

House Bill 135

By: Representatives Douglas of the 78<sup>th</sup>, Powell of the 32<sup>nd</sup>, Howard of the 124<sup>th</sup>, Hawkins of the 27<sup>th</sup>, and Robichaux of the 48<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to health  
2 care facilities, so as to provide for authorized electronic monitoring in long-term care  
3 facilities; to provide for a short title; to provide for definitions; to provide consent  
4 requirements; to provide for notice to the facility; to provide for cost and installation; to  
5 provide for an assistance program for Medicaid recipients; to provide for notice to visitors;  
6 to prohibit obstruction of electronic monitoring devices; to limit the dissemination of  
7 recordings; to provide for admissibility into evidence; to provide for limited liability; to  
8 provide for rules and regulations; to provide for related matters; to repeal conflicting laws;  
9 and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to health care  
13 facilities, is amended by adding a new article to read as follows:

14 "ARTICLE 16

15 31-7-450.

16 This article shall be known and may be cited as the 'Authorized Electronic Monitoring in  
17 Long-term Care Facilities Act.'

18 31-7-451.

19 As used in this article, the term:

20 (1) 'Authorized electronic monitoring' means the placement and use of an electronic  
21 monitoring device by a resident in his or her room in accordance with this article.

22 (2) 'Electronic monitoring device' means a surveillance instrument with a fixed position  
23 video camera or an audio recording device, or a combination thereof, that is installed in

24 a resident's room under the provisions of this article and broadcasts or records activity or  
25 sounds occurring in the room.

26 (3) 'Facility' means any skilled nursing facility, intermediate care home, assisted living  
27 community, or personal care home subject to regulation and licensure by the department.

28 (4) 'Resident' means a person residing in a facility.

29 31-7-452.

30 (a) A resident shall be permitted to conduct authorized electronic monitoring of the  
31 resident's room through the use of electronic monitoring devices placed in the room  
32 pursuant to this article.

33 (b) Nothing in this article shall be construed to allow the use of an electronic monitoring  
34 device to take still photographs or for the nonconsensual interception of private  
35 communications.

36 31-7-453.

37 (a) Except as otherwise provided in this Code section, a resident, a resident's guardian, or  
38 the parent of a resident under the age of 18 must consent in writing on a notification and  
39 consent form prescribed by the department to the authorized electronic monitoring in the  
40 resident's room. If the resident has not affirmatively objected to the authorized electronic  
41 monitoring and the resident's physician determines that the resident lacks the ability to  
42 understand and appreciate the nature and consequences of electronic monitoring, the  
43 individuals listed in subsection (a) of Code Section 31-9-2 may consent on behalf of the  
44 resident, in the order of priority listed.

45 (b) Prior to another person, other than a resident's guardian, consenting on behalf of a  
46 resident 18 years of age or older in accordance with this Code section, the resident must  
47 be asked by that person, in the presence of a facility employee, if he or she wants  
48 authorized electronic monitoring to be conducted. Such person shall explain to the  
49 resident:

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

51 (2) The standard conditions that may be placed on the electronic monitoring device's use,  
52 including those listed in paragraph (7) of subsection (b) of Code Section 31-7-454;

53 (3) With whom the recording may be shared according to Code Section 31-7-459; and

54 (4) The resident's ability to decline all recording. For the purposes of this Code section,  
55 a resident affirmatively objects when he or she orally, visually, or through the use of  
56 auxiliary aids or services declines authorized electronic monitoring. The resident's  
57 response shall be documented on the notification and consent form.

58 (c) A resident or roommate may consent to authorized electronic monitoring with any  
59 conditions of the resident's or roommate's choosing, including, but not limited to, the list  
60 of standard conditions provided in paragraph (7) of subsection (b) of Code Section  
61 31-7-454. A resident or roommate may request that the electronic monitoring device be  
62 turned off or the visual recording component of the electronic monitoring device be  
63 blocked at any time.

64 (d) Prior to the authorized electronic monitoring, a resident shall obtain the written consent  
65 of any other resident residing in the room on the notification and consent form prescribed  
66 by the department. Except as otherwise provided in this Code section, a roommate, a  
67 roommate's guardian, or the parent of a roommate under the age of 18 must consent in  
68 writing to the authorized electronic monitoring in the resident's room. If the roommate has  
69 not affirmatively objected to the authorized electronic monitoring in accordance with  
70 subsection (b) of this Code section and the roommate's physician determines that the  
71 roommate lacks the ability to understand and appreciate the nature and consequences of  
72 electronic monitoring, the individuals listed in subsection (a) of Code Section 31-9-2 may  
73 consent on behalf of the resident's roommate, in the order of priority listed.

74 (e) Consent by a roommate under subsection (d) of this Code section authorizes the  
75 resident's use of any recording obtained under this article, as provided in Code  
76 Section 31-7-459.

77 (f) Any resident previously conducting authorized electronic monitoring shall obtain  
78 consent from any new roommate before the resident may resume authorized electronic  
79 monitoring. If a new roommate does not consent to authorized electronic monitoring and  
80 the resident conducting the authorized electronic monitoring does not remove or disable  
81 the electronic monitoring device, the facility may turn off the device.

82 (g) Consent may be withdrawn by the resident or roommate at any time, and the  
83 withdrawal of consent shall be documented in the resident's or roommate's clinical record.  
84 If a roommate withdraws consent and the resident conducting the authorized electronic  
85 monitoring does not remove or disable the electronic monitoring device, the facility may  
86 turn off the electronic monitoring device.

87 (h) If a resident who is residing in a shared room wants to conduct authorized electronic  
88 monitoring and another resident living in or moving into the same shared room refuses to  
89 consent to the use of an electronic monitoring device, the facility shall make a reasonable  
90 attempt to accommodate the resident who wants to conduct authorized electronic  
91 monitoring. A facility has met the requirement to make a reasonable attempt to  
92 accommodate a resident who wants to conduct authorized electronic monitoring when upon  
93 notification that a roommate has not consented to the use of an electronic monitoring  
94 device in his or her room, the facility offers to move either resident to another shared room

95 that is available at the time of the request. If a resident chooses to reside in a private room  
96 in order to accommodate the use of an electronic monitoring device, the resident must pay  
97 the private room rate. If a facility is unable to accommodate a resident due to lack of  
98 space, the facility shall reevaluate the request every two weeks until the request is fulfilled.

99 31-7-454.

100 (a) Authorized electronic monitoring may begin only after a notification and consent form  
101 prescribed by the department has been completed and submitted to the facility.

102 (b) A resident shall notify the facility in writing of his or her intent to install an electronic  
103 monitoring device by providing a completed notification and consent form prescribed by  
104 the department that shall include, at a minimum, the following information:

105 (1) The resident's signed consent to electronic monitoring or the signature of the person  
106 consenting on behalf of the resident in accordance with Code Section 31-7-453, if  
107 applicable, and any conditions placed on the resident's consent; if a person other than the  
108 resident signs the consent form, the form must document the following:

109 (A) The date the resident was asked if he or she wants authorized electronic monitoring  
110 to be conducted in accordance with subsection (b) of Code Section 31-7-453;

111 (B) Who was present when the resident was asked; and

112 (C) An acknowledgment that the resident did not affirmatively object;

113 (2) The resident's roommate's signed consent to electronic monitoring or the signature  
114 of the person consenting on behalf of the roommate in accordance with Code Section  
115 31-7-453, if applicable, and any conditions placed on the roommate's consent; if a person  
116 other than the roommate signs the consent form, the form must document the following:

117 (A) The date the roommate was asked if he or she wants authorized electronic  
118 monitoring to be conducted in accordance with subsection (b) of Code Section  
119 31-7-453;

120 (B) Who was present when the roommate was asked; and

121 (C) An acknowledgment that the roommate did not affirmatively object;

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

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

124 (5) The proposed date of installation for scheduling purposes;

125 (6) A copy of any contract for maintenance of the electronic monitoring device by a  
126 commercial entity;

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

129 (A) Prohibiting audio recording;

130 (B) Prohibiting broadcasting of audio or video;

- 131 (C) Turning off the electronic monitoring device or blocking the visual recording  
132 component of the electronic monitoring device for the duration of an exam or procedure  
133 by a health care professional;
- 134 (D) Turning off the electronic monitoring device or blocking the visual recording  
135 component of the electronic monitoring device while dressing or bathing is performed;  
136 and
- 137 (E) Turning the electronic monitoring device off for the duration of a visit with a  
138 spiritual adviser, ombudsman, attorney, financial planner, intimate partner, or other  
139 visitor; and
- 140 (8) Any other condition or restriction elected by the resident or roommate on the use of  
141 an electronic monitoring device.
- 142 (c) A copy of the completed notification and consent form shall be placed in the resident's  
143 and any roommate's clinical record and a copy shall be provided to the resident and his or  
144 her roommate, if applicable.
- 145 (d) The department shall prescribe the notification and consent form required by this Code  
146 section no later than 60 days after the effective date of this article. If the department has  
147 not prescribed such a form by that date, the Office of the Attorney General shall post a  
148 notification and consent form on its website for resident use until the department has  
149 prescribed the form.
- 150 31-7-455.
- 151 (a) A resident choosing to conduct authorized electronic monitoring shall do so at his or  
152 her own expense, including paying for the purchase, installation, maintenance, and removal  
153 costs.
- 154 (b) If a resident chooses to install an electronic monitoring device that uses Internet  
155 technology for visual or audio monitoring, such resident is responsible for contracting with  
156 an Internet service provider.
- 157 (c) The facility shall make a reasonable attempt to accommodate a resident's installation  
158 needs, including, but not limited to, allowing access to the facility's telecommunications  
159 or equipment room. A facility shall have the burden of proving that a requested  
160 accommodation is not reasonable.
- 161 (d) The electronic monitoring device shall be placed in a conspicuously visible location  
162 in the room.
- 163 (e) A facility may not charge a resident a fee for the cost of electricity used by an  
164 electronic monitoring device.

165 (f) All electronic monitoring device installations and supporting services shall comply with  
166 the requirements of the National Fire Protection Association (NFPA) 101 Life Safety Code  
167 (2000 edition).

168 31-7-456.

169 (a) Subject to appropriation, the department shall establish a program to assist residents  
170 receiving medical assistance under Article 7 of Chapter 4 of Title 49 in accessing  
171 authorized electronic monitoring.

172 (b) The department shall distribute up to \$50,000 in funds on an annual basis to residents  
173 receiving medical assistance under Article 7 of Chapter 4 of Title 49 for the purchase and  
174 installation of authorized electronic monitoring devices.

175 (c) Applications for funds and disbursement of funds shall be made in a manner prescribed  
176 by the department.

177 31-7-457.

178 (a) If a resident of a facility conducts authorized electronic monitoring, a sign shall be  
179 clearly and conspicuously posted at all building entrances accessible to visitors. The notice  
180 shall be entitled 'Electronic Monitoring' and shall state in large, easy-to-read type, 'The  
181 rooms of some residents may be monitored electronically by or on behalf of the residents.'

182 (b) A sign shall be clearly and conspicuously posted at the entrance to a resident's room  
183 where authorized electronic monitoring is being conducted. The notice shall state in large,  
184 easy-to-read type, 'This room is electronically monitored.'

185 (c) The facility shall be responsible for installing and maintaining the signage required by  
186 this Code section.

187 31-7-458.

188 (a) A person or entity is prohibited from knowingly hampering, obstructing, tampering  
189 with, or destroying an electronic monitoring device installed in a resident's room without  
190 the permission of the resident or the individual who consented on behalf of the resident in  
191 accordance with Code Section 31-7-453.

192 (b) A person or entity is prohibited from knowingly hampering, obstructing, tampering  
193 with, or destroying a video or audio recording obtained in accordance with this article  
194 without the permission of the resident or the individual who consented on behalf of the  
195 resident in accordance with Code Section 31-7-453.

196 (c) A person or entity that violates this Code section shall be guilty of a misdemeanor.

197 (d) It shall not be a violation of this Code section if a person or facility turns off the  
198 electronic monitoring device or blocks the visual recording component of the electronic

199 monitoring device at the direction of the resident or the person who consented on behalf  
200 of the resident in accordance with Code Section 31-7-453.

201 31-7-459.

202 (a) A facility may not access any video or audio recording created through authorized  
203 electronic monitoring without the written consent of the resident or the person who  
204 consented on behalf of the resident in accordance with Code Section 31-7-453.

205 (b) Except as required under Article 4 of Chapter 18 of Title 50, relating to open records,  
206 a recording or a copy of a recording made pursuant to this article shall only be  
207 disseminated for the purpose of addressing concerns relating to the health, safety, or  
208 welfare of a resident or residents.

209 (c) The resident or the person who consented on behalf of the resident in accordance with  
210 Code Section 31-7-453 shall provide a copy of any video or audio recording to parties  
211 involved in a civil, criminal, or administrative proceeding, upon a party's request, if the  
212 video or audio recording was made during the time period that the conduct at issue in the  
213 proceeding allegedly occurred.

214 31-7-460.

215 Subject to applicable rules of evidence and procedure, any video or audio recording created  
216 through authorized electronic monitoring in accordance with this article may be admitted  
217 into evidence in a civil, criminal, or administrative proceeding if the contents of the  
218 recording have not been edited or artificially enhanced and the video recording includes  
219 the date and time the events occurred.

220 31-7-461.

221 Each facility shall report to the department, in a manner prescribed by the department, the  
222 number of authorized electronic monitoring notification and consent forms received  
223 annually. The department shall report the total number of authorized electronic monitoring  
224 notification and consent forms received by facilities to the Office of the Attorney General  
225 annually.

226 31-7-462.

227 (a) A facility shall not be civilly or criminally liable for the inadvertent or intentional  
228 disclosure of a recording by a resident or a person who consents on behalf of the resident  
229 for any purpose not authorized by this article.

230 (b) A facility shall not be civilly or criminally liable for a violation of a resident's right to  
231 privacy arising out of any electronic monitoring conducted pursuant to this article.

232 31-7-463.

233 The department shall adopt rules and regulations necessary to implement this article."

234 **SECTION 2.**

235 All laws and parts of laws in conflict with this Act are repealed.