

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

HOUSE BILL 1392

5 By: Representatives Bright, Wood, Borhauer, S. Prater
6
7

For An Act To Be Entitled

9 AN ACT RELATING TO LONG-TERM CARE; CREATING THE
10 RESIDENT CARE MONITORING ACT; ESTABLISHING
11 AUTHORIZATION AND USE OF MONITORING DEVICES;
12 PROVIDING FOR WAIVERS; PROVIDING FOR ENFORCEMENT
13 AND PENALTIES; AND FOR OTHER PURPOSES.
14

Subtitle

15 THE WILLIE MAE RYAN NURSING HOME PATIENT
16 PROTECTION ACT.
17
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19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

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

24 20-10-2001. Title.

25 This subchapter shall be known and may be cited as the "Resident Care
26 Monitoring Act".
27

28 20-10-2002. Definitions.

29 As used in this subchapter:

30 (1) "Facility" means a long-term care facility which is required
31 to be licensed under § 20-10-224;

32 (2)(A) "Monitoring device" means a surveillance instrument that
33 broadcasts or records activity.

34 (B) "Monitoring device" does not include a still camera;

35 (3) "Office" means the Office of Long-Term Care of the Division
36 of Medical Services of the Department of Human Services;



1 (4) "Ombudsman" means the long-term care ombudsman under §§ 20-
 2 10-602 and 20-10-603;

3 (5) "Resident" means a person who is a resident of a facility;
 4 and

5 (6) "Surrogate" means a legal guardian or a legally appointed
 6 substitute decision maker who is authorized to act on behalf of a resident.

7
 8 20-10-2003. Monitoring device -- Authorization and use.

9 (a) A resident or a surrogate may authorize installation and use of a
 10 monitoring device in a facility if:

11 (1) The facility is given notice of the installation;

12 (2)(A) The monitoring device records activity visually.

13 (B) The recording shall include a record of the date and
 14 time of the recording;

15 (3) The monitoring device and all installation and maintenance
 16 costs are paid for by the resident; and

17 (4) Written consent is given by each resident or surrogate of
 18 each resident occupying the same room.

19 (b) The resident may establish and the facility shall accommodate
 20 limits on the use of a monitoring device, including:

21 (1) The time of operation; and

22 (2) The direction, focus, and volume.

23
 24 20-10-2004. Monitoring device option -- Installation -- Accommodation
 25 by a facility.

26 (a)(1) At the time of admission to a facility, a resident shall have
 27 the option of having a monitoring device.

28 (2)(A) The record of the resident's authorization or choice not
 29 to have a monitoring device shall be kept by the facility.

30 (B) The record shall be made accessible to the ombudsman.

31 (b) After authorization, consent, and notice, a resident or surrogate
 32 may install, operate, and maintain a monitoring device in the resident's room
 33 at the resident's expense.

34 (c) The facility shall accommodate the installation of the monitoring
 35 device if the installation does not place undue burden on the facility.

36

1 20-10-2005. Consent -- Waiver.

2 (a) Consent to the authorization for the installation and use of a
3 monitoring device may be given only by the resident or the surrogate.

4 (b) Consent to the authorization for the installation and use of a
5 monitoring device shall include a release of liability for the facility for a
6 violation of the resident's right to privacy insofar as the use of the
7 monitoring device is concerned.

8 (c) A resident or the surrogate may reverse a choice to have or not
9 have a monitoring device installed and used at any time, after notice to the
10 facility and to the ombudsman upon a form prescribed by the Office of Long-
11 Term Care.

12
13 20-10-2006. Authorization form -- Contents.

14 The form for the authorization of installation and use of a monitoring
15 device shall provide for:

16 (1) Consent of the resident or the surrogate authorizing the
17 installation and use of the monitoring device;

18 (2) Notice to the facility of the resident's installation of a
19 monitoring device and specifics as to its type, function, and use;

20 (3) Consent of any other resident sharing the same room or that
21 resident's surrogate;

22 (4) Notice of release from liability for privacy violation
23 through the use of the monitoring device; and

24 (5) Waiver of the resident's right to privacy in conjunction
25 with the use of the monitoring device.

26
27 20-10-2007. Immunity -- Unauthorized use.

28 (a) In any civil action against the facility, material obtained
29 through the use of a monitoring device may not be used if the monitoring
30 device was installed or used without the knowledge of the facility or without
31 the prescribed form being completed.

32 (b) Compliance with the provisions of this subchapter shall be a
33 complete defense against any civil or criminal action brought against the
34 resident, surrogate, or facility for the use or presence of a monitoring
35 device.

36 (c)(1) No hidden camera may be installed or operated in a facility.

1 (2) A person who is found guilty of, or pleads guilty or nolo
2 contendere to, installing or operating a hidden camera in a facility is
3 guilty of a Class A misdemeanor.

4
5 20-10-2008. Notice to current residents.

6 (a) Within six (6) months of the effective date of this subchapter,
7 all facilities shall provide to each resident or surrogate a form prescribed
8 by the Office of Long-Term Care explaining the provisions of this subchapter
9 and giving each resident or surrogate a choice to have a monitoring device
10 installed in the resident's room.

11 (b) Copies of the completed form shall be:

- 12 (1) Kept by the facility; and
- 13 (2) Made accessible to the ombudsman.

14
15 20-10-2009. Notice.

16 The facility shall post a notice in a conspicuous place at the entrance
17 to each room with a monitoring device indicating that a monitoring device is
18 in use in that room of the facility.

19
20 20-10-2010. Rules.

21 The Office of Long-Term Care shall promulgate rules necessary to
22 implement the provisions of this subchapter.

23
24 20-10-2011. Prohibited acts.

25 (a) No person or resident shall be denied admission to or discharged
26 from a facility or be otherwise discriminated against or retaliated against
27 because of a choice to authorize installation and use of a monitoring device.

28 (b) A person who is found guilty of, or pleads guilty or nolo
29 contendere to, a violation of this section is guilty of a Class A
30 misdemeanor.

31
32 20-10-2012. Criminal acts.

33 Any person other than a resident or surrogate who is found guilty of,
34 or pleads guilty or nolo contendere to, intentionally hampering, obstructing,
35 tampering with, or destroying a monitoring device or a recording made by a
36 monitoring device installed in a facility under this subchapter is guilty of

1 a Class D felony.
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