

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

As Engrossed: H2/21/05

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
16
17 RESIDENT PROTECTION ACT.
18
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 fixed surveillance instrument
33 that broadcasts or records activity.

34 (B) "Monitoring device" does not include a still camera or
35 a personal home video or audio recording device not placed in a resident's
36 room for the purpose of surreptitious recording of events or actions;



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

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

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

7 (6) "Surrogate" means a resident's spouse, parent, child,
8 grandchild, sibling, legal guardian, or a legally appointed substitute
9 decision maker who is authorized to act on behalf of a resident.

10
11 20-10-2003. Monitoring device -- Authorization and use.

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

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

15 (2)(A) The monitoring device records activity visually, audibly,
16 or both.

17 (B) The recording shall include a record of the date and
18 time of the recording;

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

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

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

25 (1) The time of operation; and

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

27
28 20-10-2004. Monitoring device option -- Installation -- Accommodation
29 by a facility.

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

32 (B)(i) The option to have a monitoring device shall be presented
33 to the resident or the resident's surrogate on a form created by the Office
34 of Long Term Care.

35 (ii) A copy of the form reflecting the resident's
36 authorization or choice not to have a monitoring device shall be transmitted

1 upon its completion by the facility to the office.

2 (C)(i) A resident or a resident's surrogate may, at any time,
3 amend the authorization or choice not to have a monitoring device by
4 obtaining a new form from the facility and completing it to reflect the
5 amendment.

6 (ii) A copy of the form reflecting the resident's
7 amendment shall be transmitted by the facility to the office upon its
8 completion.

9 (2)(A) All records of the resident's authorization or choice not
10 to have a monitoring device shall be kept by the facility and by the Office
11 of Long-Term Care.

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

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

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

18 (c) The facility shall accommodate the installation of the monitoring
19 device.

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

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

23 (b)(1) Consent to the authorization for the installation and use of a
24 monitoring device shall include a release of liability for the facility for a
25 violation of the resident's right to privacy regarding the use of the
26 monitoring device for recording care and treatment rendered to the resident.

27 (2) Nothing in the release shall work to release the facility,
28 its agents or employees from any liability that would arise from the
29 obtaining, viewing, or listening to the recording or monitoring of the
30 resident for any purpose other than monitoring the care and treatment of the
31 resident.

32 (3) Any person obtaining or viewing the recording of the
33 resident for any purpose other than monitoring the care and treatment of the
34 resident shall in addition to any other liability under the law be in
35 violation of this subchapter.

36 (c) A resident or the surrogate may reverse a choice to have or not

1 have a monitoring device installed and used at any time, after notice to the
2 facility and to the ombudsman upon a form prescribed by the Office of Long-
3 Term Care.

4
5 20-10-2006. Authorization form -- Contents.

6 The form for the authorization of installation and use of a monitoring
7 device shall provide for:

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

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

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

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

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

18
19 20-10-2007. Immunity -- Unauthorized use.

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

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

28 (c)(1) No monitoring device may be installed or operated in a facility
29 except as provided in this subchapter.

30 (2) A person who is found guilty of, or pleads guilty or nolo
31 contendere to, installing or operating a monitoring device in a facility
32 without complying with the provisions of this subchapter is guilty of a Class
33 A misdemeanor.

34 20-10-2008. Notice to current residents.

35 (a) Within six (6) months of the effective date of this subchapter,
36 all facilities shall provide to each resident or surrogate a form prescribed

1 by the Office of Long-Term Care explaining the provisions of this subchapter
2 and giving each resident or surrogate a choice to have a monitoring device
3 installed in the resident's room.

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

5 (1) Kept by the facility;

6 (2) Made accessible to the ombudsman; and

7 (3) Kept by the office.

8
9 20-10-2009. Notice.

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

13
14 20-10-2010. Rules.

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

17
18 20-10-2011. Prohibited acts.

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

22 (b) A person who is found guilty of, or pleads guilty or nolo
23 contendere to, a violation of this section is guilty of a Class A
24 misdemeanor.

25
26 20-10-2012. Criminal acts.

27 Any person other than a resident or surrogate who is found guilty of,
28 or pleads guilty or nolo contendere to, intentionally hampering, obstructing,
29 tampering with, or destroying a monitoring device or a recording made by a
30 monitoring device installed in a facility under this subchapter is guilty of
31 a Class D felony.

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33 */s/ Bright, et al*
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