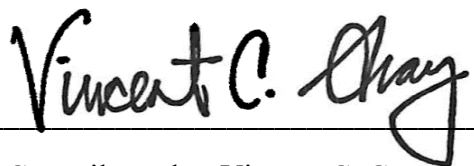
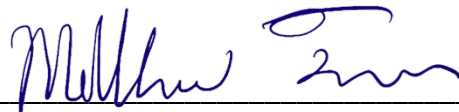


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2 Councilmember Charles Allen



Councilmember Vincent C. Gray

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6 Councilmember Matthew Frumin

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11 A BILL

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15 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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19
20 To authorize the use of electronic monitoring devices in residential care facilities, to use such
21 devices inside a resident's room to help monitor, investigate, and deter abuse and neglect,
22 to establish notice, consent, and accommodation procedures to ensure personal privacy,
23 and to limit the unauthorized use of device recordings.

24
25 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
26 act may be cited as the "Residential Care Communication and Monitoring Act of 2023".

27
28 Sec. 2. Definitions.

29 For the purposes of this act, the term:

30 (1) "Electronic monitoring" means a video camera or other device that captures,
31 records, or broadcasts audio, video, or both, that is placed in a fixed position in a resident's room
32 and is used to record or transmit sounds or activity occurring in the room to a third-party having
33 access to a receiver, a web-based application, or ancillary transmission method outside of the
34 room.

35 (2) "Facility" means a nursing home, as that term is defined in section 2(11) of the
36 Health-Care and Community Residence Facility Hospice and Home Care Licensure Act of 1983
37 (D.C. Law 5-48; D.C. Official Code § 44-501(a)(11)).

38 (3) "Long-Term Care Ombudsman" means the person designated under District of
39 Columbia Long-Term Care Ombudsman Program Act of 1988, effective March 16, 1989 (D.C.
40 Law 7-218; D.C. Official Code 7-701.01 *et seq.*) to perform the mandated functions of the Long-
41 Term Care Ombudsman program in the District.

42 (4) "Resident" means a resident of a facility.

43 (5) "Resident representative" means one of the following in the order of priority
44 listed, to the extent the person may reasonably be identified and located:

45 (A) A person who is not an agent or employee of a facility who has been
46 appointed by a court either to administer a resident's financial or personal affairs or to protect
47 and advocate for a resident's rights;

48 (B) A person who is not an agent or employee of a facility and is
49 appointed by the resident in a health care power of attorney to make health care decisions on
50 behalf of the resident; or

51 (C) A person who is not an agent or employee of a facility and is
52 designated in writing by the resident and maintained in the resident's records on file with the
53 facility.

54 (6) "Roommate" means one or more persons sharing the same room as the
55 resident.

56 (7) "Roommate representative" means one of the following in the order of priority
57 listed, to the extent the person may reasonably be identified and located:

58 (A) A person who is not an agent or employee of a facility who has been
59 appointed by a court either to administer a roommate's financial or personal affairs or to protect
60 and advocate for a roommate's rights;

61 (B) A person who is not an agent or employee of a facility and is
62 appointed by the roommate in a health care power of attorney to make health care decisions on
63 behalf of the roommate; or

64 (C) A person who is not an agent or employee of a facility and is
65 designated in writing by the roommate and maintained in the roommate's records on file with the
66 facility.

67

68 Sec. 3. Electronic monitoring authorized.

69 (a) A resident or a representative may conduct electronic monitoring of the resident's
70 room through the use of an electronic monitoring device placed in the resident's room in
71 accordance with this act.

72 (b) The electronic monitoring device shall be installed and operated in a way that protects
73 the privacy of the resident by being placed in a fixed, stationary position, and, to the extent
74 possible, monitor only the area occupied by the resident.

75 (c) If the electronic monitoring device records activity visually, the recording made by
76 the device shall include a record of the date and time of the recording.

77 Sec. 4. Consent to electronic monitoring.

78 (a) A resident shall provide written consent to the facility on a notification and consent
79 form described in section 6 before the resident installs an electronic monitoring device. If the
80 resident has not affirmatively objected to electronic monitoring and the resident's medical

81 professional determines that the resident currently lacks the ability to understand and appreciate
82 the nature and consequences of electronic monitoring, the resident representative and roommate
83 representative may consent on behalf of the resident and roommate.

84 (b) Prior to a representative consenting on behalf of a resident, the resident must be asked
85 if the resident wants electronic monitoring to be conducted and the representative must explain to
86 the resident:

87 (1) The type of electronic monitoring device to be used;

88 (2) The standard conditions that may be placed on the electronic monitoring
89 device's use, including those listed in section 6;

90 (3) With whom the recording may be shared as provided under section 10; and

91 (4) The resident's ability to decline all recordings.

92 (c) A resident or resident representative may consent to electronic monitoring with any
93 conditions of the resident's or representative's choosing, including the list of standard conditions
94 as provided in section 6. A resident or representative may turn off or the visual or audio
95 recording component of the electronic monitoring device may be blocked at any time.

96 (d) Prior to implementing electronic monitoring, a resident or resident representative
97 must obtain the written consent on the notification and consent form of any roommate or
98 roommate representative residing in the shared room. A roommate's or roommate
99 representative's written consent must comply with the requirements of subsections (a) to (c) of
100 this section. Consent by a roommate or a roommate's representative under this subsection
101 authorizes the resident's use of any recording obtained under this section, as provided under
102 section 10 or 11.

103 (e) A resident conducting electronic monitoring must immediately remove or disable an
104 electronic monitoring device prior to a new roommate moving into a shared room or shared
105 private living unit, unless the resident obtains the roommate's or roommate representative's
106 written consent prior to the roommate moving into the shared room. Upon obtaining the new
107 roommate's signed notification and consent form and submitting the form to the facility as
108 required under section 6, the resident may resume electronic monitoring.

109 (f) The resident or roommate, or their respective representative, may withdraw consent at
110 any time, and the withdrawal of consent must be documented on an original or a copy of the
111 consent form as provided under section 6.

112 Sec. 5. Refusal of roommate to consent.

113 (a) If a resident's roommate refuses to consent to the use of an electronic monitoring
114 device, the facility shall make a reasonable attempt to accommodate the resident who wants to
115 conduct electronic monitoring.

116 (b) A facility shall be deemed to have met the accommodation requirement set forth in
117 subsection (a) of this section when, upon notification that a roommate has not consented to the
118 use of an electronic monitoring device in his room, the facility offers to move either the resident
119 or the roommate to another shared room that is available at the time of the request at the same
120 monthly rate.

121 (c) If a facility is unable to accommodate a resident due to lack of space, the facility shall
122 reevaluate the request at least once every 2 weeks until the request is fulfilled. If the resident who
123 wants electronic monitoring chooses to reside in an available private room in order to use an
124 electronic monitoring device, the resident shall pay the private room rate if required by the
125 licensee.

126 Sec. 6. Consent form requirements.

127 (a) The notice and consent form shall include the following information from the
128 resident and all roommates living in the room that is to be electronically monitored:

129 (1) The signed consent to electronic monitoring from the resident or resident
130 representative, and if applicable, the signed consent of the roommate or roommate

131 (2) If the resident representative or roommate representative is signing the
132 consent form:

133 (A) The date the resident or roommate was asked if they want electronic
134 monitoring to be conducted;

135 (B) Who was present when the resident or roommate were asked;

136 (C) An acknowledgment that the resident or roommate did not
137 affirmatively object; and

138 (D) The source of authority allowing a resident representative or
139 roommate representative to sign the notification and consent form on their behalf;

140 (3) The type of electronic monitoring device to be used;

141 (4) A list of standard conditions or restrictions that the resident or a roommate
142 may elect to place on the use of the electronic monitoring device, including:

143 (A) Prohibiting audio recording;

144 (B) Prohibiting video recording;

145 (C) Prohibiting the broadcasting of audio or video;

146 (D) Turning off the electronic monitoring device or blocking the visual
147 recording component of the electronic monitoring device for the duration of an exam or
148 procedure by a health care professional;

149 (E) Turning off the electronic monitoring device or blocking the visual
150 recording component of the electronic monitoring device while dressing or bathing is performed;
151 and

152 (F) Turning off the electronic monitoring device for the duration of a visit
153 with a spiritual adviser, ombudsman, attorney, financial planner, intimate partner, or other
154 visitor;

155 (5) A statement of the circumstances under which a recording may be
156 disseminated under section 10;

157 (6) A notice to release the facility from liability for a violation of privacy through
158 the use of the electronic monitoring device; and

159 (10) A signature box for documenting that the resident, roommate or their
160 representative has withdrawn consent; and

161 (b) Facilities shall make the notification and consent form available to residents and
162 inform residents of their option to conduct electronic monitoring of their rooms.

163 Sec. 7. Notice to visitors.

164 (a) The facility shall post a sign at each facility entrance accessible to visitors that states
165 that electronic monitoring devices, including security cameras and audio devices, may be present
166 to record persons and activities. The sign shall be in large, clearly legible type and font.

167 (b) The facility shall bear the costs associated with installing and maintaining the sign
168 required by this section. A resident who conducts authorized electronic monitoring or the
169 resident's representative may post and maintain a notice at the entrance to the resident's room
170 stating that the room is being monitored by an electronic monitoring device.

171 Sec. 8. Cost and installation.

172 (a) A resident or representative choosing to conduct electronic monitoring must do so at
173 the resident's own expense, including purchase, installation, maintenance, and removal costs.

174 (b) If a resident chooses to place an electronic monitoring device that uses Internet
175 technology for visual or audio monitoring, the resident shall be responsible for contracting with
176 an Internet service provider if the facility does not allow the resident to use the facility's Internet
177 service to operate the device.

178 (c) The facility shall reasonably accommodate the resident's installation needs, including
179 allowing access to the facility's public-use Internet or Wi-Fi systems when available for other
180 public uses. The facility has the burden of proving that a requested accommodation is not
181 reasonable.

182 (d) If the structure of the resident's room must be altered in order to accommodate an
183 electronic monitoring device, then the renovation to the room may be done only by a licensed
184 contractor and at the resident's expense, subject to the facility's approval, which may not be
185 unreasonably withheld.

186 (e) All electronic monitoring device installations and supporting services must be
187 Underwriters Laboratory-listed.

188 Sec. 9. Obstruction of electronic monitoring devices.

189 (a) A person must not knowingly hamper, obstruct, tamper with, or destroy an electronic
190 monitoring device placed in a resident's room or private living unit without the permission of the
191 resident or representative. Checking the electronic monitoring device by facility staff for the
192 make and model number shall not constitute tampering.

193 (b) It is not a violation of subsection (a) of this section if a person turns off the electronic
194 monitoring device or blocks the visual recording component of the electronic monitoring device

195 at the direction of the resident or representative, or if the consent of the roommate or his or her
196 representative has been withdrawn.

197 Sec. 10. Use of recordings.

198 (a) No person may access any video or audio recording created through authorized
199 electronic monitoring without the written consent of the resident or representative.

200 (b) Except as required in section 14 or under another law authorizing disclosure, a
201 recording or copy of a recording may only be disseminated for the purpose of addressing health,
202 safety, or welfare concerns of one or more residents.

203 Sec. 11. Admissibility of evidence.

204 Subject to applicable rules of evidence and procedure, any video or audio recording
205 created through electronic monitoring under this section may be admitted into evidence in a civil,
206 criminal, or administrative proceeding.

207 Sec. 12. Liability.

208 For the purposes of District law, the mere presence of an electronic monitoring device
209 in a resident's room or private living unit in accordance with this chapter is not a violation of the
210 resident's right to privacy under District and federal law.

211 Sec. 13. Resident Protections.

212 A facility may not refuse to admit an individual and may not remove a resident from a
213 facility because of authorized electronic monitoring of a resident's room, nor may a facility
214 retaliate or discriminate against a resident for the use of authorized electronic monitoring.

215 Sec. 14. Employee discipline.

216 (a) If abuse or neglect of the resident is reported to the facility, and the facility requests a

217 copy of any relevant footage made by an electronic monitoring device, the person who possesses
218 the footage shall provide the facility with a copy at the facility's expense.

219 (b) A facility who obtains a recording or a copy of the recording must treat the recording
220 or copy confidentially and must not further disseminate it to any other person except as required
221 under law. Any copy of the recording must be returned to the resident who provided the copy
222 when it is no longer needed for purposes of defending against a proposed action.

223 Sec. 15. Fines and penalties; criminal violations.

224 (a) Any person who violates any provision of this subchapter shall, upon conviction, be
225 subject to imprisonment not to exceed one year, a fine not to exceed \$10,000, or both.

226 (b) Any person who has been previously convicted under this subchapter shall, upon
227 conviction, be subject to imprisonment not to exceed one year, a fine not to exceed \$25,000, or
228 both.

229 (c) The fines set forth in this section shall not be limited by § 22-3571.01.

230 Sec. 16. Prosecutions.

231 (a) Prosecutions for violations of this subchapter shall be brought in the name of the
232 District of Columbia by the Attorney General for the District of Columbia.

233 (b) In any prosecution brought under this subchapter, any person claiming an exemption
234 from regulation under this subchapter shall have the burden of providing entitlement to the
235 exemption.

236 Sec. 17. Fines and penalties; civil alternatives.

237 Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction
238 of the provisions of this subchapter, or any rules or regulations issued under the authority of this
239 subchapter, pursuant to Chapter 18 of Title 2.

240 Sec. 18. Injunctions; unlawful practices.

241 (a) The Attorney General for the District of Columbia may bring an action in the Superior
242 Court of the District of Columbia in the name of the District of Columbia to enjoin the unlawful
243 practice of any occupation or profession or any other action which is grounds for the imposition
244 of a criminal penalty or disciplinary action under this subchapter.

245 (b) Remedies under this section are in addition to criminal prosecution or any disciplinary
246 action by a board.

247 (c) In any proceeding under this section, it shall not be necessary to prove that any person
248 is personally injured by the action or actions alleged.

249 . Sec. 19. Fiscal impact statement.

250 The Council adopts the fiscal impact statement in the committee report as the fiscal
251 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
252 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

253 Sec. 20. Effective date.

254 This act shall take effect following approval by the Mayor (or in the event of veto by the
255 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
256 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
257 24, 1973, (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
258 Columbia Register.