

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 *As Engrossed: H2/21/05 H3/11/05 S4/8/05*

2 85th General Assembly

# A Bill

3 Regular Session, 2005

HOUSE BILL 1392

4

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

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## For An Act To Be Entitled

9 *AN ACT CREATING THE WILLIE MAE RYAN RESIDENT CARE*  
10 *MONITORING ACT; ESTABLISHING AUTHORIZATION AND*  
11 *USE OF MONITORING DEVICES IN LONG-TERM CARE*  
12 *FACILITIES; PROVIDING FOR WAIVERS; PROVIDING FOR*  
13 *ENFORCEMENT AND PENALTIES; AND FOR OTHER*  
14 *PURPOSES.*

15

16

## Subtitle

17 *THE WILLIE MAE RYAN RESIDENT CARE*  
18 *MONITORING ACT.*

19

20

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

22

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

25 *20-10-2001. Title.*

26 *This subchapter shall be known and may be cited as the "Willie Mae Ryan*  
27 *Resident Care Monitoring Act."*

28

29 *20-10-2002. Definitions*

30 *As used in this subchapter:*

31 *(1) "Facility" means a long-term care facility which is required*  
32 *to be licensed under § 20-10-204;*

33 *(2)(A) "Monitoring device" means a video or audio device*  
34 *installed in the room of a resident which acquires visual images, activity,*  
35 *or sounds occurring in the room.*

36

*(B) "Monitoring device" includes video surveillance*



1 cameras, but does not include a still camera or any device used for the  
2 nonconsensual interception of wire or electronic communications;

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

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

7 (5) "Roommate" means a resident who occupies the same room as  
8 the resident who has a monitoring device.

9  
10 20-10-2003. Immunity of office or facility

11 (a) For purposes of this subchapter, the placement and use of a  
12 monitoring device in the room of a resident is considered to be covert if:

13 (1) The placement and use of the device is not open and obvious;  
14 and

15 (2) The facility is not informed about the device by the  
16 resident, by a person who placed the device in the room, or by a person who  
17 is using the device.

18 (b) The office and the facility may not be held civilly liable in  
19 connection with the covert placement or use of a monitoring device in the  
20 room of a resident.

21  
22 20-10-2004. Required form on admission.

23 The office by rule shall prescribe a monitoring device information form  
24 that must be completed and signed on a resident's admission to a facility by  
25 or on behalf of the resident. The form must state:

26 (1) That a person who places a monitoring device in the room of  
27 a resident or who uses or discloses a tape or other recording made by the  
28 device may be criminally or civilly liable for any unlawful violation of the  
29 privacy rights of another;

30 (2) That a person who covertly places a monitoring device in the  
31 room of a resident or who consents or acquiesces in the covert placement of  
32 the device in the room of a resident has waived any privacy right the person  
33 may have had in connection with images or sounds that may be acquired by the  
34 device;

35 (3) That a guardian or legal representative who uses or operates  
36 a monitoring device on behalf of a facility resident is subject to criminal

1 penalties if that person knowingly fails to notify the facility administrator  
2 or designated agent within twenty-four (24) hours of viewing or listening to  
3 a tape or recording created by a monitoring device that the guardian or legal  
4 representative reasonably believes constitutes evidence of resident  
5 maltreatment; and

6 (4) The basic procedures that must be followed to request a  
7 monitoring device.

8  
9 20-10-2005. Monitoring device – Who may request.

10 (a) If a resident has capacity to request a monitoring device and has  
11 not been judicially declared to lack the required capacity, only the resident  
12 may request a monitoring device, notwithstanding the terms of any durable  
13 power of attorney or similar instrument.

14 (b) If a resident has been judicially declared to lack the capacity  
15 required for taking an action such as requesting a monitoring device, only  
16 the guardian of the person of the resident may request a monitoring device  
17 under this subchapter.

18 (c)(1) If a resident does not have capacity to request a monitoring  
19 device but has not been judicially declared to lack the required capacity,  
20 only the legal representative of the resident may request a monitoring device  
21 under this subchapter.

22 (2) The resident's physician shall make the determination  
23 regarding the resident's incapacity to request a monitoring device, and shall  
24 record the determination in the resident's medical record.

25 (3) When the resident's physician determines the resident lacks  
26 capacity to request a monitoring device, a person from the following list, in  
27 order of priority, may act as the resident's legal representative for the  
28 limited purpose of requesting a monitoring device:

29 (A) An attorney-in-fact authorized by the terms of a valid  
30 durable power of attorney to make health care decisions on behalf of the  
31 resident;

32 (B) In the case of an unmarried patient under the age of  
33 eighteen (18), the parents of the patient;

34 (C) The patient's spouse;

35 (D) The patient's adult child or, if there is more than  
36 one (1), then a majority of the patient's adult children participating in the

1 decision;

2 (E) The parents of a patient over the age of eighteen  
3 (18);

4 (F) The patient's adult sibling or, if there is more than  
5 one (1), then a majority of the patient's adult siblings participating in the  
6 decision;

7 (G) Persons standing in loco parentis to the patient; or

8 (H) A majority of the patient's adult heirs at law who  
9 participate in the decision.

10  
11 20-10-2006. Monitoring device--Form of request -- consent of other  
12 residents in room.

13 (a) A resident or the guardian or legal representative of a resident  
14 who wishes to install or use a monitoring device in the resident's room must  
15 make the request to the facility on a form prescribed by the office.

16 (b) The form prescribed by the office shall comply with all  
17 requirements for the release of protected health information under the Health  
18 Insurance Portability and Accountability Act of 1996.

19 (c) The form prescribed by the office must require the resident or the  
20 resident's guardian or legal representative to:

21 (1) Release the facility from any civil liability for a  
22 violation of the resident's privacy rights in connection with the use of the  
23 monitoring device; and

24 (2) Obtain the consent of the resident's roommate(s), using a  
25 form prescribed by the office, if the resident resides in a multiperson room.

26 (d) Consent under Subsection (c)(3) may be given only by:

27 (1) The resident's roommate or roommates;

28 (2) The guardian of a person described by subsection (d)(1), if  
29 the person has been judicially declared to lack the required capacity; or

30 (3) The legal representative who under § 20-10-2005(c)(3) may  
31 request a monitoring device on behalf of a person described in subsection  
32 (d)(1) of this section.

33 (e) The resident or the guardian or legal representative of a resident  
34 may withdraw a request or consent to the use of a monitoring device at any  
35 time.

36 (f) The form prescribed by the office must condition the consent of

1 the resident's roommate on the roommate also releasing the facility from any  
2 civil liability for a violation of the roommate's privacy rights in  
3 connection with the use of the electronic monitoring device.

4 (g) The resident's roommate may:

5 (1) When the monitoring device is a video surveillance camera,  
6 condition consent on the camera being pointed away from the consenting  
7 resident;

8 (2) Condition consent on the use of an audio monitoring device  
9 being limited or prohibited; and

10 (3) Withdraw consent to the use of a monitoring device at any  
11 time.

12 (h) If a monitoring device is being used in the room of a resident and  
13 another resident is moved into the room who has not yet consented to the use  
14 of a monitoring device, use of the monitoring device must cease until the new  
15 resident has consented in accordance with this section.

16 (i) The office may adopt rules prescribing the place or places that a  
17 form signed under this section must be maintained and the period of which it  
18 must be maintained.

19 (j) Use of a monitoring device:

20 (1) May not commence until all request and consent forms  
21 required by this section have been completed and returned to the facility;

22 (2) Must be conducted in accordance with any limitation placed  
23 on the monitoring as a condition of the consent given by or on behalf of any  
24 roommate of the resident; and

25 (3) Must cease upon the withdrawal of consent by the resident or  
26 the resident's guardian or legal representative or upon the withdrawal of the  
27 consent of the roommate or the roommate's guardian or legal representative.

28  
29 20-10-2007. Monitoring device – General provisions.

30 (a) A resident shall have the option of requesting a monitoring device  
31 at any time.

32 (b)(1) A facility shall accommodate the request of a resident or the  
33 guardian or legal representative of a resident to use a monitoring device  
34 upon satisfaction of the requirements of § 20-10-2006, and if the  
35 installation or operation of the monitoring device does not place an undue  
36 burden on the facility.

1           (2) The office shall promulgate rules defining what constitutes  
2 an “undue burden” for purposes of this section.

3           (c) A resident or the guardian or legal representative of a resident  
4 who uses a monitoring device shall post and maintain a conspicuous notice at  
5 the entrance of the resident’s room. The notice must state that a monitoring  
6 device is in use in that room, and must specify whether the device monitors  
7 visual activity, auditory activity, or both.

8           (d) The resident or the resident’s guardian or legal representative  
9 must pay for all costs associated with the installation, maintenance, and  
10 operation of the monitoring device.

11           (e) The facility may require that installation and use of a monitoring  
12 device be conducted in a manner that is safe for residents, employees, or  
13 visitors who may be moving about the room.

14           (f) The monitoring device shall be installed and operated in plain  
15 view.

16           (g)(1)(A) The resident or the guardian or legal representative of a  
17 resident who requests a monitoring device must, when any sound, image, or  
18 other information acquired by a monitoring device is transmitted over an  
19 electronic communications network, implement reasonable technical security  
20 measures to guard against unauthorized access.

21           (B) The office shall establish guidelines for technical  
22 security measures to guard against unauthorized access.

23           (2) A facility may not be held civilly liable in connection with  
24 any unauthorized access to a communications network containing sounds,  
25 images, or other information acquired by a monitoring device, or any  
26 subsequent unauthorized use or disclosure resulting from the unauthorized  
27 access.

28           (h) A facility may, but is not required to, place a resident in a  
29 different room to accommodate a request to install or use a monitoring  
30 device.

31  
32           20-10-2008. Use of a tape or recording in a judicial or administrative  
33 proceeding or by the office.

34           (a) No court or administrative agency, nor the office, may admit into  
35 evidence a tape or recording created through the use of a monitoring device,  
36 including covert monitoring devices, or take or authorize action based on the

1 tape or recording unless:

2 (1) If the tape or recording is a video tape or recording, the  
3 tape or recording shows the time and date that the events acquired on the  
4 tape or recording occurred;

5 (2) The contents of the tape or recording are continuous, and  
6 have not been edited or artificially enhanced; and

7 (3) If the contents of the tape or recording have been  
8 transferred from the original format to another technological format, the  
9 transfer was done by a qualified professional and the contents of the tape or  
10 recording were not altered.

11 (b)(1) A facility shall not be required to disclose a tape or  
12 recording to the office unless the office requests to view or copy a tape or  
13 recording in connection with an investigation into allegations of resident  
14 maltreatment.

15 (2) Any request by the office to view or copy a tape or  
16 recording in connection with an investigation into allegations of resident  
17 maltreatment shall be limited to the resident who is the subject of the  
18 allegations and to the time period during which the maltreatment is believed  
19 to have occurred.

20  
21 20-10-2009. Use of tape or recording created by a monitoring device in  
22 civil action against a facility.

23 No tape or recording created by a monitoring device may be admitted or  
24 used in a civil action against a facility, owner, or management company  
25 unless the facility, owner, or management company seeks to admit or use the  
26 tape or recording.

27  
28 20-10-2010. Request by facility or facility employee for copies of  
29 tapes or recordings.

30 (a) Upon written request by a facility, a person in possession of  
31 tapes or recordings created by a monitoring device installed in that facility  
32 shall provide a copy at the facility's expense.

33 (b) Upon written request by a facility employee accused of maltreating  
34 a resident, the person in possession of tapes or other recordings of the  
35 resident created by a monitoring device installed in that facility shall  
36 provide a copy to the facility employee at that employee's expense.

1 (c) A person who provides a copy of a tape or recording to a facility  
2 or employee in accordance with subsection (a) or (b) shall also provide  
3 written certification that the copy meets the requirements of § 20-10-  
4 2008(a).

5 (d) A person in possession of tapes or other recordings of the  
6 resident created by a monitoring device installed in a facility shall, prior  
7 to erasing, obliterating, or otherwise disposing of a tape or recording,  
8 notify the facility in writing and permit the facility to purchase a copy of  
9 the tape or recording.

10  
11 20-10-2011. Reporting of suspected maltreatment.

12 (a) For purposes of the duty to report resident maltreatment under §  
13 5-28-203, no facility employee shall be deemed to have reasonable cause to  
14 suspect resident maltreatment by virtue of possession of a tape or recording  
15 created by a monitoring device unless:

16 (1) The employee has independent knowledge of the alleged  
17 maltreatment; or

18 (2) The employee actually views the tape or recording and  
19 reasonably believes that maltreatment has occurred; or

20 (b)(1) A guardian or legal representative who uses or operates a  
21 monitoring device on behalf of a facility resident shall, within twenty-four  
22 (24) hours of viewing or listening to a tape or recording created by a  
23 monitoring device that the guardian or legal representative reasonably  
24 believes constitutes evidence of resident maltreatment, notify the facility  
25 administrator or that person's designated agent.

26 (2) For purposes of the duty to report suspected adult  
27 maltreatment in accordance with this section, a guardian or legal  
28 representative who uses or operates a monitoring device on behalf of a  
29 facility resident is considered to have viewed or listened to a tape or  
30 recording created by the monitoring device on or before the 30<sup>th</sup> day after the  
31 date the tape or recording is created.

32 (3) A guardian or legal representative who knowingly fails to  
33 notify the facility administrator or designated agent in the time and manner  
34 provided in this subsection is guilty of a violation, and shall be punished  
35 as provided by law.

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