A bill to be entitled
An act relating to electronic monitoring devices;
providing a definition; requiring that a nursing home
and an assisted living facility allow a resident, the
resident’s personal representative at the resident’s
request, the resident’s surrogate, or the resident’s
guardian to monitor the room of the resident through
the use of electronic monitoring devices; providing
that a nursing home and an assisted living facility
require a resident who conducts electronic monitoring,
or the resident’s personal representative, surrogate,
or guardian, to post notice of the monitoring on the
hall door of the resident’s room; providing
requirements for the notice; providing requirements
for the electronic monitoring; prohibiting a nursing
home and an assisted living facility from inquiring of
a prospective resident or the representative of a
prospective resident regarding the resident’s plans
about the use of electronic monitoring; prohibiting a
nursing home and an assisted living facility from
refusing to admit a person to residency in the nursing
home or the assisted living facility or from removing
a resident from the nursing home or the facility
because of a request to use an electronic monitoring
device; requiring that a nursing home and an assisted
living facility inform a resident, or the resident’s
personal representative, surrogate, or guardian, of
the resident’s right to conduct electronic monitoring;
requiring that a nursing home and an assisted living
facility make reasonable physical accommodation for electronic monitoring; authorizing a nursing home and an assisted living facility to require that the resident, or the resident’s personal representative, surrogate, or guardian, conduct the electronic monitoring in plain view; authorizing a nursing home and an assisted living facility to require that a request to conduct electronic monitoring be made in writing; providing that a tape or recording created through the use of electronic monitoring may be admitted into evidence in a court or administrative proceeding; providing criminal penalties; providing a defense to criminal prosecution; requiring that written consent be obtained from the resident, or from the resident’s personal representative, surrogate, or guardian, on a form provided by the Agency for Health Care Administration before an employee, officer, or other agent of the nursing home or the assisted living facility intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident’s room; requiring that the resident, or the person representing the resident, and one other witness sign the consent form; providing an additional fine for violations of the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Resident use of electronic monitoring devices in
nursing homes.—

(1) As used in this section, the term “electronic monitoring device” means:

(a) A video surveillance camera, with or without audio capability, installed in the room of a resident; or

(b) An audio device installed in the room of a resident which is designed to acquire communications or other sounds occurring in the room.

(2) A nursing home shall allow a resident, the resident’s personal representative at the resident’s request, the resident’s surrogate, or the resident’s guardian to monitor the room of the resident through the use of electronic monitoring devices.

(3) The nursing home shall require a resident who conducts electronic monitoring, or the resident’s personal representative, surrogate, or guardian, to post notice of the monitoring on the hall door of the resident’s room. The notice must state that the room is being monitored by an electronic monitoring device.

(4) Electronic monitoring conducted under this section:

(a) Is voluntary and may be conducted only at the request and expense of the resident, the resident’s personal representative at the resident’s request, the resident’s surrogate, or the resident’s guardian; and

(b) Must protect the privacy rights of other residents and visitors to the nursing home to the extent reasonably possible.

(5)(a) A nursing home may not:

1. Inquire of a prospective resident who is applying to reside at the nursing home, or of the resident’s personal
representative, surrogate, or guardian, about the resident’s plans regarding the use of electronic monitoring; or

2. Refuse to admit a person to residency in the nursing home or remove a resident from the nursing home because of a request to use an electronic monitoring device.

(b) A nursing home shall inform a resident, or the resident’s personal representative, surrogate, or guardian, of the resident’s right to conduct electronic monitoring.

(6) (a) A nursing home shall make reasonable physical accommodation for electronic monitoring, including:

1. Providing a reasonably secure place to mount a video surveillance camera or other electronic monitoring device; and

2. Providing access to power sources for the video surveillance camera or other electronic monitoring device.

(b) If electronic monitoring is conducted on behalf of a resident, the nursing home may require the resident, the resident’s personal representative at the resident’s request, the resident’s surrogate, or the resident’s guardian to conduct the electronic monitoring in plain view.

(7) A nursing home may require that a request to conduct electronic monitoring be made in writing.

(8) Subject to applicable rules of evidence and procedure, a tape or recording created through the use of electronic monitoring conducted under this section may be admitted into evidence in a court or administrative proceeding in this state.

(9) An administrator of a nursing home who knowingly refuses to allow a resident, or the resident’s personal representative, surrogate, or guardian, to monitor the room of the resident through the use of an electronic monitoring device.
in accordance with this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

(10) An administrator of a nursing home who knowingly refuses to admit a person to residency in the nursing home or who knowingly allows the removal of a resident from the nursing home because of a request to conduct electronic monitoring as provided under this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

(11)(a) An employee, officer, or other agent of the nursing home who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident’s room in accordance with this section, or a tape or recording made by the device, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

(b) Before an employee, officer, or other agent of the nursing home intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident’s room in accordance with this section, or a tape or recording made by the device, written consent must be obtained from the resident, or from the resident’s personal representative, surrogate, or guardian, on a form provided by the Agency for Health Care Administration. The resident who made the request, or the person representing the resident, and one other witness must sign this consent form. It is a defense to prosecution under this subsection that the employee, officer, or other agent took such action with the consent of the resident on
whose behalf the electronic monitoring device was installed, or
with the consent of the resident’s personal representative at
the resident’s request, the resident’s surrogate, or the
resident’s guardian.
(12) A licensee who violates any provision of this section
is subject to a fine not to exceed $500 per violation per day,
pursuant to s. 400.102, Florida Statutes.
Section 2. Resident use of electronic monitoring devices in
assisted living facilities.—
(1) As used in this section, the term “electronic
monitoring device” means:
(a) A video surveillance camera, with or without audio
capability, installed in the room of a resident; or
(b) An audio device installed in the room of a resident
which is designed to acquire communications or other sounds
occurring in the room.
(2) A facility shall allow a resident, the resident’s
personal representative at the resident’s request, the
resident’s surrogate, or the resident’s guardian to monitor the
room of the resident through the use of electronic monitoring
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(3) A facility shall require a resident who conducts
electronic monitoring, or the resident’s personal
representative, surrogate, or guardian, to post notice of the
monitoring on the hall door of the resident’s room. The notice
must state that the room is being monitored by an electronic
monitoring device.
(4) Electronic monitoring conducted under this section:
(a) Is voluntary and may be conducted only at the request
and expense of the resident, the resident’s personal
representative at the resident’s request, the resident’s
surrogate, or the resident’s guardian; and

(b) Must protect the privacy rights of other residents and
visitors to the facility to the extent reasonably possible.

(5)(a) A facility may not:

1. Inquire of a prospective resident who is applying to
reside at the facility, or of the resident’s personal
representative, surrogate, or guardian, about the resident’s
plans regarding the use of electronic monitoring; or

2. Refuse to admit a person to residency in the facility or
remove a resident from the facility because of a request to use
an electronic monitoring device.

(b) A facility shall inform a resident, or the resident’s
personal representative, surrogate, or guardian, of the
resident’s right to conduct electronic monitoring.

(6)(a) A facility shall make reasonable physical
accommodation for electronic monitoring, including:

1. Providing a reasonably secure place to mount a video
surveillance camera or other electronic monitoring device; and

2. Providing access to power sources for the video
surveillance camera or other electronic monitoring device.

(b) If electronic monitoring is conducted on behalf of a
resident, the facility may require the resident, the resident’s
personal representative at the resident’s request, the
resident’s surrogate, or the resident’s guardian to conduct the
electronic monitoring in plain view.

(7) A facility may require that a request to conduct
electronic monitoring be made in writing.
(8) Subject to applicable rules of evidence and procedure, a tape or recording created through the use of electronic monitoring conducted under this section may be admitted into evidence in a court or administrative proceeding in this state.

(9) An administrator of a facility who knowingly refuses to allow a resident, or the resident’s personal representative, surrogate, or guardian, to monitor the room of the resident through the use of an electronic monitoring device in accordance with this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

(10) An administrator of a facility who knowingly refuses to admit a person to residency in the facility or who knowingly allows the removal of a resident from the facility because of a request to conduct electronic monitoring as provided under this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

(11)(a) An employee, officer, or other agent of the facility who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident’s room in accordance with this section, or a tape or recording made by the device, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, Florida Statutes.

(b) Before an employee, officer, or other agent of the facility intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident’s room in accordance with this section, or a tape or recording made by the device, written consent must be obtained
from the resident, or from the resident’s personal representative, surrogate, or guardian, on a form provided by the Agency for Health Care Administration. The resident who made the request, or the person representing the resident, and one other witness must sign this consent form. It is a defense to prosecution under this subsection that the employee, officer, or other agent took such action with the consent of the resident on whose behalf the electronic monitoring device was installed, or with the consent of the resident’s personal representative at the resident’s request, the resident’s surrogate, or the resident’s guardian.

(12) A licensee who violates any provision of this section is subject to a fine not to exceed $500 per violation per day, pursuant to s. 400.102, Florida Statutes.

Section 3. This act shall take effect July 1, 2012.