

House Bill 849

By: Representatives Douglas of the 78th, Trammell of the 132nd, Hawkins of the 27th, Powell of the 32nd, Howard of the 124th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to care
2 and protection of indigent and elderly patients, so as to provide for authorized electronic
3 monitoring in long-term care facilities; to provide for a short title; to provide for definitions;
4 to provide consent requirements; to provide for notice to the facility; to provide for cost and
5 installation; to provide for notice to visitors; to prohibit obstruction of electronic monitoring
6 devices; to limit access to recordings; to provide for limited liability; to provide for rules and
7 regulations; to provide for a notification and consent form; to provide for related matters; to
8 repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to care and
12 protection of indigent and elderly patients, is amended by adding a new article to read as
13 follows:

14 style="text-align:center">"ARTICLE 5B

15 31-8-140.

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

18 31-8-141.

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 broadcasts or
 24 records activity or sounds.

25 (3) 'Facility' means any skilled nursing facility, intermediate care home, assisted living
 26 community, or personal care home subject to regulation and licensure by the department
 27 under Chapter 7 of this title.

28 (4) 'Notification and consent form' means a document substantially similar to the form
 29 set forth in Code Section 31-8-149.3.

30 (5) 'Physician' means an individual licensed to practice medicine in this state.

31 (6) 'Representative' means an individual listed in subsection (a) of Code Section 31-9-2.

32 (7) 'Resident' means a person residing in a facility.

33 31-8-142.

34 (a) A resident shall be permitted to conduct authorized electronic monitoring of his or her
 35 room through the use of one or more electronic monitoring devices placed in his or her
 36 room in accordance with the provisions of this article.

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

40 31-8-143.

41 (a) Prior to conducting any electronic monitoring, a resident or a resident's representative
 42 shall provide written consent on a notification and consent form to authorize electronic
 43 monitoring in the resident's room. If the resident's physician determines that the resident
 44 lacks the ability to understand and appreciate the nature and consequences of electronic
 45 monitoring, the resident's representative may consent on behalf of the resident.

46 (b) Prior to conducting any electronic monitoring, a resident shall obtain the written
 47 consent of any other resident residing in the room on the notification and consent form.
 48 Such consent may be provided by a roommate or the roommate's representative. If the
 49 roommate's physician determines that the roommate lacks the ability to understand and
 50 appreciate the nature and consequences of electronic monitoring, the roommate's
 51 representative may consent on behalf of the roommate.

52 (c) Prior to a representative consenting on behalf of a resident or roommate, such
 53 representative shall ask the resident or roommate, in the presence of a facility employee,
 54 if the resident or roommate wants authorized electronic monitoring to be conducted. The
 55 resident's or roommate's representative shall explain to the resident or roommate:

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

- 57 (2) That conditions may be placed on the use of the electronic monitoring device,
58 including those contained in the form set forth in Code Section 31-8-149.3;
59 (3) The entities with whom the recordings may be shared; and
60 (4) The resident's or roommate's ability to object to and decline the placement of
61 electronic monitoring devices in his or her room.

62 For purposes of this Code section, a resident or roommate objects when he or she orally,
63 visually, or through the use of auxiliary aids or services declines authorized electronic
64 monitoring. The resident's or roommate's response shall be documented on the notification
65 and consent form.

66 (d) A resident or roommate of a resident may consent to authorized electronic monitoring
67 with any conditions either party chooses. A resident or roommate of a resident may request
68 that the electronic monitoring device be turned off or the visual recording component of
69 the electronic monitoring device be blocked for a limited time as needed.

70 (e) Consent by a resident's roommate under subsection (b) of this Code section authorizes
71 the resident's use of any recording conducted in accordance with this article, as provided
72 in Code Section 31-8-148.

73 (f) Any resident conducting authorized electronic monitoring shall obtain consent from
74 any new roommate before the resident may continue authorized electronic monitoring. If
75 a new roommate does not consent to authorized electronic monitoring and the resident
76 conducting the authorized electronic monitoring does not remove or disable the electronic
77 monitoring device, the facility may turn off the electronic monitoring device.

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

83 (h) If a resident's roommate refuses to consent to the use of an electronic monitoring
84 device, the facility shall make a reasonable attempt to accommodate the resident who wants
85 to conduct authorized electronic monitoring. If the facility offers to move either resident
86 to another shared room that is available at the time of the request, it shall be deemed a
87 reasonable attempt. If a facility is unable to accommodate a resident, owing to lack of
88 space, the facility shall reevaluate the request every two weeks until the request can be
89 fulfilled. If a resident chooses to reside in a private room in order to accommodate the use
90 of an electronic monitoring device, the resident must pay the private room rate.

91 31-8-144.

92 (a) A resident shall notify the facility in writing of his or her intent to install an electronic
93 monitoring device in his or her room by providing a completed notification and consent
94 form to the facility. Such form shall be accompanied by a copy of any contract for
95 maintenance of the electronic monitoring device by a commercial entity, if applicable.

96 (b) A copy of the completed notification and consent form shall be placed in the resident's
97 and any roommate's clinical record, and a copy shall be provided to the resident and the
98 resident's roommate, if applicable.

99 31-8-145.

100 (a) A resident choosing to conduct authorized electronic monitoring shall do so at his or
101 her own expense, including paying for the purchase, installation, maintenance, and removal
102 costs.

103 (b) The facility shall make a reasonable attempt to accommodate a resident's installation
104 needs, including, but not limited to, allowing access to the facility's telecommunications
105 or equipment room. A facility shall have the burden of proving that a requested
106 accommodation is not reasonable.

107 (c) The electronic monitoring device shall be placed in a conspicuously visible location
108 in the resident's room.

109 (d) A facility may not charge a resident a fee for the cost of electricity used by an
110 electronic monitoring device.

111 (e) All electronic monitoring device installations and supporting services shall comply
112 with the requirements of the National Fire Protection Association (NFPA) 101 Life Safety
113 Code (2000 edition).

114 31-8-146.

115 (a) If a resident conducts authorized electronic monitoring, a sign shall be clearly and
116 conspicuously posted by the facility at all building entrances accessible to visitors. The
117 sign shall be entitled 'Electronic Monitoring' and shall state in large, easy-to-read type, 'The
118 rooms of one or more residents may be monitored electronically by or on behalf of the
119 residents.'

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

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

125 31-8-147.

126 (a) A person or entity is prohibited from knowingly hampering, obstructing, tampering
127 with, or destroying an electronic monitoring device installed in a resident's room without
128 the permission of the resident or the resident's representative.

129 (b) A person or entity is prohibited from knowingly hampering, obstructing, tampering
130 with, or destroying a video or audio recording obtained in accordance with this article
131 without the permission of the resident or the resident's representative.

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

133 (d) It shall not be a violation of this Code section if a person or facility turns off the
134 electronic monitoring device or blocks the visual recording component of the electronic
135 monitoring device at the direction of the resident or the resident's representative or the
136 roommate or the roommate's representative.

137 31-8-148.

138 A facility may not access any video or audio recording created through authorized
139 electronic monitoring without the written consent of the resident or the resident's
140 representative.

141 31-8-149.

142 Each facility shall report to the department, in a manner prescribed by the department, the
143 number of authorized electronic monitoring notification and consent forms received
144 annually. The department shall report the total number of authorized electronic monitoring
145 notification and consent forms received from facilities on an annual basis to the Office of
146 the Attorney General.

147 31-8-149.1.

148 It shall not be considered a violation of this article if a person or facility:

149 (1) Turns off an electronic monitoring device or blocks the visual recording component
150 of the electronic monitoring device at the direction of the resident or the resident's
151 representative or the roommate or the roommate's representative;

152 (2) Turns off an electronic monitoring device or blocks the visual recording component
153 of the electronic monitoring device pursuant to conditions or restrictions of the resident
154 or the resident's representative or the roommate or the roommate's representative;

155 (3) In good faith, fails to turn off an electronic monitoring device or block the visual
156 recording component of the electronic monitoring device as referenced in this Code
157 section; or

158 (4) In good faith, fails to turn on an electronic monitoring device or unblock the visual
159 recording component of the electronic monitoring device following activity as referenced
160 in this Code section.

161 31-8-149.2.

162 (a) A facility shall not be civilly or criminally liable for the inadvertent or unintentional
163 disclosure of a recording by a resident or for any purpose not authorized by this article.

164 (b) A facility shall not be civilly or criminally liable for a violation of a resident's right to
165 privacy arising out of any electronic monitoring conducted in accordance with this article.

166 31-8-149.3.

167 This document or a document substantially similar to the following form may be used to
168 create a notification and consent form that has the meaning and effect prescribed by this
169 article.

170 NOTICE OF AUTHORIZED ELECTRONIC MONITORING

171 _____

172 Resident's Name Date

173 I, _____, elect at my own expense to install an

174 Resident

175 electronic monitoring device in my room _____.

176 Room Number

177 _____

178 Resident or Representative Signature Date Resident Consented to Authorized

179 Electronic Monitoring

180 _____

181 Resident or Representative Printed Name

182 Type of electronic monitoring device to be used: audio/video (circle one or both)

183 Make/Model/Type: _____

184 Installation needs (if any): _____

185 Proposed date of installation: _____

186 Resident's restrictions (check all that apply):

187 Prohibit Audio Recording

188 Prohibit Broadcasting of Audio or Video

189 Turn Off Device for Duration of an Examination or Procedure by a Physician or Other Health Care Professional

191 Block Visual Recording for Duration of an Examination or Procedure by a Physician or Other Health Care Professional

193 Turn Off Device while Dressing, Bathing, or other Personal Care is Performed

194 Block Visual Recording while Dressing, Bathing, or other Personal Care is Performed

195 Turn Off Device for the Duration of a Visit with:

196 A Spiritual Adviser

197 Ombudsman, Attorney, or Financial Planner

198 Intimate Partner

199 Other Visitor (please specify) _____

200 Other Conditions/Restrictions (please specify) _____

201 _____

202 *If the resident's representative signs on the resident's behalf:*

203 I, _____, attest that _____

204 Witness Resident

205 did not object to authorized electronic monitoring.

206 _____

207 Witness Signature

Date

208 ROOMMATE CONSENT

209 _____

210 Roommate Name

Date

211 I, _____, consent to my roommate's use of an electronic

212 Roommate

213 monitoring device in our room _____.

214 Room Number

215 _____

216 Roommate or Representative Signature

Date Roommate Consented to Authorized

217 Electronic Monitoring

218 _____

219 Roommate or Representative Printed Name

220 Roommate's restrictions (check all that apply):

221 Prohibit Audio Recording

222 Prohibit Broadcasting of Audio or Video

223 Turn Off Device for Duration of an Examination or Procedure by a Physician or Other Health Care Professional

225 Block Visual Recording for Duration of an Examination or Procedure by a Physician or Other Health Care Professional

227 Turn Off Device while Dressing, Bathing, or other Personal Care is Performed

228 Block Visual Recording while Dressing, Bathing, or other Personal Care is Performed

229 Turn Off Device for the Duration of a Visit with:

230 A Spiritual Adviser

231 Ombudsman, Attorney, or Financial Planner

232 Intimate Partner

233 Other Visitor (please specify) _____

234 Other Conditions/Restrictions (please specify) _____

235 _____

236 *If the roommate's representative signs on roommate's behalf:*

237 I, _____, attest that _____

238 Witness

Roommate

239 did not object to authorized electronic monitoring.

240 _____

241 Witness Signature

Date

242 For Internal Use Only

243 Date Received _____ Received By _____

244 31-8-149.4.

245 The department shall adopt rules and regulations necessary to implement the provisions of
246 this article."

SECTION 2.

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