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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO HEALTH AND SAFETY -- ELECTRONIC MONITORING IN NURSING
AND ASSISTED LIVING FACILITIES

Introduced By: Representatives Knight, Shanley, Fogarty, Batista, McEntee, Cotter,
Vella-Wilkinson, Dawson, Finkelman, and Craven

Date Introduced: March 05, 2024

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 17.29

4 ELECTRONIC MONITORING IN NURSING AND ASSISTED LIVING FACILITIES

5 **23-17.29-1. Definitions.**

6 As used in this chapter:

7 (1) "Affirmative objection" means any verbal or written statement or statements, or made
8 through the use of auxiliary aids or services, or any visual cue, that indicates that a resident is
9 opposed to electronic monitoring within their room, except if the resident has been determined to
10 lack the requisite capacity to make their own healthcare decisions.

11 (2) "Authorized electronic monitoring" means the placement and use of an electronic
12 monitoring device by a resident in the residents room or private living unit in accordance with this
13 chapter.

14 (3) "Department" means the Rhode Island department of health.

15 (4) "Director" means the director of the Rhode Island department of health.

16 (5) "Electronic monitoring device" means any photo, video, and/or audio surveillance
17 equipment with a fixed position, that broadcasts or records activities or sounds occurring in the
18 room or private living unit within which it is installed.

1 (6) “Facility” means an entity that is:

2 (i) Licensed as a healthcare facility under chapter 17 of title 23 and the regulations for
3 Licensing of Nursing Facilities (216-RICR-40-10-1, or superseding regulations); or

4 (ii) Licensed as an assisted living residence under chapter 17.4 of title 23 and the
5 regulations for Licensing Assisted Living Residence (216-RICR-40-10-2, or superseding
6 regulations).

7 (7) “Resident” means a person residing in a facility as defined in subsection (6) of this
8 section.

9 (8) “Resident representative” means one of the following, in order of priority:

10 (i) A healthcare agent or agent acting pursuant to a durable power of attorney, as executed
11 pursuant to chapter 4.10 of title 23;

12 (ii) A court-appointed guardian;

13 (iii) A resident’s spouse; or

14 (iv) A resident’s parent.

15 **23-17.29-2. Authorization of electronic monitoring.**

16 (a) A resident or their representative shall be permitted to conduct authorized electronic
17 monitoring of the resident’s room or private living unit through the use of electronic monitoring
18 devices placed in the resident’s room or private living unit as provided in this chapter.

19 (b) Nothing in this chapter precludes the use of electronic monitoring of healthcare as
20 authorized pursuant to state or federal law.

21 **23-17.29-3. Consent to electronic monitoring.**

22 (a) Except as otherwise provided in this section, a resident or their representative shall
23 consent to electronic monitoring in the resident’s room or private living unit in writing, on a
24 notification and consent form prescribed by the department. If the resident has not affirmatively
25 objected to electronic monitoring and the resident’s healthcare provider determines that the resident
26 lacks the ability to understand and appreciate the nature and consequences of electronic monitoring,
27 the resident’s representative may consent on behalf of the resident.

28 (b) Prior to a resident representative consenting on behalf of a resident, the resident
29 representative shall inquire if the resident consents to electronic monitoring to be conducted. The
30 resident representative shall explain to the resident:

31 (1) The type of electronic monitoring device to be used;

32 (2) The standard conditions that may be placed on the electronic monitoring device’s use,
33 including those set forth in § 23-17.29-6;

34 (3) With whom the recording may be shared pursuant to §§ 23-17.29-10 and 23-17.29-11;

1 and

2 (4) The resident's ability to decline any or all recording.

3 (c) A resident or resident representative, when consenting on behalf of the resident, may
4 consent to electronic monitoring with any conditions of the resident's or resident representative's
5 choosing, including the list of standard conditions provided in § 23-17.29-6. A resident, or resident
6 representative when consenting on behalf of the resident, may request that the electronic monitoring
7 device be turned off or the visual or audio recording component of the electronic monitoring device
8 be blocked at any time.

9 (d) Prior to implementing electronic monitoring, a resident, or resident representative when
10 acting on behalf of the resident, shall obtain the written consent on the notification and consent
11 form of any other resident residing in the shared room or shared private living unit. A roommate's
12 or roommate's resident representative's written consent shall comply with the requirements of
13 subsections (a) through (c) of this section. Consent by a roommate or a roommate's resident
14 representative under this section authorizes the resident's use of any recording obtained under this
15 chapter, as provided under §§ 23-17.29-10 and 23-17.29-11.

16 (e) Any resident conducting electronic monitoring shall immediately remove or disable an
17 electronic monitoring device prior to a new roommate moving into a shared room or shared private
18 living unit, unless the resident obtains the roommate's or roommate's resident representative's
19 written consent as provided under subsection (d) of this section prior to the roommate moving into
20 the shared room or shared private living unit. Upon obtaining the new roommate's signed
21 notification and consent form and submitting the form to the facility pursuant to § 23-17.29-5, the
22 resident may resume electronic monitoring.

23 (f) The resident or roommate, or the resident representative of the resident or roommate, if
24 the representative is consenting on behalf of the resident or roommate, may withdraw consent at
25 any time and the withdrawal of consent shall be documented on the original consent form as
26 provided under § 23-17.29-5(d).

27 **23-17.29-4. Refusal of roommate to consent.**

28 If a resident of a facility who is residing in a shared room or shared living unit, or the
29 resident representative of such a resident when acting on behalf of the resident, wants to conduct
30 electronic monitoring and another resident living in or moving into the same shared room or shared
31 living unit refuses to consent to the use of an electronic monitoring device, the facility shall make
32 a reasonable attempt to accommodate the resident who wants to conduct electronic monitoring. A
33 facility has met the requirement to make a reasonable attempt to accommodate a resident or resident
34 representative who wants to conduct electronic monitoring when, upon notification that a roommate

1 has not consented to the use of an electronic monitoring device in the resident's room, the facility
2 offers to move the resident to another shared room or shared living unit that is available at the time
3 of the request. If a resident chooses to reside in a private room or private living unit in a facility in
4 order to accommodate the use of an electronic monitoring device, the resident shall pay either the
5 private room rate in a nursing home setting, or the applicable rent in a housing with services
6 establishment or assisted living facility. If a facility is unable to accommodate a resident due to
7 lack of space, the facility shall reevaluate the request every two (2) weeks until the request is
8 fulfilled. A facility is not required to provide a private room, a single-bed room, or a private living
9 unit to a resident who is unable or unwilling to pay.

10 **23-17.29-5. Notice to facility.**

11 (a) Authorized electronic monitoring may begin only after the resident or resident
12 representative who intends to place an electronic monitoring device and any roommate or
13 roommate's resident representative completes the notification and consent form and submits the
14 form to the facility.

15 (b) Notwithstanding subsection (a) of this section, the resident or resident representative
16 who intends to place an electronic monitoring device may do so without submitting a notification
17 and consent form to the facility for up to fourteen (14) days:

18 (1) If the resident or the resident representative reasonably fears retaliation against the
19 resident by the facility and timely submits a Rhode Island department of health complaint or police
20 report, or both, upon evidence from the electronic monitoring device that suspected maltreatment
21 has occurred;

22 (2) If there has not been a timely written response from the facility to a written
23 communication from the resident or resident representative expressing a concern prompting the
24 desire for placement of an electronic monitoring device; or

25 (3) If the resident or resident representative has already submitted a Rhode Island
26 department of health complaint or police report regarding the resident's concerns prompting the
27 desire for placement of an electronic monitoring device.

28 (c) Upon receipt of any completed notification and consent form, the facility shall place
29 the original form in the resident's file or file the original form with the resident's housing with
30 services contract. The facility shall provide a copy to the resident and the resident's roommate, if
31 applicable.

32 (d) If a resident is conducting electronic monitoring according to subsection (b) of this
33 section and a new roommate moves into the room or living unit, the resident or resident
34 representative shall submit the signed notification and consent form to the facility. In the event that

1 a resident or roommate, or the resident representative or roommate's resident representative if the
2 representative is consenting on behalf of the resident or roommate, chooses to alter the conditions
3 under which consent to electronic monitoring is given or chooses to withdraw consent to electronic
4 monitoring, the facility shall make available the original notification and consent form so that it
5 may be updated. Upon receipt of the updated form, the facility shall place the updated form in the
6 resident's file or file the original form with the resident's housing with services contract. The facility
7 shall provide a copy of the updated form to the resident and the resident's roommate, if applicable.

8 (e) If a new roommate, or the new roommate's resident representative when consenting on
9 behalf of the new roommate, does not submit to the facility a completed notification and consent
10 form and the resident conducting the electronic monitoring does not remove or disable the
11 electronic monitoring device, the facility shall remove the electronic monitoring device.

12 (f) If a roommate, or the roommate's resident representative when withdrawing consent on
13 behalf of the roommate, submits an updated notification and consent form withdrawing consent
14 and the resident conducting electronic monitoring does not remove or disable the electronic
15 monitoring device, the facility shall remove the electronic monitoring device.

16 **23-17.29-6. Notification and consent form requirements.**

17 (a) The notification and consent form completed by the resident shall include, at a
18 minimum, the following information:

19 (1) The resident's signed consent to electronic monitoring or the signature of the resident
20 representative, if applicable. If a person other than the resident signs the consent form, the form
21 shall document the following:

22 (i) The date the resident was asked if the resident wants electronic monitoring to be
23 conducted;

24 (ii) Who was present when the resident was asked;

25 (iii) An acknowledgment that the resident did not affirmatively object; and

26 (iv) The source of authority allowing the resident representative to sign the notification and
27 consent form on the resident's behalf.

28 (2) The resident's roommate's signed consent or the signature of the roommate's resident
29 representative, if applicable. If a roommate's resident representative signs the consent form, the
30 form shall document the following:

31 (i) The date the roommate was asked if the roommate wants electronic monitoring to be
32 conducted;

33 (ii) Who was present when the roommate was asked;

34 (iii) An acknowledgment that the roommate did not affirmatively object; and

1 (iv) The source of authority allowing the resident representative to sign the notification and
2 consent form on the roommate's behalf;

3 (3) The type of electronic monitoring device to be used;

4 (4) Any installation needs, such as the mounting of a device to a wall or ceiling;

5 (5) A list of standard conditions or restrictions that the resident or a roommate may elect
6 to place on the use of the electronic monitoring device, including, but not limited to:

7 (i) Prohibiting audio recording;

8 (ii) Prohibiting video recording;

9 (iii) Prohibiting broadcasting of audio or video;

10 (iv) Turning off the electronic monitoring device or blocking the visual recording
11 component of the electronic monitoring device for the duration of an exam or procedure by a
12 healthcare professional;

13 (v) Turning off the electronic monitoring device or blocking the visual recording
14 component of the electronic monitoring device while dressing or bathing is performed; and

15 (vi) Turning off the electronic monitoring device for the duration of a visit with a spiritual
16 adviser, ombudsman, attorney, financial planner, intimate partner, or other visitor;

17 (6) Any other condition or restriction elected by the resident or roommate on the use of an
18 electronic monitoring device;

19 (7) A statement of the circumstances under which a recording may be disseminated under
20 § 23-17.29-10; and

21 (8) A signature box for documenting that the resident or roommate has withdrawn consent.

22 (b) Facilities must make the notification and consent form available to the residents and
23 inform residents of their option to conduct electronic monitoring of their rooms or private living
24 unit.

25 (c) The department shall prescribe the notification and consent form required in this chapter
26 no later than sixty (60) days after the effective date. If the department has not prescribed such a
27 form by that date, a resident may use a form that substantially complies with this chapter until such
28 time as a prescribed form is available. Nothing in this section shall be construed to invalidate a
29 notification and consent form that was used prior to the department disseminating a prescribed form
30 solely due to it not being the form proscribed by the department.

31 **23-17.29-7. Costs and installation.**

32 (a) A resident or resident representative choosing to conduct electronic monitoring shall do
33 so at the resident's own expense, including the purchase, installation, maintenance, and removal
34 costs.

1 **(b) Any device used by a resident to conduct authorized electronic monitoring shall meet**
2 **the following minimum functional requirements:**

3 **(1) Include timestamping of all video recordings; and**

4 **(2) If movement tracking is a default setting, that the device must be able to switch off this**
5 **function.**

6 **(c) If a resident chooses to place an electronic monitoring device that uses Internet**
7 **technology for visual or audio monitoring, the resident shall be responsible for contracting with an**
8 **Internet service provider.**

9 **(d) All electronic monitoring device installations and supporting services shall be UL-**
10 **listed.**

11 **(e) The electronic monitoring device must be placed in a conspicuously visible location in**
12 **the room.**

13 **(f) A facility shall not charge the resident a fee for the cost of electricity used by an**
14 **electronic monitoring device.**

15 **23-17.29-8. Notice to visitors.**

16 **(a) If a resident conducts authorized electronic monitoring, a sign shall be clearly and**
17 **conspicuously posted at each facility entrance accessible to visitors. The notice must state the**
18 **following in large, easy-to-read type, "The rooms of some residents may be monitored**
19 **electronically by or on behalf of the residents."**

20 **(b) A sign shall also be clearly and conspicuously posted at the entrance to a resident's**
21 **room where authorized electronic monitoring is being conducted. The notice must state the**
22 **following in large, easy-to-read type: "This room is electronically monitored."**

23 **(c) The facility is responsible for installing and maintaining the signage required pursuant**
24 **to this section.**

25 **23-17.29-9. Obstruction of electronic monitoring devices.**

26 **(a) A person shall not knowingly hamper, obstruct, tamper with, or destroy an electronic**
27 **monitoring device placed in a resident's room or private living unit without the permission of the**
28 **resident or resident representative. Checking the electronic monitoring device by facility staff for**
29 **the make and model number does not constitute tampering under this section.**

30 **(b) It is not a violation of subsection (a) of this section if a person turns off the electronic**
31 **monitoring device or blocks the visual recording component of the electronic monitoring device at**
32 **the direction of the resident or resident representative, or if consent has been withdrawn.**

33 **(c) A person shall not knowingly hamper, obstruct, tamper with, or destroy a video or audio**
34 **recording obtained in accordance with this chapter without the permission of the resident or the**

1 resident's representative who consented to monitoring on behalf of the resident.

2 **23-17.29-10. Dissemination of recordings.**

3 (a) Any recording obtained as the result of authorized electronic monitoring shall be
4 considered the personal property of the resident who installed the electronic monitoring device.

5 (b) No person, facility, or facility representative may access any video or audio recording
6 created through authorized electronic monitoring without the written consent of the resident or
7 resident representative.

8 (c) Except as prohibited by any other state or federal law, a recording or copy of a recording
9 made as provided in this chapter may only be disseminated for the purpose of addressing health,
10 safety, or welfare concerns of one or more residents.

11 (d) The resident or resident's representative who consented to monitoring on behalf of a
12 resident shall provide a copy of any video or audio recording to parties involved in a civil, criminal,
13 or administrative proceeding upon request of a party to said proceeding if the video or audio
14 recording was made during the time period that the conduct at issue in the proceeding allegedly
15 occurred.

16 **23-17.29-11. Admissibility of evidence.**

17 Subject to applicable rules of evidence and procedure, any video or audio recording created
18 through electronic monitoring under this chapter may be admitted into evidence in any civil,
19 criminal, or administrative proceeding if the contents of the recording have not been edited or
20 artificially enhanced and the video recording includes the date and time the events occurred.

21 **23-17.29-12. Liability.**

22 (a) The mere presence of an electronic monitoring device in a resident's room or private
23 living unit is not a violation of the resident's right to privacy under § 23-17.5-14.

24 (b) A facility or home care provider is not civilly or criminally liable for the inadvertent or
25 unintentional disclosure of a recording by a resident or a resident representative for any purpose
26 not authorized by this chapter.

27 **23-17.29-13. Resident protections.**

28 (a) A facility shall not:

29 (1) Refuse to admit a potential resident or remove a resident because the facility disagrees
30 with the decision of the potential resident, the resident, or a resident representative acting on behalf
31 of the resident regarding electronic monitoring; or

32 (2) Retaliate or discriminate against any resident for consenting or refusing to consent to
33 electronic monitoring.

34 (b) Any contractual provision prohibiting, limiting, or otherwise modifying the rights and

1 obligations in this chapter is contrary to public policy and is void and unenforceable.

2 **23-17.29-14. Employee discipline.**

3 (a) An employee of the facility or an employee of a contractor providing services at the
4 facility, including an arranged home care, who is the subject of proposed disciplinary action based
5 upon evidence obtained by electronic monitoring, shall be given access to that evidence for
6 purposes of defending against the proposed action.

7 (b) An employee who obtains a recording or a copy of the recording shall treat the recording
8 or copy confidentially and must not further disseminate it to any other person except as required
9 pursuant to applicable law. Any copy of the recording shall be returned to the facility or resident
10 who provided the copy when it is no longer needed for purposes of defending against a proposed
11 action.

12 **23-17.29-15. Penalties.**

13 (a) The director may issue a statement of deficiency, upon a finding that the facility has
14 failed to comply with any provisions of this chapter.

15 (b) For each violation of this chapter, any licensed facility shall be guilty of a misdemeanor
16 for each violation punishable by a fine of not more than five hundred dollars (\$500).

17 (c) Any person convicted of a violation pursuant to § 23-17.29-10, shall be guilty of a
18 misdemeanor for each violation punishment by a fine of not more than five hundred dollars (\$500),
19 or shall be imprisoned not more than six (6) months, or both.

20 **23-17.29-16. Rules and regulations.**

21 The department shall adopt rules necessary to administer and enforce any section of this
22 chapter. Rulemaking shall not delay the full implementation of this chapter.

23 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- ELECTRONIC MONITORING IN NURSING
AND ASSISTED LIVING FACILITIES

1 This act would permit the use of electronic monitoring of a resident's room or private living
2 unit within a nursing home or assisted living facility; provided that, the resident or their
3 representative consent to the monitoring, as well as the resident's roommate or designated
4 representative consents to such electronic monitoring in writing.

5 This act would take effect upon passage.

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