

House File 2317 - Introduced

HOUSE FILE 2317
BY COMMITTEE ON HEALTH AND
HUMAN SERVICES

(SUCCESSOR TO HF 537)

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
5 of an electronic monitoring device by a resident or resident
6 representative in the resident's room in accordance with this
7 subchapter.

8 2. "*Electronic monitoring device*" means a video camera that
9 livestream broadcasts video only that is placed in a resident's
10 room and is used to monitor the resident or activities in the
11 room. "*Electronic monitoring device*" does not include video
12 phone calls or video conferencing where a resident either
13 initiates or joins a call or conference.

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

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

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

21 b. The attorney in fact designated to make treatment
22 decisions for the resident in accordance with chapter 144B.

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

24 1. A resident, or a resident representative when acting
25 on behalf of a resident, may conduct electronic monitoring
26 of the resident's room through the use of an electronic
27 monitoring device placed in the resident's room pursuant to
28 this subchapter.

29 2. A nursing facility or resident of the nursing facility
30 shall not engage in electronic monitoring or the use of
31 electronic monitoring devices in a resident's room without the
32 written permission of the nursing facility and the written
33 consent of the resident or resident representative when
34 consenting on behalf of a resident.

35 3. Nothing in this section precludes the use of electronic

1 monitoring otherwise allowed by law.

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

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

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

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

24 b. The standard conditions or restrictions that may be
25 placed on the electronic monitoring device's use including as
26 specified in the list of standard conditions or restrictions
27 contained in the notification and consent form completed by the
28 resident as provided in section 135C.55.

29 c. The resident's ability to decline all electronic
30 monitoring.

31 3. A resident, or resident representative when consenting
32 on behalf of the resident, shall consent to electronic
33 monitoring with the standard conditions or restrictions
34 contained in the notification and consent form completed by the
35 resident as provided in section 135C.55.

1 4. A nursing facility employee may be present to witness
2 the completion of the written notification and consent form
3 and to answer any questions relating to conducting electronic
4 monitoring in a resident's room.

5 Sec. 4. NEW SECTION. 135C.52 Consent to electronic
6 monitoring — shared room.

7 1. If a resident resides in a shared room, all of the
8 following shall apply:

9 a. The resident, or resident representative, as applicable,
10 shall request and obtain the written consent on the
11 notification and consent form of any existing roommate residing
12 in the shared room, prior to initiating electronic monitoring
13 in the resident's room.

14 b. The resident, or resident representative, as applicable,
15 who is currently conducting electronic monitoring in the
16 resident's room, shall immediately remove or disable an
17 electronic monitoring device prior to a new roommate moving
18 into a shared room, and shall not resume electronic monitoring
19 unless the resident or resident representative requests
20 and obtains written consent on the notification and consent
21 form, of the new roommate or the new roommate's resident
22 representative.

23 2. a. An existing or new roommate, or the roommate's
24 resident representative, as applicable, shall have thirty
25 calendar days from receipt of the request for consent to
26 electronic monitoring to complete the notification and consent
27 form.

28 b. Failure of an existing or new roommate, or the roommate's
29 resident representative, to complete the notification and
30 consent form within the thirty-calendar-day period, shall
31 be considered an affirmative objection to the initiating
32 or resuming of electronic monitoring, and the resident
33 or resident's representative shall not initiate or resume
34 electronic monitoring in the resident's room.

35 3. After obtaining an existing or new roommate's, or the

1 roommate's resident representative's signed notification
2 and consent form and submitting the form to the nursing
3 facility as required under section 135C.54, the resident or
4 resident representative may initiate or resume electronic
5 monitoring of the resident's room only after the expiration of
6 a thirty-calendar-day waiting period commencing on the date
7 the signed notification and consent form is submitted to the
8 nursing facility.

9 4. The resident, the existing or new roommate, the
10 resident's resident representative, or the roommate's resident
11 representative, as applicable, may withdraw consent to
12 electronic monitoring at any time and the withdrawal of consent
13 shall be documented on the original notification and consent
14 form.

15 Sec. 5. NEW SECTION. 135C.53 Refusal of roommate to consent
16 — accommodations.

17 1. If a resident is residing in a shared room, and the
18 resident or resident representative, when acting on behalf of
19 the resident, wants to initiate or resume electronic monitoring
20 but an existing or new roommate refuses to consent to the
21 electronic monitoring as required under section 135C.52, the
22 nursing facility shall make a reasonable attempt to accommodate
23 the resident or resident representative who wants to conduct
24 electronic monitoring.

25 2. A nursing facility has met the requirement to make
26 a reasonable attempt to accommodate a resident or resident
27 representative who wants to initiate or resume electronic
28 monitoring under subsection 1 when, upon notification of the
29 nursing facility by a resident or resident representative
30 that an existing or new roommate has refused to consent to
31 electronic monitoring in the shared room, the nursing facility
32 offers to move the resident or roommate to another shared room
33 that is available at the time of the request that accommodates
34 the resident or roommate.

35 3. If a resident chooses to reside in a private room in

1 order to accommodate the use of an electronic monitoring
2 device, the resident shall be subject to the private room rate.

3 4. If a nursing facility is unable to accommodate a
4 resident's request to conduct electronic monitoring under this
5 section, the nursing facility shall reevaluate the request
6 periodically until the request is fulfilled.

7 **Sec. 6. NEW SECTION. 135C.54 Notice and consent form**
8 **submitted to nursing facility.**

9 1. Electronic monitoring of a resident's room may be
10 conducted only after all of the following conditions are met:

11 a. (1) If the resident resides in a private room, the
12 resident, or the resident representative when acting on behalf
13 of the resident, completes a notification and consent form and
14 submits the signed and completed form to the nursing facility.

15 (2) If the resident resides in a shared room, the resident
16 or the resident representative when acting on behalf of
17 the resident, and any roommate or the roommate's resident
18 representative, completes notification and consent forms and
19 submit the signed and completed forms to the nursing facility.

20 b. Any required waiting period prior to the initiating or
21 resuming of electronic monitoring has expired.

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

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

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

7 4. If a new roommate, or the new roommate's resident
8 representative when consenting on behalf of the new roommate,
9 does not consent to electronic monitoring and submit a
10 completed notification and consent form to the nursing
11 facility, and the resident or resident representative
12 conducting the electronic monitoring does not remove or disable
13 an existing electronic monitoring device, the nursing facility
14 shall provide the resident or the resident representative, as
15 applicable, a twenty-four-hour notice to remove or disable the
16 electronic monitoring device. If the device is not removed
17 or disabled within twenty-four hours of notification to the
18 resident or resident representative, the nursing facility may
19 disable or remove the electronic monitoring device.

20 5. If an existing roommate, or the existing roommate's
21 resident representative when withdrawing consent on behalf of
22 the existing roommate, submits an updated notification and
23 consent form withdrawing consent and the resident or resident
24 representative conducting electronic monitoring does not remove
25 or disable the electronic monitoring device, the nursing
26 facility shall provide the resident or resident representative
27 a twenty-four-hour notice to remove or disable the electronic
28 monitoring device. If the device is not removed or disabled
29 within twenty-four hours of notification to the resident or
30 resident representative, the nursing facility may disable or
31 remove the electronic monitoring device.

32 **Sec. 7. NEW SECTION. 135C.55 Notification and consent form**
33 **requirements.**

34 1. The notification and consent form completed by the
35 resident shall include, at a minimum, all of the following

1 information:

2 *a.* The resident's signed consent to electronic monitoring or
3 the signature of the resident representative, if applicable.

4 If a resident representative signs the notification and consent
5 form, the form shall document all of the following:

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

8 (2) The name of any person present when the resident was
9 asked.

10 (3) An acknowledgment that the resident did not
11 affirmatively object.

12 (4) The source of authority allowing the resident
13 representative to sign the notification and consent form on the
14 resident's behalf, including any court order, as applicable.

15 *b.* The resident's roommate's signed consent or the signature
16 of the roommate's resident representative, if applicable. If a
17 roommate's resident representative signs the notification and
18 consent form, the form shall document all of the following:

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

21 (2) The name of any person present when the roommate was
22 asked.

23 (3) An acknowledgment that the roommate did not
24 affirmatively object.

25 (4) The source of authority allowing the resident
26 representative to sign the notification and consent form on the
27 roommate's behalf, including any court order, as applicable.

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

29 *d.* Any installation needs, such as mounting a device to a
30 wall or ceiling, and the costs associated with installation
31 and use, which are to be paid by the resident or the resident
32 representative, and the resident's liability for potential
33 damage and repairs due to installation.

34 *e.* Fourteen days' notice of the proposed date of
35 installation for scheduling purposes.

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

3 *g.* A list of standard conditions or restrictions for the use
4 of the electronic monitoring device including but not limited
5 to all of the following:

6 (1) Prohibiting audio recording.

7 (2) Prohibiting video recording.

8 (3) Turning off the electronic monitoring device or
9 blocking the lens of the electronic monitoring device for the
10 duration of an exam or procedure by a health care professional.

11 (4) Turning off the electronic monitoring device or
12 blocking the lens of the electronic monitoring device while
13 dressing or bathing is performed.

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

18 (6) Prohibiting drop-in video access.

19 (7) Requiring visual verification when the electronic
20 monitoring device is in use.

21 (8) Requiring conspicuously visible placement of the
22 electronic monitoring device inside the resident's room.

23 (9) Prohibiting the electronic monitoring device from being
24 placed outside the resident's living quarters.

25 *h.* A signature box to document if the resident or roommate
26 withdraws consent.

27 2. A nursing facility shall make the notification and
28 consent form available to residents and inform residents of the
29 option to conduct electronic monitoring of the resident's room.

30 Sec. 8. NEW SECTION. 135C.56 Cost and installation.

31 1. A resident who chooses to conduct electronic monitoring
32 shall do so at the resident's own expense, including payment
33 of any purchase, installation, maintenance, removal costs, and
34 costs for returning the resident's room to preinstallation
35 condition.

1 2. If a resident chooses to place an electronic monitoring
2 device that uses internet technology for visual monitoring, the
3 resident shall be responsible for contracting with an internet
4 service provider.

5 3. The nursing facility shall make a reasonable attempt to
6 accommodate the resident's installation needs.

7 4. All electronic monitoring device installations and
8 supporting services shall comply with all applicable building
9 codes.

10 5. A nursing facility shall not charge a resident a fee
11 for the costs of electricity used by the electronic monitoring
12 device.

13 **Sec. 9. NEW SECTION. 135C.57 Notice to visitors.**

14 1. If electronic monitoring is being conducted, a nursing
15 facility shall post a sign at each nursing facility entrance
16 accessible to visitors that states "Electronic monitoring
17 devices may be present in the rooms of residents to observe
18 persons and activities".

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

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

25 **Sec. 10. NEW SECTION. 135C.58 Obstruction of electronic
26 monitoring devices.**

27 A person shall not knowingly hamper, obstruct, tamper
28 with, or destroy an electronic monitoring device placed in
29 a resident's room without the permission of the resident or
30 resident representative, as applicable.

31 **Sec. 11. NEW SECTION. 135C.59 Immunity from liability —
32 licensee discipline — inadmissibility of recordings.**

33 1. A nursing facility is not civilly or criminally liable
34 for the disclosure of an unlawful recording captured by an
35 electronic monitoring device.

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

5 3. The resident and resident representative, as applicable,
6 are responsible for complying with local, state, and federal
7 privacy laws and for firewall protections to prevent images
8 that may violate obscenity laws from being inadvertently shown
9 on the internet via the electronic monitoring device.

10 4. A nursing facility that knowingly violates this
11 subchapter shall be subject to licensee discipline.

12 5. If a resident fails to comply with the nursing facility
13 policies and residency agreement relating to the use of an
14 electronic monitoring device, nursing facility staff may
15 report the failure to the office of long-term care ombudsman
16 and law enforcement, as applicable. Continued failure by a
17 resident to comply with such nursing facility policies and
18 residency agreement may constitute grounds for termination of a
19 resident's residency agreement.

20 6. Audio or video recordings obtained in violation of this
21 chapter are inadmissible in a regulatory or other disciplinary
22 proceeding.

23 Sec. 12. NEW SECTION. 135C.60 Resident protections.

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

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

30 b. Retaliate or discriminate against any resident for
31 consenting or refusing to consent to electronic monitoring.

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

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

5 Sec. 13. NEW SECTION. 135C.61 Report to the department.

6 A nursing facility shall report to the department, during
7 the nursing facility's recertification survey, the number of
8 electronic monitoring device notification and consent forms
9 received by the nursing facility.

10 Sec. 14. Section 633.635, subsection 3, Code 2024, is
11 amended by adding the following new paragraph:

12 NEW PARAGRAPH. d. Consenting to electronic monitoring
13 conducted in accordance with chapter 135C.

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

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

22 EXPLANATION

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

25 This bill provides for authorized electronic monitoring in
26 nursing facilities.

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

1 consent form requirements; the responsibility for costs and
2 installation relating to the electronic monitoring; notice
3 to visitors; prohibited obstruction of electronic monitoring
4 devices; immunity from liability, licensee discipline, and
5 inadmissibility of recordings related to violations of the
6 bill; resident protections; and reporting requirements. The
7 bill also directs the department of inspections and appeals
8 to prescribe the notification and consent form described in
9 the bill and to make the form available on the department's
10 internet site.