

Senate File 2073 - Introduced

SENATE FILE 2073

BY DE WITT

A BILL FOR

1 An Act relating to electronic monitoring in long-term care
2 facilities, and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 135S.1 Definitions.

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

4 1. "*Assisted living program*" means the same as defined in
5 section 231C.2.

6 2. "*Department*" means the department of inspections,
7 appeals, and licensing.

8 3. "*Electronic monitoring*" means the placement of one or
9 more electronic monitoring devices in the room of a long-term
10 care facility resident.

11 4. "*Electronic monitoring device*" or "*device*" means a
12 surveillance instrument used to broadcast or record activity
13 or sound occurring in a room, including a video surveillance
14 camera or an audio device designed to acquire communications or
15 other sounds occurring in the room, but not to intercept wire
16 or electronic communications.

17 5. "*Health care facility*" means a health care facility as
18 defined in section 135C.1.

19 6. "*Legal representative*" means, in order of priority,
20 an attorney in fact under a durable power of attorney for
21 health care pursuant to chapter 144B or, if no durable power
22 of attorney for health care has been executed pursuant to
23 chapter 144B or if the attorney in fact is unavailable, a legal
24 guardian appointed pursuant to chapter 232D or 633.

25 7. "*Long-term care facility*" means a health care facility
26 or an assisted living program.

27 8. "*Resident*" means the resident of a health care facility
28 or a tenant of an assisted living program.

29 9. "*Resident's room*" means a room in a long-term care
30 facility that is used as a resident's private living quarters.

31 10. "*Roommate*" means, in a multiresident room, any resident
32 who uses the room as the resident's private living quarters.

33 Sec. 2. NEW SECTION. 135S.2 Long-term care facility —
34 electronic monitoring — penalties.

35 1. A resident may conduct electronic monitoring in the

1 resident's room subject to the requirements of this section.

2 2. A resident, or the resident's legal representative,
3 who wishes to conduct electronic monitoring, shall notify the
4 long-term care facility on a form prescribed by the department.
5 Such form shall be maintained in the resident's file at the
6 long-term care facility and shall require the resident, or the
7 resident's legal representative, to do all of the following:

8 a. Release the long-term care facility from any civil
9 liability for a violation of the resident's privacy rights in
10 connection with the use of the electronic monitoring device.

11 b. If the electronic monitoring device is a video
12 surveillance camera, choose whether the camera will always be
13 unobstructed, or will be obstructed in specified circumstances
14 to protect the dignity of a resident.

15 c. If the resident resides in a multiresident room, obtain
16 the consent of any roommate on a form prescribed by the
17 department. The long-term care facility shall provide a copy
18 of the completed form to the resident, any roommate, and the
19 department.

20 3. A long-term care facility shall make reasonable physical
21 accommodations for electronic monitoring, including all of the
22 following:

23 a. Providing a reasonably secure place to mount the
24 electronic monitoring device.

25 b. Providing access to appropriate power sources for the
26 electronic monitoring device.

27 c. Making reasonable accommodations if a resident in a
28 multiresident room wishes to conduct electronic monitoring
29 pursuant to this section and any roommate does not consent
30 to the monitoring, including offering to move the resident
31 who wishes to conduct electronic monitoring to another
32 multiresident room that is available or becomes available, and
33 in which any roommate will consent to electronic monitoring.

34 d. Making reasonable accommodations before moving a
35 prospective roommate who does not consent to electronic

1 monitoring into a multiresident room with a resident who wants
2 to conduct electronic monitoring.

3 4. A resident who is actively conducting electronic
4 monitoring shall remove or disable the electronic monitoring
5 device and obtain consent from any new roommate before the
6 resident resumes electronic monitoring. If a new roommate
7 does not consent to electronic monitoring and the resident
8 conducting the electronic monitoring does not remove or disable
9 the electronic monitoring device, the long-term care facility
10 may remove or disable the device and shall return the device to
11 the resident or the resident's legal representative.

12 5. Consent may be withdrawn by the resident, the resident's
13 legal representative, or any roommate at any time. The
14 withdrawal of consent shall be documented in the resident's and
15 any roommate's record and a copy of the withdrawal of consent
16 shall be provided to the department. If a roommate withdraws
17 consent and the resident conducting the electronic monitoring
18 does not remove or disable the electronic monitoring device,
19 the long-term care facility may remove or disable the device
20 and shall return the device to the resident or the resident's
21 legal representative.

22 6. A resident, or the resident's legal representative,
23 shall pay all costs associated with installing and maintaining
24 an electronic monitoring device authorized under this section.

25 7. A long-term care facility may require the resident, or
26 the resident's legal representative, to place a sign near the
27 entrance of the resident's room that states the room contains
28 an electronic monitoring device.

29 8. If electronic monitoring is conducted, the long-term
30 care facility may require the resident, or the resident's legal
31 representative, to conduct the electronic monitoring in plain
32 view.

33 9. Upon or before admission to a long-term care facility, a
34 prospective resident shall complete and sign a form prescribed
35 by the department, which, after the resident's admission, shall

1 be maintained in the resident's file at the long-term care
2 facility. The form shall state all of the following:

3 a. That a person who places an electronic monitoring device
4 in a resident's room in violation of this section, or discloses
5 a recording made by such device, may be civilly liable for any
6 unlawful violation of the privacy rights of another person.

7 b. That a resident, or the resident's legal representative,
8 is entitled to conduct electronic monitoring in compliance with
9 this section.

10 c. The basic procedures required to obtain authorization for
11 electronic monitoring in a resident's room.

12 d. Who may request electronic monitoring.

13 e. Who may consent to electronic monitoring.

14 f. Restrictions that a resident may elect to place on
15 electronic monitoring conducted in the resident's room,
16 including but not limited to any of the following:

17 (1) Prohibiting video recording.

18 (2) Prohibiting audio recording.

19 (3) Turning off the device or blocking the visual recording
20 component of the device during an examination or procedure
21 administered by a health care professional.

22 (4) Turning off the device or blocking the visual recording
23 component of the device while the resident is dressing or
24 bathing.

25 (5) Turning off the device or blocking the visual recording
26 component of the device during a resident's visit with a
27 spiritual adviser, ombudsman, attorney, financial planner,
28 intimate partner, or other visitor.

29 g. Any other information related to electronic monitoring
30 that the department deems necessary or appropriate to include
31 on such form.

32 10. A court or state agency shall not admit into evidence or
33 consider during any proceeding any tape or recording created
34 using an electronic monitoring device in a resident's room in a
35 long-term care facility, whether or not authorized under this

1 section, or take or authorize any action based on such tape or
2 recording, unless both of the following apply:

3 *a.* If the tape or recording is a video tape or recording,
4 the tape or recording shows the time and date when the events
5 shown on the tape or recording occurred.

6 *b.* The contents of the tape or recording have not been
7 edited or artificially enhanced.

8 11. *a.* A person shall not knowingly hinder, obstruct,
9 tamper with, or destroy, without the consent of the resident
10 or the resident's legal representative who authorized the
11 electronic monitoring, an electronic monitoring device
12 installed and maintained in a resident's room in accordance
13 with this section.

14 *b.* A person shall not knowingly hinder, obstruct, tamper
15 with, or destroy, without the consent of the resident or the
16 resident's legal representative who authorized the electronic
17 monitoring, a video or audio recording obtained in accordance
18 with this section.

19 12. A long-term care facility shall not refuse to admit
20 a prospective resident, discharge a resident, or otherwise
21 retaliate against a resident based on the prospective resident
22 or resident consenting to or conducting electronic monitoring.

23 13. The department may adopt rules pursuant to chapter 17A
24 to administer this section.

25

EXPLANATION

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

28 This bill relates to electronic monitoring in long-term care
29 facilities.

30 The bill defines "electronic monitoring", "electronic
31 monitoring device", "legal representative", and "long-term care
32 facility".

33 Under the bill, a resident may conduct electronic monitoring
34 in the resident's room subject to the requirements of the bill.
35 The requirements include notifying the long-term care facility

1 (facility) prior to utilizing electronic monitoring; releasing
2 the facility from any civil liability for a violation of a
3 resident's privacy rights in connection with the use of the
4 electronic monitoring device (device); choosing whether the
5 camera of the device will always be unobstructed or will be
6 obstructed in specified circumstances to protect the dignity
7 of a resident; obtaining consent of any roommate; reasonable
8 physical accommodations by the facility for electronic
9 monitoring and accommodations for residents and roommates of
10 a multiresident room; providing for withdrawal of consent to
11 electronic monitoring at any time; responsibility for payment
12 of all costs associated with installing and maintaining the
13 device; signage; and consent and other forms to be completed by
14 a resident, roommate, or legal representative.

15 The bill prohibits a court or state agency from admitting
16 into evidence or considering during any proceeding any tape or
17 recording created using a device in a resident's room, whether
18 or not authorized under the bill, or from taking or authorizing
19 any action based on such tape or recording, unless the tape or
20 recording shows the time and date when the events shown on the
21 tape or recording occurred, and the contents of the tape or
22 recording have not been edited or artificially enhanced.

23 The bill prohibits a person from knowingly hindering,
24 obstructing, tampering with, or destroying, without the consent
25 of the resident or the resident's legal representative, a
26 device installed and maintained in a resident's room or a video
27 or audio recording obtained in accordance with the bill.

28 The bill prohibits a facility from refusing to admit a
29 prospective resident, discharging a resident, or otherwise
30 retaliating against a resident based on the prospective
31 resident or resident consenting to or conducting electronic
32 monitoring.

33 The bill authorizes the department of inspections, appeals,
34 and licensing to adopt administrative rules to administer the
35 bill.