

1 INTERIM STUDY PROPOSAL 2015-106

2 State of Arkansas

As Engrossed: H3/12/15

3 90th General Assembly

A Bill

4 Regular Session, 2015

HOUSE BILL 1932

5
6 By: Representative Leding

7 Filed with: House Committee on Aging, Children and Youth, Legislative and Military Affairs

8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9
10 AN ACT TO ESTABLISH AUTHORIZATION FOR AND USE OF A
11 MONITORING DEVICE IN A LONG TERM CARE FACILITY; TO
12 PROVIDE FOR WAIVERS; TO PROVIDE FOR ENFORCEMENT AND
13 PENALTIES; AND FOR OTHER PURPOSES.
14

Subtitle

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17 TO ESTABLISH AUTHORIZATION FOR AND USE OF
18 A MONITORING DEVICE IN A LONG TERM CARE
19 FACILITY; TO PROVIDE FOR WAIVERS; AND TO
20 PROVIDE FOR ENFORCEMENT AND PENALTIES.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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25 *SECTION 1. Arkansas Code Title 20, Chapter 10 is amended to add an*
26 *additional subchapter to read as follows:*

27 *Subchapter 24 – Monitoring Device in Long-Term Care Facility*

28
29 *20-10-2401. Definitions.*

30 *As used in this subchapter:*

31 *(1) "Authorized electronic monitoring" means the placement of*
32 *electronic monitoring devices in the common areas or room of a resident of a*
33 *nursing facility and the recordings from such devices pursuant to the*
34 *provisions of this act;*

35 *(2) "Authorized electronic monitoring devices" means:*

1 (A) Video surveillance cameras installed in the common
2 areas or resident's room under the provisions of this act; or

3 (B) Audio devices installed in the room of a resident
4 under the provisions of this act that are designed to acquire communications
5 or other sounds occurring in the room;

6 (3) "Facility" or "nursing facility" means a long-term care
7 facility that is required to be licensed under § 20-10-204;

8 (4) "Representative of a resident" means the guardian of the
9 person of a resident appointed by a court;

10 (5) "Resident" means a person who is a resident of a facility;
11 and

12 (6) "Unauthorized electronic monitoring" means electronic,
13 mechanical, or other devices that do not meet the provisions of this
14 interception of wire or electronic communications.

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16 20-10-2402. Required notice.

17 (a) A facility shall provide written notice to each resident or to the
18 representative of a resident that authorized electronic monitoring of a
19 resident's room conducted under the provisions of this act is not compulsory
20 and shall only be conducted with the written consent of the resident or the
21 representative of the resident.

22 (b) A facility shall not refuse to admit an individual to residency in
23 the facility and shall not remove a resident from a facility because the
24 individual, resident, or representative of the resident does not grant
25 authority for electronic monitoring of a resident's room.

26 (c) A nursing facility shall post at or near its main entrances a sign
27 that clearly states that electronic monitoring and audio devices may be in
28 use in the facility.

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30 20-10-2403. Monitoring device – No tampering or destruction.

31 (a) A person or entity shall not intentionally obstruct, tamper with,
32 or destroy an electronic monitoring device installed in a nursing facility.

33 (b) A person or entity that intentionally obstructs, tampers with, or
34 destroys a recording or an electronic monitoring device installed in a
35 nursing facility shall be guilty of a Class D felony.

1 (c) A person or entity shall not intercept a communication or disclose
2 or use an intercepted communication of an electronic monitoring device placed
3 or installed in a common area of a nursing facility without the express
4 written consent of the facility, or, for an electronic monitoring device
5 installed in a room of the resident, the express written consent of the
6 resident or the representative of the resident.

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8 20-10-2404. Monitoring device – Conducting monitoring.

9 (a) A resident or the representative of a resident may conduct
10 authorized electronic monitoring of the resident’s room through the use of
11 authorized electronic monitoring devices placed in the room under this
12 subchapter at the expense of such person or representative of the resident
13 and with the written consent of any other resident living in the room.

14 (b) A resident who conducts authorized electronic monitoring or the
15 representative of the resident may post and maintain a notice at the entrance
16 to the resident’s room stating that the room is being monitored by an
17 electronic monitoring device.

18 (c)(1) This subchapter does not prevent a resident or the
19 representative of the resident from placing an electronic monitoring device
20 in the room of the resident at the expense of such person.

21 (2) However, if a resident is sharing a room with any other
22 resident, the resident or the representative of the resident shall obtain
23 written consent from the other resident or the representative of the resident
24 living in the room and the consent shall be on a form prescribed by the
25 Office of Long-Term Care of Division of Medical Services of the Department of
26 Human Services and shall be placed on file with the administrator of the
27 facility.

28 (d) If a resident residing in a shared room, or the representative of
29 a resident residing in a shared room, desires to utilize an authorized
30 electronic monitoring device and another resident living in a shared room
31 refuses to consent to the use of an authorized electronic monitoring device,
32 the nursing facility shall accommodate the resident or the representative of
33 the resident desiring to utilize an authorized electronic monitoring device
34 to move to another room if the resident or representative of a resident
35 requests a room change within a reasonable amount of time.

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1 20-10-2405. Monitoring device – Notice to facility required form.

2 (a) A resident or representative of a resident who wishes to conduct
3 authorized electronic monitoring shall be required to notify the nursing
4 facility on the consent form prescribed by the Office of Long-Term Care.

5 (b) The consent form prescribed by the office shall require the
6 resident or the representative of a resident to obtain the consent of any
7 other resident in the room or the representative of a resident, using the
8 consent form prescribed for this purpose by the office, if the resident
9 resides in a room with another resident.

10 (c) Consent may be given only by:

11 (1) The resident or any other resident in the room; or

12 (2) The representative of the resident or representative of any
13 other resident in the room.

14 (d) Another resident in the room may:

15 (1) When the proposed electronic monitoring device is a video
16 surveillance camera, condition consent on the camera being pointed away from
17 the consenting resident; and

18 (2) Condition consent on the use of an audio electronic
19 monitoring device being limited or prohibited.

20 (e) Except as provided for in § 20-10-2406, authorized electronic
21 monitoring may begin only after the required consent forms specified in this
22 act have been completed and returned to the nursing facility and placed on
23 file with the administrator of such facility.

24 (f) If authorized electronic monitoring is being conducted in the room
25 of a resident, another resident may not be moved into the room unless the
26 resident or representative of the resident has consented to the use of
27 existing electronic monitoring, in accordance with this act.

28 (g) The office may include other information that it considers to be
29 appropriate on any form it is required to prescribe under the provisions of
30 this act.

31 (h) The office shall prescribe the forms required by this act no later
32 than November 1, 2015, and shall make such forms available on its website.

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34 20-10-2406. Monitoring devices – Compliance.

35 A resident or the representative of the resident utilizing existing
36 electronic monitoring devices prior to November 1, 2015, shall comply with

1 all written consent and disclosure provisions of this act no later than
2 January 1, 2016.

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/s/Leding

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7 Referred by the Arkansas House of Representatives

8 Prepared by: VJF

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