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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO HEALTH AND SAFETY - ELECTRONIC MONITORING OF NURSING  
HOME PREMISES

Introduced By: Representatives Costa, Palumbo, Baldelli-Hunt, Giarrusso, and Phillips

Date Introduced: February 05, 2013

Referred To: House Health, Education & Welfare

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 17.8.1

4 ELECTRONIC MONITORING OF PREMISES OF NURSING HOMES

5 **23-17.8.1-1. Definitions.** -- As used in this chapter:

6 (1) "Authorized electronic monitoring" means the placement of electronic monitoring  
7 devices in the common areas and rooms of residents of a nursing facility and recordings with the  
8 devices pursuant to the provisions of this chapter; and

9 (2) "Electronic monitoring device" means video surveillance cameras installed in the  
10 common areas and residents' rooms and audio devices installed in the residents' bathrooms and  
11 shower/bathing areas, designed to acquire communication or other sounds occurring in the rooms.

12 **23-17.8.1-2. Placement of monitoring devices.** -- (a) A licensed nursing facility shall  
13 place electronic monitoring devices throughout the nursing facility in areas including, but not  
14 limited to:

15 (1) Entrances and exits;

16 (2) Hallways;

17 (3) Dining areas;

18 (4) Nurses' stations; and

1           (5) Residents' rooms.

2           The resident and/or the resident's legal representative shall have the choice to opt out of  
3 electronic monitoring in the resident's room by executing a waiver prescribed by the director of  
4 the department of health. Should the resident or the resident's legal representative opt out by  
5 executing the waiver, electronic monitoring in that resident's room shall be turned off. In the  
6 event that a resident or a resident's legal representative chooses to opt out, execution of the waiver  
7 must be witnessed and signed by a representative of the state's long-term care ombudsman's  
8 office.

9           (b) Upon a resident's admission to a nursing facility, a form prescribed by the director  
10 shall be signed by the resident or the resident's legal representative which provides notice that the  
11 facility is required by state law to place electronic monitoring devices throughout the facility; this  
12 form shall provide language to allow the resident or resident's legal representative to opt out of  
13 electronic monitoring in the resident's room, if the resident or resident's legal representative  
14 chooses privacy over increased safety provided by electronic monitoring. The executed form shall  
15 be attached as a permanent record in the resident's file. The form shall also release the facility  
16 from any civil liability for a violation of the resident's privacy rights in connection with the use of  
17 the electronic monitoring device. The nursing facility shall be required to provide rooms to those  
18 residents who opt out of electronic monitoring. Under no circumstances will a resident be  
19 provided a room without video monitoring unless that resident or resident's legal representative  
20 opts out of electronic monitoring.

21           (c) Electronic monitoring in residents' rooms, bathrooms, and bathing areas shall be  
22 constant.

23           (d) Recordings shall be motion activated and activated whenever the nurse-call or call-  
24 for-assistance button is pressed for video recordings in residents' rooms and sound activated for  
25 bathrooms and bathing areas.

26           (e) Recordings shall capture a minimum of thirty (30) seconds after the activation and  
27 shall continue until no motion is detected for three (3) minutes.

28           (f) Recordings shall be maintained at the nursing facility for a minimum of thirty (30)  
29 days. Recordings shall be transferred to the department of health, where recordings will be stored  
30 for a minimum of five (5) years.

31           (g) Electronic monitoring systems for video monitoring shall be color, motion activated,  
32 with a minimum of fifteen (15) seconds per frame, minimum 550 resolution, with infrared  
33 illuminator or greater for night or low lighting monitoring.

34           (h) Nursing facilities shall post and maintain a conspicuous notice at the entrance of the

1 facility stating that the facility is being monitored by electronic monitoring devices.

2 (i) A nursing facility which conducts authorized electronic monitoring in a resident's  
3 room pursuant to this chapter shall post and maintain a conspicuous notice at the entrance to the  
4 resident's room stating that the room is being monitored by one or more electronic monitoring  
5 devices.

6 **23-17.8.1-3. Monitoring not compulsory. --** (a) Authorized electronic monitoring of a  
7 resident's room conducted under this chapter is not compulsory and shall only be conducted with  
8 the consent of the resident, residents, or legal representatives thereof.

9 (b) A nursing facility shall not refuse to admit an individual to residency in the facility  
10 and shall not remove a resident from a facility because of consent or refusal to consent to  
11 authorized electronic monitoring of a resident's room.

12 (c) All recordings made pursuant to this chapter shall show the time and date that events  
13 acquired on the tape or recording occurred.

14 **23-17.8.1-4. Obstructing prohibited. --** (a) No person or entity shall intentionally  
15 hamper, obstruct, tamper with, or destroy an electronic monitoring device installed in a nursing  
16 facility.

17 (b) Any person or entity found guilty of hampering, obstructing, tampering or destroying  
18 an electronic monitoring device shall be guilty of a misdemeanor and subject to imprisonment for  
19 a period not to exceed one year and/or fined an amount not to exceed one thousand dollars  
20 (\$1,000) or both.

21 (c) No person or entity shall intercept a communication or disclosure or use an  
22 intercepted communication of an electronic monitoring device placed or installed in a nursing  
23 facility without the express consent of the facility, or, for an electronic monitoring device  
24 installed in a resident's room, the express consent of the resident or the legal representatives  
25 thereof. Such act shall be considered tampering.

26 **23-17.8.1-5. Electronic files available. --** (a) A nursing facility shall make available to  
27 any resident or resident's legal representative real-time and recorded files. The nursing facility  
28 shall provide the resident or resident's legal representative with a secured Internet address, login,  
29 and password specifically for that respective resident to view real-time and recorded activity. The  
30 nursing facility shall provide a computer station at the facility for residents and their legal  
31 representatives to access real-time or recorded files. Recordings may be provided by the nursing  
32 facility upon request by residents and residents' legal representatives. Such recordings shall be  
33 provided by the nursing facility within forty-eight (48) hours. Residents and legal representatives  
34 may provide the nursing facility with DVDs or flash drives for the transfer of such recorded files,

1 otherwise the nursing facility may charge a fee of no more than twenty-five dollars (\$25.00) to  
2 recover the cost of storage media for such file transfers.

3 (b) A nursing facility shall make access to real-time video, tapes or other recordings  
4 permitted by this chapter available to the department of health. The state board of health shall  
5 promulgate rules as necessary to ensure that the provisions of this subsection do not violate the  
6 privacy rights of the residents protected by state or federal law.

7 (c) Residents, residents' legal representatives, authorized nursing home staff, and  
8 authorized state department of health staff shall have real-time access and access to recorded  
9 files.

10 (d) Law enforcement, prosecutors, and legal counsel representing a resident or residents'  
11 legal representative shall have access to recorded files.

12 **23-17.8.1-6. Use of recording as evidence. --** (a) A tape or recording created through  
13 the use of authorized electronic monitoring pursuant to this chapter may be admitted into  
14 evidence in a civil or criminal court action or administrative proceeding, upon motion.

15 (b) A court or administrative agency may not admit into evidence a tape or recording  
16 created through the use of authorized electronic monitoring or take or authorize action based on  
17 the tape or recording, unless:

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

20 (2) The contents of the tape or recording have not been edited or artificially enhanced;  
21 and

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

25 **23-17.8.1-7. Other causes of action pursued. --** (a) This chapter shall not affect  
26 whether a person may be held civilly liable under other provisions of law in connection with  
27 placing an electronic monitoring device in the room of a resident of a nursing facility or in  
28 connection with using or disclosing a tape or recording made by the device except:

29 (1) As specifically provided in this chapter; or

30 (2) To the extent that liability is affected by a consent form or waiver signed pursuant to  
31 the provisions of this chapter or the fact that authorized electronic monitoring is required to be  
32 conducted with notice to persons who enter the facility or a resident's room.

33 (b) The department of health shall not be held civilly liable in connection with the  
34 placement or use of an electronic monitoring device in a nursing facility.

1           **23-17.8.1-8. Resident's right to monitor.** -- Nothing in this chapter shall be construed to  
2 prevent a resident or resident's legal representative from placing an electronic monitoring device  
3 in the resident's room at the expense of such person and with the consent of all other residents, or  
4 legal representatives thereof, living in the room.

5           **23-17.8.1-9. Temporary waiver.** -- Residents who have electronic monitoring in their  
6 rooms and who desire privacy for intimacy shall have the right to request a temporary waiver  
7 from monitoring during such personal periods under the following conditions:

8           (1) Temporary waivers must be executed by a resident who is of sound mind or does not  
9 have a diagnosis of Alzheimer's disease, dementia, or has not been deemed incompetent; or

10           (2) If the resident is not of sound mind, has a diagnosis of Alzheimer's disease, dementia,  
11 or has been deemed to be incompetent, the resident's legal representative may request the  
12 temporary waiver.

13           **23-17.8.1-10. Authority of department of health.** -- The department of health is  
14 authorized to impose administrative fines or deny, suspend, or refuse to renew the license of a  
15 nursing facility which violates the provisions of this chapter, and shall promulgate rules as  
16 necessary to implement the provisions of this chapter.

17           SECTION 2. This act shall take effect upon passage. Facilities subject to the provisions  
18 of this act shall comply no later than December 31, 2013.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO HEALTH AND SAFETY - ELECTRONIC MONITORING OF NURSING  
HOME PREMISES

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- 1 This act would permit the electronic monitoring of nursing home facilities.
- 2 This act would take effect upon passage and would require compliance by December 31,
- 3 2013.

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