

House File 664 - Introduced

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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:

unofficial

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 room
6 in accordance with this subchapter.

7 2. "*Electronic monitoring device*" means a camera or other
8 device that captures, records, or broadcasts audio, video, or
9 both, that is placed in a resident's room and is used to monitor
10 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, a
2 resident must consent to electronic monitoring in the resident's
3 room in writing on a notification and consent form prescribed
4 by the department. If the resident has not affirmatively
5 objected to electronic monitoring and the resident's medical
6 professional determines that the resident lacks the ability
7 to understand and appreciate the nature and consequences of
8 electronic monitoring, the resident representative may consent
9 on behalf of the resident. For purposes of this subsection,
10 a resident affirmatively objects when the resident orally,
11 visually, or through the use of auxiliary aids or services
12 declines electronic monitoring. The resident's response shall be
13 documented on the notification and consent form.

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

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

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

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

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

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

1 monitoring device be turned off or the visual or audio recording
2 component of the electronic monitoring device be blocked at any
3 time.

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

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

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

31 Sec. 4. NEW SECTION. **135C.52 Refusal of roommate to**
32 **consent.**

33 If a resident of a nursing facility who is residing in a
34 shared room, or the resident representative of such a resident
35 when acting on behalf of the resident, wants to conduct

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

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

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

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

31 3. If a resident or roommate, or the resident representative
32 or roommate's resident representative if the representative
33 is consenting on behalf of the resident or roommate, chooses
34 to alter the conditions under which consent to electronic
35 monitoring is given or chooses to withdraw consent to electronic

1 monitoring, the nursing facility shall make available the
2 original notification and consent form so that the original form
3 may be updated. Upon receipt of the updated original form, the
4 nursing facility shall place the updated original form in the
5 resident's file. The nursing facility shall provide a copy of
6 the updated form to the resident and the resident's roommate, as
7 applicable.

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

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

21 **Sec. 6. NEW SECTION. 135C.54 Notification and consent form**
22 **requirements.**

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

26 a. The resident's signed consent to electronic monitoring or
27 the signature of the resident representative, if applicable. If
28 a resident representative signs the consent form, the form shall
29 document all of the following:

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

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

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

35 (4) The source of authority allowing the resident

1 representative to sign the notification and consent form on the
2 resident's behalf.

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

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

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

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

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

15 c. The type of electronic monitoring device to be used.

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

18 e. The proposed date of installation for scheduling 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 of
24 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 blocking
29 the visual recording component of the electronic monitoring
30 device for the duration of an exam or procedure by a health care
31 professional.

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

35 (6) Turning off the electronic monitoring device for the

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

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

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

7 j. A signature box to document if the resident or roommate
8 withdraws consent.

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

12 Sec. 7. NEW SECTION. **135C.55 Cost and installation.**

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

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

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

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

27 5. A nursing facility shall not charge a resident a fee
28 for the costs of electricity used by the electronic monitoring
29 device.

30 Sec. 8. NEW SECTION. **135C.56 Notice to visitors.**

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

35 2. A nursing facility shall post a sign clearly and

1 conspicuously at the entrance to a resident's room where
2 electronic monitoring is being conducted. The notice shall state
3 "This room is electronically monitored".

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

6 Sec. 9. NEW SECTION. **135C.57 Obstruction of electronic**
7 **monitoring devices.**

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

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

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

21 4. A person who violates this section is guilty of a serious
22 misdemeanor.

23 Sec. 10. NEW SECTION. **135C.58 Dissemination of**
24 **recordings.**

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

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

33 3. A person accessing or disseminating a recording or copy of
34 a recording created as provided in this section in violation of
35 this section is guilty of a serious misdemeanor.

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

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

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

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

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

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

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

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

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

26 b. Retaliate or discriminate against any resident for
27 consenting or refusing to consent to electronic monitoring.

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

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

35 Sec. 14. NEW SECTION. **135C.62 Report to department.**

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

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

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

13 EXPLANATION

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

16 This bill provides for authorized electronic monitoring in
17 nursing facilities.

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

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1 available on the department's internet site.

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