

SECOND REGULAR SESSION

# SENATE BILL NO. 909

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Read 1st time January 21, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4952S.011

## AN ACT

To amend chapter 198, RSMo, by adding thereto twelve new sections relating to the protection of residents living in long-term care facilities, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 198, RSMo, is amended by adding thereto twelve new sections, to be known as sections 198.610, 198.612, 198.614, 198.616, 198.618, 198.620, 198.622, 198.624, 198.626, 198.628, 198.630, and 198.632 to read as follows:

**198.610. 1. The provisions of sections 198.610 to 198.632 shall be known and may be cited as the "Authorized Electronic Monitoring in Long-Term Care Facilities Act".**

**2. For purposes of sections 198.610 to 198.632, the following terms shall mean:**

**(1) "Authorized electronic monitoring", the placement and use of an electronic monitoring device by a resident in his or her room in accordance with the provisions of sections 198.610 to 198.632;**

**(2) "Department", the department of health and senior services;**

**(3) "Electronic monitoring device", a surveillance instrument capable of recording or transmitting audio or video footage of any activity occurring in a resident's room;**

**(4) "Facility" or "long-term care facility", any residential care facility, assisted living facility, intermediate care facility, or skilled nursing facility, as such terms are defined in section 198.006;**

**(5) "Guardian", the same meaning as defined under section 475.010;**

**(6) "Legal representative", a person authorized under a durable**

19 power of attorney that complies with sections 404.700 to 404.737 to act  
20 on behalf of a resident of a facility;

21 (7) "Resident", a person residing in a facility.

198.612. 1. Residents of long-term care facilities in this state  
2 shall have the right to place in the resident's room an authorized  
3 electronic monitoring device that is owned and operated by the  
4 resident or provided by the resident's guardian or legal representative.

5 2. No facility shall be civilly or criminally liable for any activity  
6 or action arising out of the use by any resident or any resident's  
7 guardian or legal representative of any electronic monitoring device,  
8 including the facility's inadvertent or intentional disclosure of a  
9 recording made by a resident, or by a person who consents on behalf  
10 of the resident, for any purpose not authorized under sections 198.610  
11 to 198.632.

12 3. No facility shall be civilly or criminally liable for a violation  
13 of the Health Insurance Portability and Accountability Act (HIPAA) or  
14 any resident's right to privacy arising out of any electronic monitoring  
15 conducted under sections 198.610 to 198.632.

16 4. Except for cases of abuse and neglect, no person shall release  
17 any recording made under sections 198.610 to 198.632 without the  
18 written permission of the resident, or the resident's guardian or legal  
19 representative, and the long-term care facility.

20 5. The department shall promulgate rules to implement the  
21 provisions of sections 198.610 to 198.632. Any rule or portion of a rule,  
22 as that term is defined in section 536.010, that is created under the  
23 authority delegated in this section shall become effective only if it  
24 complies with and is subject to all of the provisions of chapter 536 and,  
25 if applicable, section 536.028. This section and chapter 536 are  
26 nonseverable, and if any of the powers vested with the general  
27 assembly pursuant to chapter 536 to review, to delay the effective date,  
28 or to disapprove and annul a rule are subsequently held  
29 unconstitutional, then the grant of rulemaking authority and any rule  
30 proposed or adopted after August 28, 2020, shall be invalid and void.

198.614. 1. For purposes of sections 198.610 to 198.632, the  
2 placement and use of an electronic monitoring device in the room of a  
3 resident is considered to be unauthorized if:

4 (1) The placement and use of the device is not open and obvious;

5 or

6 (2) The facility and the department are not informed about the  
7 device by the resident, by a person who placed the device in the room,  
8 or by a person who is using the device.

9 2. The department and the facility shall be immune from civil  
10 liability in connection with the unauthorized placement or use of an  
11 electronic monitoring device in the room of a resident.

198.616. Each facility shall use an electronic monitoring device  
2 acknowledgment form developed by the department and adopted by  
3 regulation. The form shall be offered to any resident or resident's  
4 guardian or legal representative upon request. The form shall be  
5 completed and signed by or on behalf of a resident prior to the  
6 installation of, or any use of, an electronic monitoring device in the  
7 facility. The form shall state:

8 (1) That a person who places an electronic monitoring device in  
9 the room of a resident, or who uses or discloses a tape or other  
10 recording made by the device, may be civilly liable for any unlawful  
11 violation of the privacy rights of another;

12 (2) That a person who, without authorization, places an  
13 electronic monitoring device in the room of a resident, or who consents  
14 to or acquiesces in the unauthorized placement of the device in the  
15 room of a resident, has waived any privacy right the person may have  
16 had in connection with images or sounds that may be acquired by the  
17 device;

18 (3) That a resident, or the resident's guardian or legal  
19 representative, is entitled to conduct authorized electronic monitoring,  
20 and that if the facility refuses to permit the electronic monitoring or  
21 fails to make reasonable physical accommodations for the authorized  
22 electronic monitoring, the person should contact the department;

23 (4) The basic procedures that shall be followed to request  
24 authorized electronic monitoring;

25 (5) The manner in which sections 198.610 to 198.632 affect the  
26 legal requirement to report abuse or neglect when electronic  
27 monitoring is being conducted; and

28 (6) Any other information regarding authorized or unauthorized  
29 electronic monitoring that the department, by regulation, specifies  
30 should be included on the form.

18.618. 1. If a resident has capacity to request electronic  
2 monitoring and has not been judicially declared to lack the required  
3 capacity, then only the resident may request authorized electronic  
4 monitoring under sections 198.610 to 198.632, notwithstanding the  
5 terms of any durable power of attorney, general power of attorney, or  
6 similar instrument.

7 2. If a resident has been judicially declared to lack the capacity  
8 required for taking an action such as requesting electronic monitoring,  
9 then only the guardian of the resident may request electronic  
10 monitoring under sections 198.610 to 198.632.

11 3. If a resident has been determined by a physician to lack  
12 capacity to request electronic monitoring, but has not been judicially  
13 declared to lack the required capacity, then only the legal  
14 representative of the resident may request electronic monitoring under  
15 sections 198.610 to 198.632.

198.620. 1. A resident, or the guardian or legal representative of  
2 a resident, who wishes to conduct authorized electronic monitoring  
3 shall make the request to the facility on an electronic monitoring  
4 request form prescribed by the department and provided to the  
5 resident by the facility.

6 2. The form shall require the resident, or the resident's guardian  
7 or legal representative, to:

8 (1) Release the facility from any civil liability for a violation of  
9 the resident's privacy rights in connection with the use of the  
10 electronic monitoring device;

11 (2) Choose whether the camera will always be unobstructed or  
12 whether the camera should be obstructed in specified circumstances to  
13 protect the dignity of the resident, if the electronic monitoring device  
14 is a video surveillance camera; and

15 (3) Obtain the consent of other residents residing in the room,  
16 using a form prescribed for such purpose by the department.

17 3. Consent under subdivision (3) of subsection 2 of this section  
18 shall be given only:

19 (1) By the other resident or residents in the room;

20 (2) By the guardian of a person described under subdivision (1)  
21 of this subsection, if the person has been judicially declared to lack the  
22 required capacity; or

23           **(3) By the legal representative of a person described under**  
24 **subdivision (1) of this subsection, if the person does not have capacity**  
25 **to sign the form, but has not been judicially declared to lack the**  
26 **required capacity.**

27           **4. The form prescribed by the department under subdivision (3)**  
28 **of subsection 2 of this section shall require any other resident in the**  
29 **room to consent to release the facility from any civil liability for a**  
30 **violation of the resident's privacy rights in connection with the use of**  
31 **the electronic monitoring device.**

32           **5. Another resident in the room may:**

33           **(1) If the proposed electronic monitoring device is a video**  
34 **surveillance camera, condition his or her consent on the camera being**  
35 **pointed away from the consenting resident; and**

36           **(2) Condition his or her consent on the use of an audio electronic**  
37 **monitoring device being limited or prohibited.**

38           **6. If authorized electronic monitoring is being conducted in the**  
39 **room of a resident and another resident is moved into the room who**  
40 **has not yet consented to the electronic monitoring, authorized**  
41 **electronic monitoring shall cease until the new resident has consented**  
42 **in accordance with this section.**

43           **7. The department shall include other information that the**  
44 **department considers to be appropriate on either of the forms that the**  
45 **department is required to prescribe under this section.**

46           **8. The department shall adopt rules prescribing the place or**  
47 **places that a form signed under this section shall be maintained and**  
48 **the period for which it shall be maintained.**

49           **9. Authorized electronic monitoring:**

50           **(1) Shall not commence nor shall an electronic monitoring device**  
51 **be installed until all request and consent forms required by this section**  
52 **have been completed and returned to the facility;**

53           **(2) Shall be conducted in accordance with any limitation placed**  
54 **on the monitoring as a condition of the consent given by or on behalf**  
55 **of another resident in the room; and**

56           **(3) Shall be installed and conducted only in a fixed position.**

57           **10. The facility shall be granted access to all footage made by an**  
58 **electronic monitoring device at the facility's expense.**

198.622. 1. A facility shall permit a resident, or the resident's

2 guardian or legal representative, to monitor the room of the resident  
3 through the use of electronic monitoring devices.

4 2. The facility shall require a resident who conducts authorized  
5 electronic monitoring, or the resident's guardian or legal  
6 representative, to post and maintain a conspicuous notice at the  
7 entrance to the resident's room. The notice shall state that the room is  
8 being monitored by an electronic monitoring device.

9 3. Authorized electronic monitoring conducted under sections  
10 198.610 to 198.632 shall not be compulsory and shall be conducted only  
11 at the request of the resident or the resident's guardian or legal  
12 representative.

13 4. A facility shall not refuse to admit an individual to residency  
14 in the facility and shall not remove a resident from the facility because  
15 of a request to conduct authorized electronic monitoring. A facility  
16 shall not remove a resident from the facility because unauthorized  
17 electronic monitoring is being conducted by or on behalf of a resident.

18 5. A facility shall make reasonable physical accommodations for  
19 authorized electronic monitoring, including:

20 (1) Providing a reasonably secure place to mount the video  
21 surveillance camera or other electronic monitoring device; and

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

24 6. The resident, or the resident's guardian or legal  
25 representative, shall pay for all costs associated with conducting  
26 electronic monitoring, except for the costs of electricity. The resident  
27 or the resident's guardian or legal representative shall be responsible  
28 for:

29 (1) All costs associated with installation of equipment incurred  
30 by the resident or the facility; and

31 (2) Maintaining the equipment.

32 7. A facility shall require an electronic monitoring device to be  
33 installed in a manner that is safe for residents, employees, or visitors  
34 who may be moving about the room. The department shall adopt rules  
35 regarding the safe placement of an electronic monitoring device.

36 8. If authorized electronic monitoring is conducted, the facility  
37 shall require the resident, or the resident's guardian or legal  
38 representative, to conduct the electronic monitoring in plain view.

39           **9. A facility shall not be required to provide internet service or**  
40 **network access to any electronic monitoring device. Any internet**  
41 **service for an electronic monitoring device shall be the sole**  
42 **responsibility of the resident or the resident's guardian or legal**  
43 **representative.**

44           **10. A facility may move a resident to a comparable room to**  
45 **accommodate a request to conduct authorized electronic monitoring.**

**198.624. 1. If a resident who has capacity to determine that he**  
2 **or she has been abused or neglected, and who is conducting electronic**  
3 **monitoring under sections 198.610 to 198.632, gives footage made by the**  
4 **electronic monitoring device to a person and directs the person to view**  
5 **or listen to the footage to determine whether abuse or neglect has**  
6 **occurred, the person to whom the resident gives the footage is**  
7 **considered to have viewed or listened to the footage on or before the**  
8 **seventh day after the date the person receives the footage for the**  
9 **purposes of reporting abuse or neglect.**

10           **2. A person is required to report abuse based on the person's**  
11 **viewing of, or listening to, footage only if the incident of abuse is**  
12 **acquired on the footage. A person is required to report neglect based**  
13 **on the person's viewing of, or listening to, footage only if it is clear**  
14 **from viewing or listening to the footage that neglect has occurred.**

15           **3. If abuse or neglect of the resident is reported to the facility,**  
16 **and the facility requests a copy of any relevant footage made by an**  
17 **electronic monitoring device, the person who possesses the footage**  
18 **shall provide the facility with a copy at the facility's expense.**

**198.626. 1. Subject to applicable rules of evidence and procedure**  
2 **and the requirements of this section, footage created through the use**  
3 **of unauthorized or authorized electronic monitoring described by**  
4 **sections 198.610 to 198.632 may be admitted into evidence in a civil or**  
5 **criminal court action or administrative proceeding, provided that a**  
6 **proper foundation is offered to support its admission.**

7           **2. A court or administrative agency shall not admit into evidence**  
8 **footage created through the use of unauthorized or authorized**  
9 **electronic monitoring or take or authorize action based on the footage**  
10 **unless:**

11           **(1) If the footage is a videotape or recording, the footage shows**  
12 **the time and date that the events acquired on the footage occurred;**

13           (2) The contents of the footage have not been edited or  
14 artificially enhanced; and

15           (3) If the contents of the footage have been transferred from the  
16 original format to another technological format, the transfer was done  
17 by a qualified professional and the contents of the footage were not  
18 altered.

19           3. A person who sends more than one specimen of footage to the  
20 department shall identify for the department each specimen on which  
21 the person believes that an incident of abuse or evidence of neglect  
22 may be found. The department may adopt rules encouraging persons  
23 who send footage to the department to identify the place on the footage  
24 that an incident of abuse or evidence of neglect may be found.

          198.628. Each facility shall post a notice at the entrance to the  
2 facility stating that the rooms of some residents may be monitored  
3 electronically by, or on behalf of, the residents and that the monitoring  
4 is not necessarily open and obvious. The department by rule shall  
5 prescribe the format and the precise content of the notice.

          198.630. 1. The department may impose appropriate sanctions  
2 under this chapter on an administrator of a facility who knowingly:

3           (1) Refuses to permit a resident, or the resident's guardian or  
4 legal representative, to conduct authorized electronic monitoring;

5           (2) Refuses to admit an individual to residency or allows the  
6 removal of a resident from the institution solely because of a request  
7 to conduct authorized electronic monitoring by a resident or a  
8 resident's guardian or legal representative;

9           (3) Allows the removal of a resident from the facility solely  
10 because unauthorized electronic monitoring is being conducted by or  
11 on behalf of the resident; or

12           (4) Violates another provision of sections 198.610 to 198.632.

13           2. The department may assess an administrative penalty against  
14 a facility that:

15           (1) Refuses to permit a resident, or the resident's guardian or  
16 legal representative, to conduct authorized electronic monitoring;

17           (2) Refuses to admit an individual to residency or allows the  
18 removal of a resident from the institution because of a request to  
19 conduct authorized electronic monitoring;

20           (3) Allows the removal of a resident from the facility solely



21 because unauthorized electronic monitoring is being conducted by, or  
22 on behalf of, the resident; or

23 (4) Violates another provision of sections 198.610 to 198.632.

198.632. 1. A person who intentionally hampers, obstructs,  
2 tampers with, or destroys an electronic monitoring device installed in  
3 a resident's room in accordance with sections 198.610 to 198.632, or who  
4 destroys or corrupts any data collected by the device, is guilty of a  
5 class B misdemeanor.

6 2. Evidence that the person had the consent of the resident, or  
7 the resident's guardian or legal representative, to engage in the  
8 conduct described in subsection 1 of this section shall be an affirmative  
9 defense to any prosecution brought under the provisions of subsection  
10 1 of this section.

11 3. A person other than a resident of the facility who, without  
12 authorization, places an electronic monitoring device in the room of a  
13 resident, or who consents to or acquiesces in the unauthorized  
14 placement of the device in the room of a resident, is guilty of a class B  
15 misdemeanor if the person continues the conduct after a written  
16 warning to cease and desist from that conduct.

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