

2024 -- S 2263 SUBSTITUTE A

LC004603/SUB A

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: Senators Euer, Lawson, Gu, DiMario, Acosta, Lauria, Cano, Zurier,  
Murray, and Quezada

Date Introduced: February 08, 2024

Referred To: Senate 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) Upon receipt of any completed notification and consent form, the facility shall place  
16 the original form in the resident's file or file the original form with the resident's housing with  
17 services contract. The facility shall provide a copy to the resident and the resident's roommate, if  
18 applicable.

19 (c) If a resident is conducting electronic monitoring according to subsection (b) of this  
20 section and a new roommate moves into the room or living unit, the resident or resident  
21 representative shall submit the signed notification and consent form to the facility. In the event that  
22 a resident or roommate, or the resident representative or roommate's resident representative if the  
23 representative is consenting on behalf of the resident or roommate, chooses to alter the conditions  
24 under which consent to electronic monitoring is given or chooses to withdraw consent to electronic  
25 monitoring, the facility shall make available the original notification and consent form so that it  
26 may be updated. Upon receipt of the updated form, the facility shall place the updated form in the  
27 resident's file or file the original form with the resident's housing with services contract. The facility  
28 shall provide a copy of the updated form to the resident and the resident's roommate, if applicable.

29 (d) If a new roommate, or the new roommate's resident representative when consenting on  
30 behalf of the new roommate, does not submit to the facility a completed notification and consent  
31 form and the resident conducting the electronic monitoring does not remove or disable the  
32 electronic monitoring device, the facility shall remove the electronic monitoring device.

33 (e) If a roommate, or the roommate's resident representative when withdrawing consent on  
34 behalf of the roommate, submits an updated notification and consent form withdrawing consent

1 and the resident conducting electronic monitoring does not remove or disable the electronic  
2 monitoring device, the facility shall remove the electronic monitoring device.

3 **23-17.29-6. Notification and consent form requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (i) Prohibiting audio recording;

29 (ii) Prohibiting video recording;

30 (iii) Prohibiting broadcasting of audio or video;

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

34 (v) Turning off the electronic monitoring device or blocking the visual recording

1 component of the electronic monitoring device while dressing or bathing is performed; and  
2 (vi) Turning off the electronic monitoring device for the duration of a visit with a spiritual  
3 adviser, ombudsman, attorney, financial planner, intimate partner, or other visitor;  
4 (6) Any other condition or restriction elected by the resident or roommate on the use of an  
5 electronic monitoring device;  
6 (7) A statement of the circumstances under which a recording may be disseminated under  
7 § 23-17.29-10; and  
8 (8) A signature box for documenting that the resident or roommate has withdrawn consent.  
9 (b) Facilities must make the notification and consent form available to the residents and  
10 inform residents of their option to conduct electronic monitoring of their rooms or private living  
11 unit.  
12 (c) The department shall prescribe the notification and consent form required in this chapter  
13 no later than sixty (60) days after the effective date. If the department has not prescribed such a  
14 form by that date, a resident may use a form that substantially complies with this chapter until such  
15 time as a prescribed form is available. Nothing in this section shall be construed to invalidate a  
16 notification and consent form that was used prior to the department disseminating a prescribed form  
17 solely due to it not being the form proscribed by the department.  
18 **23-17.29-7. Costs and installation.**  
19 (a) A resident or resident representative choosing to conduct electronic monitoring shall do  
20 so at the resident's own expense, including the purchase, installation, maintenance, and removal  
21 costs.  
22 (b) Any device used by a resident to conduct authorized electronic monitoring shall meet  
23 the following minimum functional requirements:  
24 (1) Include timestamping of all video recordings; and  
25 (2) If movement tracking is a default setting, that the device must be able to switch off this  
26 function.  
27 (c) If a resident chooses to place an electronic monitoring device that uses Internet  
28 technology for visual or audio monitoring, the resident shall be responsible for contracting with an  
29 Internet service provider.  
30 (d) All electronic monitoring device installations and supporting services shall be UL-  
31 listed.  
32 (e) The electronic monitoring device must be placed in a conspicuously visible location in  
33 the room.  
34 (f) A facility shall not charge the resident a fee for the cost of electricity used by an

1 electronic monitoring device.

2 **23-17.29-8. Notice to visitors.**

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

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

10 (c) The facility is responsible for installing and maintaining the signage required pursuant  
11 to this section.

12 **23-17.29-9. Obstruction of electronic monitoring devices.**

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

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

20 (c) A person shall not knowingly hamper, obstruct, tamper with, or destroy a video or audio  
21 recording obtained in accordance with this chapter without the permission of the resident or the  
22 resident's representative who consented to monitoring on behalf of the resident.

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

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

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

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

32 (d) The resident or resident's representative who consented to monitoring on behalf of a  
33 resident shall provide a copy of any video or audio recording to parties involved in a civil, criminal,  
34 or administrative proceeding upon request of a party to said proceeding if the video or audio

1 recording was made during the time period that the conduct at issue in the proceeding allegedly  
2 occurred.

3 **23-17.29-11. Admissibility of evidence.**

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

8 **23-17.29-12. Liability.**

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

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

14 **23-17.29-13. Resident protections.**

15 (a) A facility shall not:

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

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

21 (b) Any contractual provision prohibiting, limiting, or otherwise modifying the rights and  
22 obligations in this chapter is contrary to public policy and is void and unenforceable.

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

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

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

33 **23-17.29-15. Penalties.**

34 (a) The director may issue a statement of deficiency, upon a finding that the facility has



1 failed to comply with any provisions of this chapter.

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

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

7 **23-17.29-16. Rules and regulations.**

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

10 SECTION 2. This act shall take effect on January 30, 2025.

=====  
LC004603/SUB A  
=====

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 on January 30, 2025.

=====  
LC004603/SUB A  
=====