

Senate File 2057 - Introduced

SENATE FILE 2057

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. NEW SECTION. 135C.49 Definitions.

2 As used in this subchapter, unless the context otherwise
3 requires:

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

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

11 3. *"Resident"* means an individual admitted to a nursing
12 facility in a manner prescribed in section 135C.23.

13 4. *"Resident representative"* means one of the following in
14 the order of priority listed, to the extent the person may
15 reasonably be identified and located:

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

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

20 c. The resident's spouse.

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

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

26 f. An adult sibling of the resident.

27 Sec. 2. NEW SECTION. 135C.50 Electronic monitoring.

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

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

34 Sec. 3. NEW SECTION. 135C.51 Consent to electronic
35 monitoring.

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

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

20 *a.* The type of electronic monitoring device to be used.

21 *b.* The standard conditions or restrictions that may be
22 placed on the electronic monitoring device's use including as
23 specified in the list of standard conditions or restrictions
24 contained in the notification and consent form completed by the
25 resident as provided in section 135C.54.

26 *c.* The dissemination and use of any recording as provided
27 under section 135C.58 or 135C.59.

28 *d.* The resident's ability to decline all recordings.

29 3. A resident, or resident representative when consenting
30 on behalf of the resident, may consent to electronic monitoring
31 with any conditions or restrictions of the resident's or
32 resident representative's choosing, including the list
33 of standard conditions or restrictions contained in the
34 notification and consent form completed by the resident
35 as provided in section 135C.54. A resident, or resident

1 representative when consenting on behalf of the resident, may
2 request that the electronic monitoring device be turned off
3 or the visual or audio recording component of the electronic
4 monitoring device be blocked at any time.

5 4. Prior to implementing electronic monitoring, a resident,
6 or resident representative when acting on behalf of the
7 resident, shall obtain the written consent on the notification
8 and consent form of any other resident who is a roommate
9 residing in the shared room. A roommate's or roommate's
10 resident representative's written consent shall comply with
11 the requirements of this section. Consent by a roommate or
12 a roommate's resident representative under this subsection
13 authorizes the resident's use of any recording obtained under
14 this section as provided under sections 135C.58 and 135C.59.

15 5. Any resident conducting electronic monitoring shall
16 immediately remove or disable an electronic monitoring device
17 prior to a new resident who will be a roommate moving into
18 a shared room, unless the resident conducting electronic
19 monitoring obtains the new roommate's or new roommate's
20 resident representative's written consent as provided under
21 this section prior to the new roommate moving into the shared
22 room. Upon obtaining the new roommate's or new roommate's
23 resident representative's signed notification and consent form
24 and submitting the form to the nursing facility as required
25 under section 135C.53, the resident may resume electronic
26 monitoring.

27 6. The resident or roommate, or the resident representative
28 or roommate's resident representative if the representative is
29 consenting on behalf of the resident or roommate, may withdraw
30 consent at any time and the withdrawal of consent shall be
31 documented on the original consent form as provided under
32 section 135C.53.

33 Sec. 4. NEW SECTION. 135C.52 Refusal of roommate to
34 consent.

35 If a resident of a nursing facility who is residing in a

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

21 **Sec. 5. NEW SECTION. 135C.53 Notice and consent form**
22 **submitted to nursing facility.**

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

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

33 3. If a resident or roommate, or the resident representative
34 or roommate's resident representative if the representative
35 is consenting on behalf of the resident or roommate, chooses

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

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

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

24 Sec. 6. NEW SECTION. 135C.54 Notification and consent form
25 requirements.

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

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

31 If a resident representative signs the consent form, the form
32 shall document all of the following:

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

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

1 (3) An acknowledgment that the resident did not
2 affirmatively object.

3 (4) The source of authority allowing the resident
4 representative to sign the notification and consent form on the
5 resident's behalf.

6 *b.* The resident's roommate's signed consent or the signature
7 of the roommate's resident representative, if applicable. If a
8 roommate's resident representative signs the consent form, the
9 form shall document all of the following:

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

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

13 (3) An acknowledgment that the roommate did not
14 affirmatively object.

15 (4) The source of authority allowing the resident
16 representative to sign the notification and consent form on the
17 roommate's behalf.

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

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

21 *e.* The proposed date of installation for scheduling
22 purposes.

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

25 *g.* A list of standard conditions or restrictions that the
26 resident or a roommate may elect to place on the use of the
27 electronic monitoring device including but not limited to all
28 of the following:

29 (1) Prohibiting audio recording.

30 (2) Prohibiting video recording.

31 (3) Prohibiting broadcasting of audio or video.

32 (4) Turning off the electronic monitoring device or
33 blocking the visual recording component of the electronic
34 monitoring device for the duration of an exam or procedure by a
35 health care professional.

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

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

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

11 i. A statement of the circumstances under which a recording
12 may be disseminated under section 135C.58.

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

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

19 Sec. 7. NEW SECTION. 135C.55 Cost and installation.

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

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

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

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

34 5. A nursing facility shall not charge a resident a fee
35 for the costs of electricity used by the electronic monitoring

1 device.

2 Sec. 8. NEW SECTION. 135C.56 Notice to visitors.

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

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

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

13 Sec. 9. NEW SECTION. 135C.57 Obstruction of electronic
14 monitoring devices.

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

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

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

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

30 Sec. 10. NEW SECTION. 135C.58 Dissemination of recordings.

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

35 2. Except as otherwise required by law, a recording or copy

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

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

7 Sec. 11. NEW SECTION. 135C.59 **Admissibility of evidence.**

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

14 Sec. 12. NEW SECTION. 135C.60 **Liability — penalties.**

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

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

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

25 Sec. 13. NEW SECTION. 135C.61 **Resident protections.**

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

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

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

34 c. Prevent the placement or use of an electronic monitoring
35 device by a resident who has provided the nursing facility

1 with the notification and consent form as required under this
2 subchapter.

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

7 Sec. 14. NEW SECTION. 135C.62 Report to department.

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

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

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

20 EXPLANATION

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

23 This bill provides for authorized electronic monitoring in
24 nursing facilities.

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

1 penalties for obstruction of electronic monitoring devices;
2 the dissemination of recordings created through electronic
3 monitoring; the admissibility of evidence created through
4 electronic monitoring; liability and penalties for violations
5 of the bill; resident protections; and reporting requirements.
6 The bill also directs the department of inspections and appeals
7 to prescribe the notification and consent form described in
8 the bill and to make the form available on the department's
9 internet site.