3. A resident, or resident representative when consenting
27 on behalf of the resident, may consent to electronic monitoring
28 with any conditions or restrictions of the resident's or
29 resident representative's choosing, including the list of
30 standard conditions or restrictions provided in section
31 135C.53. A resident, or resident representative when
32 consenting on behalf of the resident, may request that the
33 electronic monitoring device be turned off or the visual or
34 audio recording component of the electronic monitoring device
35 be blocked at any time.

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

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

23 6. The resident or roommate, or the resident representative
24 or roommate's resident representative if the representative is
25 consenting on behalf of the resident or roommate, may withdraw
26 consent at any time and the withdrawal of consent shall be
27 documented on the original consent form as provided under
28 section 135C.52.

29 Sec. 4. NEW SECTION. 135C.51 Refusal of roommate to
30 consent.

31 If a resident of a nursing facility who is residing in a
32 shared room, or the resident representative of such a resident
33 when acting on behalf of the resident, wants to conduct
34 electronic monitoring and another resident living in or moving
35 into the same shared room refuses to consent to the use of an

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

17 Sec. 5. NEW SECTION. 135C.52 Notice and consent submitted
18 to nursing facility.

19 1. Electronic monitoring may begin only after the resident
20 or resident representative who intends to place an electronic
21 monitoring device in the resident's room and any roommate or
22 roommate's resident representative completes a notification and
23 consent form and submits the form to the nursing facility.

24 2. Upon receipt of the required, completed notification and
25 consent form, the nursing facility shall place the original
26 form in the resident's file, and a copy of the form in any
27 roommate's file. The nursing facility shall provide a copy to
28 the resident and the resident's roommate, as applicable.

29 3. If a resident or roommate, or the resident representative
30 or roommate's resident representative if the representative
31 is consenting on behalf of the resident or roommate, chooses
32 to alter the conditions under which consent to electronic
33 monitoring is given or chooses to withdraw consent to
34 electronic monitoring, the nursing facility shall make
35 available the original notification and consent form so that

1 the original form may be updated. Upon receipt of the updated
2 original form, the nursing facility shall place the updated
3 original form in the resident's file. The nursing facility
4 shall provide a copy of the updated form to the resident and
5 the resident's roommate, as applicable.

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

14 5. If a roommate, or the roommate's resident representative
15 when withdrawing consent on behalf of the roommate, submits
16 an updated notification and consent form withdrawing consent
17 and the resident conducting electronic monitoring does not
18 remove or disable the electronic monitoring device, the nursing
19 facility shall remove the electronic monitoring device.

20 Sec. 6. NEW SECTION. 135C.53 **Notification and consent form**
21 **requirements.**

22 1. The notification and consent form completed by the
23 resident shall include, at a minimum, all of the following
24 information:

25 a. The resident's signed consent to electronic monitoring or
26 the signature of the resident representative, if applicable.

27 If a resident representative signs the consent form, the form
28 shall document all of the following:

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

31 (2) Any person present when the resident was asked.

32 (3) An acknowledgment that the resident did not
33 affirmatively object.

34 (4) The source of authority allowing the resident
35 representative to sign the notification and consent form on the

1 resident's behalf.

2 *b.* The resident's roommate's signed consent or the signature
3 of the roommate's resident representative, if applicable. If a
4 roommate's resident representative signs the consent form, the
5 form shall document all of the following:

6 (1) The date the roommate was asked if the roommate wants
7 electronic monitoring to be conducted.

8 (2) Any person present when the roommate was asked.

9 (3) An acknowledgment that the roommate did not
10 affirmatively object.

11 (4) The source of authority allowing the resident
12 representative to sign the notification and consent form on the
13 roommate's behalf.

14 *c.* The type of electronic monitoring device to be used.

15 *d.* Any installation needs, such as mounting of a device to
16 a wall or ceiling.

17 *e.* The proposed date of installation for scheduling
18 purposes.

19 *f.* A copy of any contract for maintenance of the electronic
20 monitoring device by a commercial entity.

21 *g.* A list of standard conditions or restrictions that the
22 resident or a roommate may elect to place on the use of the
23 electronic monitoring device including but not limited to all
24 of the following:

25 (1) Prohibiting audio recording.

26 (2) Prohibiting video recording.

27 (3) Prohibiting broadcasting of audio or video.

28 (4) Turning off the electronic monitoring device or
29 blocking the visual recording component of the electronic
30 monitoring device for the duration of an exam or procedure by a
31 health care professional.

32 (5) Turning off the electronic monitoring device or
33 blocking the visual recording component of the electronic
34 monitoring device while dressing or bathing is performed.

35 (6) Turning off the electronic monitoring device for

1 the duration of a visit with a spiritual adviser, ombudsman,
2 attorney, financial planner, intimate partner, or other
3 visitor.

4 *h.* Any other condition or restriction elected by the
5 resident or roommate on the use of an electronic monitoring
6 device.

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

9 *j.* A signature box to document if the resident or roommate
10 withdraws consent.

11 2. A nursing facility shall make the notification and
12 consent form available to the residents and inform residents of
13 the option to conduct electronic monitoring of the resident's
14 room.

15 **Sec. 7. NEW SECTION. 135C.54 Cost and installation.**

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

19 2. If a resident chooses to place an electronic monitoring
20 device that uses internet technology for visual or audio
21 monitoring, the resident may be responsible for contracting
22 with an internet service provider.

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

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

30 5. A nursing facility shall not charge a resident a fee
31 for the costs of electricity used by the electronic monitoring
32 device.

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

34 1. A nursing facility shall post a sign at each nursing
35 facility entrance accessible to visitors that states

1 "Electronic monitoring devices may be present in the rooms of
2 residents to record persons and activities".

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

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

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

11 1. A person shall not knowingly hamper, obstruct, tamper
12 with, or destroy an electronic monitoring device placed in
13 a resident's room without the permission of the resident or
14 resident representative.

15 2. A person shall not knowingly hamper, obstruct, tamper
16 with, or destroy a video or audio recording obtained through
17 the use of an electronic monitoring device in accordance with
18 this subchapter.

19 3. It is not a violation of this section for a person to
20 turn off the electronic monitoring device or block the visual
21 recording component of the electronic monitoring device at the
22 direction of the resident or resident representative, or if
23 consent has been withdrawn.

24 4. A person who violates this section is guilty of a serious
25 misdemeanor.

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

27 1. A person shall not access any video or audio recording
28 created through electronic monitoring under this subchapter
29 without the written consent of the resident or resident
30 representative.

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

35 3. A person accessing or disseminating a recording or copy

1 of a recording created as provided in this section in violation
2 of this section is guilty of a serious misdemeanor.

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

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

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

11 1. A nursing facility is not civilly or criminally liable
12 for the disclosure of a recording by a resident or a person who
13 consents on behalf of a resident for any purpose not authorized
14 by this subchapter.

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

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

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

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

23 a. Refuse to admit a potential resident or remove a resident
24 because the nursing facility disagrees with the potential
25 resident's or the resident's decisions regarding electronic
26 monitoring, whether the decision is made by a resident or a
27 resident representative acting on behalf of the resident.

28 b. Retaliate or discriminate against any resident for
29 consenting or refusing to consent to electronic monitoring.

30 c. Prevent the placement or use of an electronic monitoring
31 device by a resident who has provided the nursing facility
32 with the notification and consent form as required under this
33 subchapter.

34 2. Any contractual provision prohibiting, limiting,
35 or otherwise modifying the rights and obligations in this

1 subchapter is contrary to public policy and is void and
2 unenforceable.

3 Sec. 14. NEW SECTION. 135C.61 Report to department.

4 A nursing facility shall report, in a manner prescribed by
5 the department, the number of electronic monitoring device
6 notification and consent forms received by the nursing facility
7 on an annual basis.

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

13 Sec. 16. CODE EDITOR DIRECTIVE. The Code editor may codify
14 the provisions of this Act as a new subchapter of chapter 135C
15 entitled "Electronic Monitoring".

16 EXPLANATION

17 The inclusion of this explanation does not constitute agreement with
18 the explanation's substance by the members of the general assembly.

19 This bill provides for authorized electronic monitoring in
20 nursing facilities.

21 The bill provides that a nursing facility resident or a
22 resident representative may conduct electronic monitoring
23 of the resident's room through the use of electronic
24 monitoring devices placed in the resident's room pursuant
25 to the bill. The bill specifies the consents that must be
26 obtained for a resident to conduct electronic monitoring
27 in the resident's room, including from any roommate; the
28 process to be followed if a roommate refuses to consent; the
29 provision of notice to the nursing facility; the notification
30 and consent form requirements; the responsibility for the
31 cost and installation relating to the electronic monitoring;
32 penalties for obstruction of electronic monitoring devices;
33 the dissemination of recordings created through electronic
34 monitoring; the admissibility of evidence created through
35 electronic monitoring; liability and penalties for violations

1 of the bill; resident protections; and reporting requirements.
2 The bill also directs the department of inspections and appeals
3 to prescribe the notification and consent form described in
4 the bill and to make the form available on the department's
5 internet site.