

SENATE SUBSTITUTE TO HB 605

AS PASSED SENATE**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 devices; to provide for protection of privacy rights; to
7 provide for limited liability; to provide for a notification and consent form; to provide for
8 statutory construction; to provide for related matters; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

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

"ARTICLE 5B

31-8-140.

As used in this article, the term:

(1) 'Authorized electronic monitoring' means the open and obvious use of an electronic monitoring device by a resident to monitor the resident or activities within the resident's room in accordance with this article.

(2) 'Department' means the Department of Community Health.

(3) 'Designated agent' means an individual listed in paragraphs (1) through (6) of subsection (a) of Code Section 31-9-2.

(4) 'Electronic monitoring device' means a video camera or an audio recording device, or a combination thereof, that broadcasts, records, or both activity or sounds.

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

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

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

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

31-8-141.

(a) Before initiating authorized electronic monitoring inside a facility, a resident shall complete and submit to the facility a written notification and consent form that substantially meets the requirements of this article. If the resident lacks decision-making capacity, the form may be completed and submitted by a designated agent of the resident. The notification and consent form shall either be on a form substantially similar to the form set forth in Code Section 31-8-148 or include at least:

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

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

(3) A description of the electronic monitoring device to be used in the authorized electronic monitoring, including the brand name and model number, and the installation and operating requirements; and

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

(A) Prohibitions on video or audio recording;

(B) Prohibitions on broadcasting video or audio recordings;

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

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

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

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

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

(b) Consent by a roommate or roommate's designated agent to use authorized electronic monitoring constitutes authorization to the resident's use of any video or audio recording obtained in accordance with this Code section and pursuant to subsection (c) of 31-8-146.

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

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

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

(f) Any electronic monitoring device used for authorized electronic monitoring shall be in an open and obvious location and shall not be hidden in another device or item.

(g) No person shall conduct authorized electronic monitoring in a manner that is inconsistent with this article. No person shall conduct clandestine use of an electronic monitoring device to monitor a resident's room, unless otherwise authorized by law.

31-8-142.

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

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

(c) In order to assist the resident or the resident's designated agent with implementation of authorized electronic monitoring, the facility shall provide the contact information for a roommate's designated agent, where known, if the roommate is incapacitated.

31-8-143.

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

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

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

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

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

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

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

(e)(1) The resident or resident's designated agent may install or maintain an electronic monitoring device for authorized electronic monitoring in accordance with this Code section.

(2) The facility shall not:

(A) Be required to or mandate that it install or maintain the resident's selected electronic monitoring device or devices for authorized electronic monitoring in compliance with this article; or

(B) Bar or attempt to limit the ability of a resident, resident's designated agent, or other agent of such resident or resident's designated agent to install or maintain an electronic monitoring device for authorized electronic monitoring in compliance with this article.

31-8-144.

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

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

31-8-145.

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

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

(c) Except as directed by the resident or the resident's designated agent, a facility may only move or adjust an electronic monitoring device to ensure such electronic monitoring device is installed, placed, or used in accordance with the terms of the notification and consent form filed with the facility pursuant to subsection (a) of 31-8-141.

(d) A court may consider evidence that a person violated subsection (a) of this Code section.

31-8-146.

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

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

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

(d) There shall be no duty for a resident or a resident's designated agent to retain material captured through authorized electronic monitoring as referenced in subsection (a) of this Code section, except after receipt of a written request from a facility pursuant to subsection (a) of this Code section by such resident or resident's designated agent, whereupon failure to retain such material, if available, may result in a presumption against the resident or resident's designated agent as provided in Code Section 24-14-22.

31-8-147.

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

(b) A facility may not discriminate against a resident or roommate for using, requesting, consenting to, or refusing to consent to the use of authorized electronic monitoring.

(c) A facility may not discriminate against any potential resident or potential roommate for using, requesting, consenting to, or refusing to consent to the use of authorized electronic monitoring.

31-8-148.

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

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- 205 ☐ Prohibit Video Recording
- 206 ☐ Turn Off Device for Duration of an Examination or Procedure by a Physician or the
- 207 Following Other Health Care Provider or Providers:
- 208 _____
- 209 ☐ Block Visual Recording for Duration of an Examination or Procedure by a Physician
- 210 or the Following Other Health Care Provider or Providers:
- 211 _____
- 212 ☐ Turn Off Device while Dressing, Bathing, or other Personal Care is Performed
- 213 ☐ Block Visual Recording while Dressing, Bathing, or other Personal Care is Performed
- 214 ☐ Turn Off Device for the Duration of a Visit with an Intimate Partner
- 215 ☐ Other Conditions/Restrictions (please specify)
- 216 _____

217 ROOMMATE CONSENT

218 _____

219 Roommate Name Date

220 I, _____, consent to my roommate's use of authorized

221 Roommate

222 electronic monitoring in our room.

223 Room Number

224 _____

225 Roommate or Designated Agent Signature Date Roommate Consented to Authorized

226 Electronic Monitoring

227 _____

228 Roommate or Designated Agent Printed Name

229 ☐ **Roommate authorizes continuous 24/7 video and audio recording**

230 OR

231 ☐ Roommate's restrictions (check all that apply):

232 ☐ Prohibit Audio Recording

233 ☐ Prohibit Video Recording

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

236 _____
237 ☐ Block Visual Recording for Duration of an Examination or Procedure by a Physician
238 or the Following Other Health Care Provider or Providers:

239 _____
240 ☐ Turn Off Device while Dressing, Bathing, or other Personal Care is Performed
241 ☐ Block Visual Recording while Dressing, Bathing, or other Personal Care is Performed
242 ☐ Turn Off Device for the Duration of a Visit with an Intimate Partner

243 Use of Data Obtained by Device:

244 ☐ Must obtain my consent before disseminating, publishing, or otherwise sharing the
245 recording with third parties for something other than an administrative or legal
246 proceeding

247 ☐ Other Conditions/Restrictions (please specify)

248 _____

249 For Internal Use Only

250 Date Received _____ Received By _____ '

251 (b) The department shall maintain a link on its website to the document set out in
252 subsection (a) of this Code section. Such linked document shall be in a format which shall
253 enable a person to complete the document online and print it or to print the document and
254 complete the document in writing.

255 31-8-149.

256 Nothing in this article shall be construed to preclude the use of electronic monitoring
257 devices nor the admissibility of audio or video recordings in civil, criminal, or
258 administrative action as otherwise authorized by law, including, but not limited to,
259 recordings obtained in accordance with subparagraph (2)(B) of Code Section 16-11-62."

260 **SECTION 2.**

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