

House Bill 605 (COMMITTEE SUBSTITUTE)

By: Representatives Cooper of the 43<sup>rd</sup> and LaHood of the 175<sup>th</sup>

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 definitions; to provide consent  
4 requirements; to provide for notice to the facility; to provide for relocation of a resident to  
5 another room; to provide for installation and costs; to provide for notice to visitors; to  
6 prohibit obstruction or destruction of electronic monitoring devices; to provide for protection  
7 of privacy rights; to provide for limited liability; to provide for a notification and consent  
8 form; to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **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:

H. B. 605 (SUB)

14 "ARTICLE 5B

15 31-8-140.

16 As used in this article, the term:

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

19 (2) 'Designated agent' means an individual listed in paragraphs (1) through (5) of  
20 subsection (a) of Code Section 31-9-2 or an adult child of the resident who has obtained  
21 the written consent of a majority of his or her siblings.

22 (3) 'Electronic monitoring device' means an open and obvious, nonclandestine  
23 surveillance instrument with a fixed, nonrotatable position video camera or an audio  
24 recording device, or a combination thereof, that broadcasts, records, or both activity or  
25 sounds.

26 (4) '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 under Chapter 7 of this title.

29 (5) 'Notification and consent form' means a document substantially similar to the form  
30 set forth in Code Section 31-8-148.

31 (6) 'Physician' means an individual licensed to practice medicine in this state.

32 (7) 'Resident' means a person who receives care and treatment and resides in a facility.

33 31-8-141.

34 (a) Before initiating the use of an electronic monitoring device inside a facility, a resident  
35 shall complete and submit to the facility a written notification and consent form that  
36 substantially meets the requirements of this article. If the resident lacks decision-making  
37 capacity, the form may be completed and submitted by a designated agent of the resident.

38 The notification and consent form shall either be on a form substantially similar to the form  
39 set forth in Code Section 31-8-148 or include at least:

40 (1) A statement affirming that the resident or resident's designated agent, subject to any  
41 noted restrictions, consents to the use of the electronic monitoring device;

42 (2) If the resident has a roommate or roommates, a statement affirming that each  
43 roommate or roommate's designated agent, subject to any noted restrictions, consents to  
44 the use of the electronic monitoring device;

45 (3) A description of the electronic monitoring device, including the brand name and  
46 model number, and the installation and operating requirements; and

47 (4) Restrictions that the resident, the resident's designated agent, the resident's roommate,  
48 or the resident's roommate's designated agent may impose on the placement and use of  
49 the electronic monitoring device, including, but not limited to, any of the following:

50 (A) Prohibitions on video or audio recording;

51 (B) Prohibitions on broadcasting video or audio recordings;

52 (C) Requiring that the electronic monitoring device be turned off or blocked during an  
53 examination or procedure by a specified health care provider;

54 (D) Requiring that the electronic monitoring device be turned off or blocked while  
55 dressing, bathing, or personal care is being performed;

56 (E) Requiring that the electronic monitoring device be turned off or blocked during a  
57 visit with an intimate partner;

58 (F) The signature of the resident or his or her designated agent and the date of signing;  
59 and

60 (G) If the resident has a roommate or roommates, the signature of each roommate or  
61 his or her designated agent, and the date of signing.

62 (b) Consent by a roommate or roommate's designated agent to use an electronic  
63 monitoring device constitutes authorization to the resident's use of any video or audio

64 recording obtained in accordance with this Code section and pursuant to subsection (c) of  
65 31-8-146.

66 (c) Any amendments to the information contained in the notification and consent form  
67 shall be in writing, signed, and dated, and submitted to the facility. The notification and  
68 consent form, or an amendment to it, shall not be effective until 24 hours after it has been  
69 received by the facility.

70 (d) If a notification and consent form or an amendment to the form is signed by a  
71 designated agent, it shall also include either a statement from a physician who has  
72 evaluated the resident that the resident, on whose behalf the designated agent is acting,  
73 lacks decision-making capacity, or a copy of the guardianship order, power of attorney, or  
74 similar authority.

75 (e) Upon receiving a completed notification and consent form, or any amendment to the  
76 form, the facility shall place the form in the resident's file and provide a copy to the  
77 resident or his or her designated agent and to the resident's roommate or roommates or his  
78 or her designated agent, if applicable.

79 (f) The placement of any electronic monitoring device shall be in an open and obvious  
80 location and shall not be hidden in another device or item.

81 (g) No person shall use an electronic monitoring device to operate in a manner that is  
82 inconsistent with this article.

83 31-8-142.

84 (a) If any of the resident's roommates refuse to consent to the use of an electronic  
85 monitoring device, the facility shall, upon the written request of the resident, relocate the  
86 resident to another room as soon as the circumstances permit; provided, however, that the  
87 facility is not required to provide the resident with a single room, unless the resident agrees  
88 to pay the increased charges.

89 (b) During the period of any delay in a requested relocation as provided in subsection (a)  
90 of this Code section, the resident shall be permitted to install a video-only electronic  
91 monitoring device, provided that such device is installed to monitor only the resident.

92 31-8-143.

93 (a) A resident may not use a facility's local area network to connect the electronic  
94 monitoring device to the internet, unless the facility provides written consent to the  
95 resident. Subject to subsection (d) of this Code section, a facility that consents to a  
96 resident's use of a local area network may impose reasonable conditions on the use of such  
97 network to prevent a data breach and to limit the consumption of available bandwidth.

98 (b) If a facility does not consent to a resident's use of its local area network, the resident  
99 may, at the resident's cost, arrange for access to the internet through an internet service  
100 provider. The facility may impose reasonable conditions on the installation of any wire,  
101 cable, or other technologies, required for internet access only to:

102 (1) Prevent permanent damage to the facility; provided, however, that the resident or  
103 resident's designated agent shall be responsible for the cost of repair of any physical  
104 damage to the facility that occurs as a result of the use of the electronic monitoring  
105 device;

106 (2) Avoid the creation of a safety hazard; or

107 (3) Avoid the violation of any applicable building or electrical code.

108 (c) All electronic monitoring device installations and supporting services shall comply  
109 with the requirements of the National Fire Protection Association (NFPA) 101 Life Safety  
110 Code (2000 edition).

111 (d) A facility may not charge a resident a fee for the cost of electricity used by an  
112 electronic monitoring device, and, if the facility charges a resident a fee for the use of data,  
113 such fee shall be reasonable.

114 31-8-144.

115 (a) If a resident conducts authorized electronic monitoring, a sign shall be clearly and  
116 conspicuously posted by the facility at the entrance to a resident's room where authorized  
117 electronic monitoring is being conducted. The sign shall state in large, easy-to-read type,  
118 'This room is electronically monitored.'

119 (b) The facility shall be responsible for installing and maintaining the signage required by  
120 this Code section.

121 31-8-145.

122 (a) A person is prohibited from knowingly hampering, obstructing, tampering with, or  
123 destroying an electronic monitoring device installed in a resident's room without the  
124 permission of the resident or the resident's designated agent.

125 (b) Except as otherwise provided in this article, a person may not access or disseminate  
126 a recording produced by an electronic monitoring device without the written consent of the  
127 resident or his or her designated agent.

128 (c) A facility may remove, without notice and at the resident's expense, any electronic  
129 monitoring device installed or placed in the facility in violation of this article.

130 31-8-146.

131 (a) A person who possesses material captured by an electronic monitoring device shall,  
132 upon the facility's written request, provide a copy of the recording to the facility if an  
133 allegation of neglect, abuse, negligence, or other misconduct has been filed or if a demand  
134 letter threatening litigation has been sent to the facility in a civil, criminal, or administrative  
135 action, and the recording, or any portion thereof, contains alleged evidence related to the  
136 allegation or threatened allegation. The facility shall reimburse the person with the  
137 recording for any reasonable costs incurred by providing the recording.

138 (b) Subject to the applicable rules of evidence and procedure, requests for discovery of  
139 such video or audio recording shall be directed to the resident or the designated agent who  
140 consented on behalf of the resident to the authorized electronic monitoring, and such  
141 requests shall not be directed to the facility.

142 (c) Subject to the applicable rules of evidence and procedure, video and audio recordings  
143 created in a facility may be admitted into evidence in a civil, criminal, or administrative  
144 proceeding if such video or audio recordings were obtained through authorized electronic  
145 monitoring in accordance with the conditions and provisions of this article.

146 31-8-147.

147 (a) A facility shall not be civilly or criminally liable for any violation of a person's right  
148 to privacy arising out of the use of an electronic monitoring device, including by third  
149 parties, except to the extent the violation was caused by the facility's intentional violation  
150 of this article.

151 (b) A facility may not discriminate against a resident or roommate for consenting to or  
152 refusing to consent to the use of an electronic monitoring device.

153 (c) A facility may not discriminate against any potential resident or potential roommate  
154 for consenting to or refusing to consent to the use of an electronic monitoring device.

155 31-8-148.

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

159 NOTICE OF AUTHORIZED ELECTRONIC MONITORING

160 \_\_\_\_\_

161 Resident's Name Date

162 I, \_\_\_\_\_, elect at my own expense to install an

163 Resident

164 electronic monitoring device in my room \_\_\_\_\_.

165 Room Number

166 \_\_\_\_\_

167 Resident or Designated Agent Signature Date Resident Consented to Authorized

168 Electronic Monitoring

169 \_\_\_\_\_

170 Resident or Designated Agent Printed Name

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

172 Make/Model/Type: \_\_\_\_\_

173 Installation needs (if any): \_\_\_\_\_

174 Proposed date of installation: \_\_\_\_\_

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

176  Prohibit Audio Recording

177  Prohibit Video Recording

178  Turn Off Device for Duration of an Examination or Procedure by a Physician or the

179 Following Other Health Care Provider or Providers:

180 \_\_\_\_\_

181  Block Visual Recording for Duration of an Examination or Procedure by a Physician  
182 or the Following Other Health Care Provider or Providers:

183 \_\_\_\_\_

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

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

186  Turn Off Device for the Duration of a Visit with an Intimate Partner

187  Other Conditions/Restrictions (please specify) \_\_\_\_\_

188 \_\_\_\_\_

189 ROOMMATE CONSENT

190 \_\_\_\_\_

191 Roommate Name Date

192 I, \_\_\_\_\_, consent to my roommate's use of an electronic  
193 Roommate

194 monitoring device in our room \_\_\_\_\_  
195 Room Number

196 \_\_\_\_\_

197 Roommate or Designated Agent Signature Date Roommate Consented to Authorized  
198 Electronic Monitoring

199 \_\_\_\_\_

200 Roommate or Designated Agent Printed Name

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

202  Prohibit Audio Recording

203  Prohibit Video Recording

204  Turn Off Device for Duration of an Examination or Procedure by a Physician or the  
205 Following Other Health Care Provider or Providers:

206 \_\_\_\_\_

207  Block Visual Recording for Duration of an Examination or Procedure by a Physician  
208 or the Following Other Health Care Provider or Providers:

209 \_\_\_\_\_

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

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

212  Turn Off Device for the Duration of a Visit with an Intimate Partner

213 Use of Data Obtained by Device:

214  Must obtain my consent before disseminating, publishing, or otherwise sharing the  
215 recording with third parties for something other than an administrative or legal  
216 proceeding

217  Other Conditions/Restrictions (please specify) \_\_\_\_\_

218 \_\_\_\_\_

219 For Internal Use Only

220 Date Received \_\_\_\_\_ Received By \_\_\_\_\_ "

221 **SECTION 2.**

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