

By Senator Storms

10-01294-12

20122014

1 A bill to be entitled
2 An act relating to electronic monitoring devices;
3 providing a definition; requiring that a nursing home
4 and an assisted living facility allow a resident, the
5 resident's personal representative at the resident's
6 request, the resident's surrogate, or the resident's
7 guardian to monitor the room of the resident through
8 the use of electronic monitoring devices; providing
9 that a nursing home and an assisted living facility
10 require a resident who conducts electronic monitoring,
11 or the resident's personal representative, surrogate,
12 or guardian, to post notice of the monitoring on the
13 hall door of the resident's room; providing
14 requirements for the notice; providing requirements
15 for the electronic monitoring; prohibiting a nursing
16 home and an assisted living facility from inquiring of
17 a prospective resident or the representative of a
18 prospective resident regarding the resident's plans
19 about the use of electronic monitoring; prohibiting a
20 nursing home and an assisted living facility from
21 refusing to admit a person to residency in the nursing
22 home or the assisted living facility or from removing
23 a resident from the nursing home or the facility
24 because of a request to use an electronic monitoring
25 device; requiring that a nursing home and an assisted
26 living facility inform a resident, or the resident's
27 personal representative, surrogate, or guardian, of
28 the resident's right to conduct electronic monitoring;
29 requiring that a nursing home and an assisted living

10-01294-12

20122014

30 facility make reasonable physical accommodation for
31 electronic monitoring; authorizing a nursing home and
32 an assisted living facility to require that the
33 resident, or the resident's personal representative,
34 surrogate, or guardian, conduct the electronic
35 monitoring in plain view; authorizing a nursing home
36 and an assisted living facility to require that a
37 request to conduct electronic monitoring be made in
38 writing; providing that a tape or recording created
39 through the use of electronic monitoring may be
40 admitted into evidence in a court or administrative
41 proceeding; providing criminal penalties; providing a
42 defense to criminal prosecution; requiring that
43 written consent be obtained from the resident, or from
44 the resident's personal representative, surrogate, or
45 guardian, on a form provided by the Agency for Health
46 Care Administration before an employee, officer, or
47 other agent of the nursing home or the assisted living
48 facility intentionally hampers, obstructs, tampers
49 with, or destroys an electronic monitoring device
50 installed in a resident's room; requiring that the
51 resident, or the person representing the resident, and
52 one other witness sign the consent form; providing an
53 additional fine for violations of the act; providing
54 an effective date.

55
56 Be It Enacted by the Legislature of the State of Florida:

57
58 Section 1. Resident use of electronic monitoring devices in

10-01294-12

20122014

59 nursing homes.-

60 (1) As used in this section, the term "electronic
61 monitoring device" means:

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

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

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

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

78 (4) Electronic monitoring conducted under this section:

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

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

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

86 1. Inquire of a prospective resident who is applying to
87 reside at the nursing home, or of the resident's personal

10-01294-12

20122014

88 representative, surrogate, or guardian, about the resident's
89 plans regarding the use of electronic monitoring; or

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

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

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

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

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

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

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

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

113 (9) An administrator of a nursing home who knowingly
114 refuses to allow a resident, or the resident's personal
115 representative, surrogate, or guardian, to monitor the room of
116 the resident through the use of an electronic monitoring device

10-01294-12

20122014

117 in accordance with this section commits a misdemeanor of the
118 second degree, punishable as provided in s. 775.082 or s.
119 775.083, Florida Statutes.

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

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

134 (b) Before an employee, officer, or other agent of the
135 nursing home intentionally hampers, obstructs, tampers with, or
136 destroys an electronic monitoring device installed in a
137 resident's room in accordance with this section, or a tape or
138 recording made by the device, written consent must be obtained
139 from the resident, or from the resident's personal
140 representative, surrogate, or guardian, on a form provided by
141 the Agency for Health Care Administration. The resident who made
142 the request, or the person representing the resident, and one
143 other witness must sign this consent form. It is a defense to
144 prosecution under this subsection that the employee, officer, or
145 other agent took such action with the consent of the resident on

10-01294-12

20122014

146 whose behalf the electronic monitoring device was installed, or
147 with the consent of the resident's personal representative at
148 the resident's request, the resident's surrogate, or the
149 resident's guardian.

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

153 Section 2. Resident use of electronic monitoring devices in
154 assisted living facilities.-

155 (1) As used in this section, the term "electronic
156 monitoring device" means:

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

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

162 (2) A facility shall allow a resident, the resident's
163 personal representative at the resident's request, the
164 resident's surrogate, or the resident's guardian to monitor the
165 room of the resident through the use of electronic monitoring
166 devices.

167 (3) A facility shall require a resident who conducts
168 electronic monitoring, or the resident's personal
169 representative, surrogate, or guardian, to post notice of the
170 monitoring on the hall door of the resident's room. The notice
171 must state that the room is being monitored by an electronic
172 monitoring device.

173 (4) Electronic monitoring conducted under this section:

174 (a) Is voluntary and may be conducted only at the request

10-01294-12

20122014

175 and expense of the resident, the resident's personal
176 representative at the resident's request, the resident's
177 surrogate, or the resident's guardian; and

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

180 (5) (a) A facility may not:

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

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

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

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

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

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

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

202 (7) A facility may require that a request to conduct
203 electronic monitoring be made in writing.

10-01294-12

20122014

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

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

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

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

228 (b) Before an employee, officer, or other agent of the
229 facility intentionally hampers, obstructs, tampers with, or
230 destroys an electronic monitoring device installed in a
231 resident's room in accordance with this section, or a tape or
232 recording made by the device, written consent must be obtained

10-01294-12

20122014__

233 from the resident, or from the resident's personal
234 representative, surrogate, or guardian, on a form provided by
235 the Agency for Health Care Administration. The resident who made
236 the request, or the person representing the resident, and one
237 other witness must sign this consent form. It is a defense to
238 prosecution under this subsection that the employee, officer, or
239 other agent took such action with the consent of the resident on
240 whose behalf the electronic monitoring device was installed, or
241 with the consent of the resident's personal representative at
242 the resident's request, the resident's surrogate, or the
243 resident's guardian.

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

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