

SENATE BILL No. 378

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-28-2-12.5; IC 34-30-2-64.4; IC 35-52-16-0.5.

Synopsis: Electronic monitoring in nursing homes. Allows the residents of: (1) health facilities; and (2) residential care facilities; to consent to the authorized electronic monitoring (monitoring) of their rooms. Allows specified individuals to consent to monitoring on behalf of health facility and residential care facility residents. Allows certain individuals to request conditions and restrictions when consenting to monitoring. Requires conditions and restrictions concerning monitoring to be memorialized in writing. Requires certain forms to be created and signed by specified parties when commencing or modifying monitoring. Allows certain individuals to refuse monitoring by withdrawing or withholding consent. Requires the withdrawal or withholding of consent to be memorialized in writing. Prohibits monitoring when certain parties refuse or decline consent. Requires a facility to make a reasonable effort to cohort residents in a manner that makes monitoring feasible. Specifies that a resident who occupies a private room for the purpose of making monitoring feasible must pay a private room rate. Requires a: (1) health facility; or (2) residential care facility; to provide specified individuals with complete copies of specified paperwork concerning monitoring upon request. Requires certain paperwork concerning monitoring to be made a permanent part of a resident's clinical report. Provides: (1) health facilities; and (2) residential care facilities; with immunity from civil liability when making a good faith effort to comply with laws, conditions, and restrictions pertaining to monitoring. Specifies that no other person or entity may be held liable for certain damages by reason of an agency relationship with a: (1) health facility; or (2) residential care facility;
(Continued next page)

Effective: July 1, 2021.

Rogers

January 14, 2021, read first time and referred to Committee on Health and Provider Services.



Digest Continued

when the health facility or residential care facility is not liable for certain damages. Specifies an exception. Specifies permitted purposes for recordings created by an electronic monitoring device (device). Provides that a person who knowingly or intentionally hampers, obstructs, tampers with, or destroys: (1) a device; or (2) a recording created by a device; commits a Class A misdemeanor. Specifies that the offense is a Level 6 felony if the person knowingly or intentionally conceals or attempts to conceal any hampering, obstruction, tampering with, or destruction of a device or recording. Specifies an exception. Requires the state department of health to create certain forms for the purpose of memorializing specified requirements concerning monitoring. Defines certain terms.



First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE BILL No. 378



A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-30.1 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2021]: **Sec. 30.1. "Authorized electronic**
4 **monitoring", for purposes of IC 16-28-2-12.5, has the meaning set**
5 **forth in IC 16-28-2-12.5(a).**

6 SECTION 2. IC 16-18-2-105.6 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2021]: **Sec. 105.6. "Electronic monitoring**
9 **device", for purposes of IC 16-28-2-12.5, has the meaning set forth**
10 **in IC 16-18-2-12.5(b).**

11 SECTION 3. IC 16-18-2-122, AS AMENDED BY P.L.86-2018,
12 SECTION 167, IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2021]: Sec. 122. (a) "Facility", for purposes of
14 IC 16-41-11, has the meaning set forth in IC 16-41-11-2.

15 (b) "Facility", for purposes of IC 16-28-2-12.5, has the meaning



1 set forth in IC 16-28-2-12.5(c).

2 SECTION 4. IC 16-28-2-12.5 IS ADDED TO THE INDIANA
3 CODE AS A NEW SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2021]: **Sec. 12.5. (a) As used in this section,**
5 **"authorized electronic monitoring" means the placement and use**
6 **of an electronic monitoring device for the purpose of monitoring a**
7 **resident's room in a facility and in compliance with this section.**

8 **(b) As used in this section, "electronic monitoring device"**
9 **means a surveillance instrument with:**

10 **(1) a fixed position video camera;**

11 **(2) an audio recording device; or**

12 **(3) both technologies described in subdivisions (1) and (2);**

13 **that is conspicuously installed in a visible location in a resident's**
14 **room in a facility for the purpose of conducting authorized**
15 **electronic monitoring. The term includes networked**
16 **communication devices such as the Amazon Echo, networked**
17 **virtual assistants such as Amazon Alexa, and any other comparable**
18 **or successor technology.**

19 **(c) As used in this section, "facility" includes the following:**

20 **(1) A health facility licensed under this article.**

21 **(2) A residential care facility.**

22 **(d) Except as otherwise provided in this section, a resident may**
23 **consent to the authorized electronic monitoring of the resident's**
24 **room through the use of one (1) or more electronic monitoring**
25 **devices. However, nothing in this section may be construed to**
26 **require a resident to consent to the authorized electronic**
27 **monitoring of the resident's room.**

28 **(e) A person authorized under law to make health care decisions**
29 **for a resident who:**

30 **(1) is incapacitated, as determined by a physician;**

31 **(2) suffers from diminished capacity, as determined by a**
32 **physician; or**

33 **(3) is under the age of eighteen (18) years;**

34 **may consent, on behalf of the resident, to the authorized electronic**
35 **monitoring of the resident's room.**

36 **(f) A person consenting to the authorized electronic monitoring**
37 **of a resident's room under subsection (d) or (e) must do so in**
38 **writing on a form prescribed by the state department and in the**
39 **presence of a facility employee. If the person consenting to the**
40 **authorized electronic monitoring of the resident's room is someone**
41 **other than the resident, the resident must first be given the**
42 **opportunity to privately decline authorized electronic monitoring**



1 in the presence of a facility employee unless incapacity or
 2 diminished capacity, as determined by a physician, prevents the
 3 resident from doing so. If someone other than the resident is
 4 consenting to authorized electronic monitoring and the resident is
 5 not incapacitated or otherwise suffering from diminished capacity
 6 as determined by a physician, the resident must be present, to the
 7 extent practicable, at the time the form described in this subsection
 8 is presented to, and signed by, the person consenting to the
 9 authorized electronic monitoring of the resident's room on behalf
 10 of the resident.

11 (g) The form described under subsection (f) shall specify the
 12 following:

13 (1) The:

14 (A) type of electronic monitoring device; and

15 (B) number of electronic monitoring devices;

16 to be used.

17 (2) All conditions or restrictions that have been, or may be,
 18 placed on the electronic monitoring device's use.

19 (3) All persons or third parties with whom any recording
 20 made by an electronic monitoring device may be shared.

21 (4) The ability of the consenting party to:

22 (A) decline all monitoring at any time; or

23 (B) limit or restrict the manner in which the authorized
 24 electronic monitoring of the resident's room occurs.

25 (h) The following limits and restrictions concerning authorized
 26 electronic monitoring shall be listed as possible limits and
 27 restrictions on the written form described under subsection (f):

28 (1) A prohibition concerning the recording or broadcasting of
 29 audio.

30 (2) A prohibition concerning the recording or broadcasting of
 31 video.

32 (3) Turning off an electronic monitoring device or blocking
 33 the visual recording component of an electronic monitoring
 34 device for the duration of an exam or procedure performed by
 35 a health care professional.

36 (4) Turning off the electronic monitoring device or blocking
 37 the visual recording component of the electronic monitoring
 38 device during dressing or bathing.

39 (5) Turning off an electronic monitoring device for the
 40 duration of a visit with a spiritual advisor, ombudsman,
 41 attorney, financial planner, intimate partner, or other visitor.

42 (6) Any other condition or restriction chosen by the resident,



1 roommate, or person consenting to the authorized electronic
2 monitoring, as applicable, under this section.
3 If an electronic monitoring device is turned off or disabled for one
4 (1) or more of the reasons described above, the date, time, and
5 reason for the turning off or disabling of the electronic monitoring
6 device shall be recorded by facility personnel or an authorized
7 person on a form prescribed by the state department. If and when
8 an electronic monitoring device is turned back on or reenabled, the
9 date, time, and reason for the turning on or reenabling of the
10 electronic monitoring device shall be recorded by facility personnel
11 or an authorized person on a form prescribed by the state
12 department.
13 (i) If a resident has a roommate, the roommate must be given
14 the opportunity to privately decline the authorized electronic
15 monitoring of the shared room in the presence of a facility
16 employee if the roommate is not incapacitated or suffering from
17 diminished capacity as determined by a physician. If a roommate
18 is incapacitated or suffering from diminished capacity as
19 determined by a physician, a person authorized under law to make
20 health care decisions on behalf of the roommate may privately
21 decline authorized electronic monitoring on the roommate's behalf.
22 A declination described under this subsection:
23 (1) must be memorialized on a written form prescribed by the
24 state department; and
25 (2) precludes any authorized electronic monitoring from
26 occurring in the applicable room.
27 (j) For purposes of this section, authorized electronic
28 monitoring is considered declined when a person with the authority
29 to decline authorized electronic monitoring orally, visually, or
30 through the use of auxiliary aids or services declines authorized
31 electronic monitoring. When authorized electronic monitoring is
32 precluded due to a declination, reasonable efforts to cohort a
33 resident in another room or with another roommate for the
34 purpose of making authorized electronic monitoring feasible shall
35 be made by the facility. A person who wishes to relocate and is
36 relocated to a private room for the purpose of making authorized
37 electronic monitoring possible must pay the private room rate,
38 including residents whose primary payor is Medicaid. If a resident
39 does not have sufficient funds to pay the private room rate, a
40 family member or other person is required to agree to the payment
41 of the facility's private room rate. A facility shall attempt to
42 accommodate a request for authorized electronic monitoring every



1 four (4) weeks until the request is either granted or withdrawn.

2 (k) Voluntary consent for authorized electronic monitoring
3 from a roommate or the person authorized under law to make
4 health care decisions on behalf of a roommate, as applicable, must
5 be in writing on a form prescribed by the state department and in
6 the presence of a facility employee. The form described under this
7 subsection must contain the same information required by the
8 form described under subsections (g) and (h).

9 (l) As an alternative to the unconditional declination of
10 authorized electronic monitoring, a roommate or a person
11 authorized under law to make health care decisions on behalf of a
12 roommate, as applicable, may request the application of certain
13 conditions or restrictions to the authorized electronic monitoring
14 of a shared room. Conditions or restrictions described under this
15 subsection must be:

16 (1) agreed to in writing by the applicable parties;

17 (2) memorialized on a form prescribed by the state
18 department; and

19 (3) executed in the presence of a facility employee.

20 The form described under this subsection shall list the same limits
21 and restrictions concerning authorized electronic monitoring that
22 are specified in subsection (h).

23 (m) Authorized electronic monitoring and any accompanying
24 conditions or restrictions, if applicable, are subject to revision or
25 withdrawal at any time and by any party authorized to consent to
26 or decline authorized electronic monitoring. If a party that
27 originally consented to authorized electronic monitoring loses the
28 capacity to revise the conditions or restrictions or withdraw
29 consent, the ability to revise the restrictions or conditions or
30 withdraw consent on behalf of the original consenting party shall
31 pass to the person authorized under law to make health care
32 decisions on behalf of the consenting party. A revision or
33 withdrawal described under this subsection must be memorialized
34 in writing on a form prescribed by the state department and in the
35 presence of a facility employee.

36 (n) The introduction of a new roommate to a shared room voids
37 any agreement that existed before the introduction of the new
38 roommate to the shared room and all existing electronic
39 monitoring devices in the room must be disabled. The resident
40 wishing to continue authorized electronic monitoring must obtain
41 agreement from all relevant parties in the manner described under
42 this section. If a new agreement cannot be recreated and a new



1 agreement cannot be created in the manner required by this
 2 section, the facility shall make reasonable efforts to cohort
 3 residents in a manner that facilitates authorized electronic
 4 monitoring for those parties desiring it. A person who wishes to
 5 relocate and is relocated to a private room for the purpose of
 6 making authorized electronic monitoring possible must pay the
 7 private room rate, including residents whose primary payor is
 8 Medicaid. If a resident does not have sufficient funds to pay the
 9 private room rate, a family member or other person is required to
 10 agree to the payment of the facility's private room rate. A facility
 11 shall attempt to accommodate a request for authorized electronic
 12 monitoring every four (4) weeks until the request is either granted
 13 or withdrawn.

14 (o) If:

- 15 (1) consent for authorized electronic monitoring is
- 16 withdrawn; or
- 17 (2) conditions or restrictions are applied to the manner in
- 18 which an electronic monitoring device is used;

19 a facility employee may turn off or modify the use of any electronic
 20 monitoring device in the applicable room for the purpose of
 21 honoring withdrawn consent or carrying out a condition or
 22 restriction.

23 (p) Before authorized electronic monitoring begins, the resident
 24 desiring electronic monitoring, or a person authorized under law
 25 to make health care decisions for the resident, shall prepare a
 26 written authorized electronic monitoring agreement consisting of
 27 all applicable forms and a summary of the specific terms and
 28 conditions that are applicable to a resident's authorized electronic
 29 monitoring request. The written agreement described under this
 30 subsection shall be provided to all parties to the agreement by the
 31 facility. A written agreement described under this subsection shall
 32 include the following information:

- 33 (1) Signed consent for authorized electronic monitoring by all
- 34 necessary parties.
- 35 (2) The names of all persons and facility staff present when
- 36 authorized electronic monitoring was requested by a resident
- 37 or consented to on behalf of a resident.
- 38 (3) An acknowledgment that:
 - 39 (A) required opportunities to decline authorized electronic
 - 40 monitoring were provided to the appropriate persons or
 - 41 parties when and as required by this section; and
 - 42 (B) the appropriate parties did not decline authorized



- 1 **electronic monitoring when provided with the opportunity**
 2 **to do so.**
 3 **(4) A complete description of each condition or restriction**
 4 **that limits or restricts the manner in which authorized**
 5 **electronic monitoring may be conducted.**
 6 **(5) The:**
 7 **(A) number; and**
 8 **(B) type;**
 9 **of electronic monitoring devices to be used.**
 10 **(6) A complete description of any installation required by the**
 11 **electronic monitoring device to be used.**
 12 **(7) A:**
 13 **(A) proposed date of installation for any electronic**
 14 **monitoring device to be used; and**
 15 **(B) provision requiring the installation of any electronic**
 16 **monitoring device to comply with all applicable building,**
 17 **fire, and life safety codes as approved by the state**
 18 **department.**
 19 **(8) A complete copy of any manual or contract concerning the**
 20 **purchase, use, operation, repair, or installation of any**
 21 **electronic monitoring device to be used.**
 22 **(9) A provision specifying that any expense associated with the**
 23 **purchase, installation, use, or repair of an electronic**
 24 **monitoring device is the sole responsibility of the requesting**
 25 **party.**
 26 **(10) Any other term or condition deemed necessary by the**
 27 **state department.**
 28 **A complete copy of the written summary described under this**
 29 **subsection and all accompanying forms otherwise required by this**
 30 **section shall be made a permanent part of the resident's and**
 31 **roommate's, if applicable, clinical record. A copy of the completed**
 32 **written summary described under this subsection shall be provided**
 33 **to a resident, roommate, or person authorized under law to make**
 34 **health care decisions on behalf of the resident or roommate, as**
 35 **applicable, upon request.**
 36 **(q) Except as otherwise provided by applicable state law, federal**
 37 **law, or rules of evidence, a recording created by an electronic**
 38 **monitoring device for a purpose specified under this section may**
 39 **be subpoenaed and is admissible as evidence in any civil, criminal,**
 40 **or administrative proceeding. Recordings prepared for use as**
 41 **evidence shall be unedited, be unenhanced, and, to the extent**
 42 **practicable, include applicable dates and times.**



1 (r) A facility or governmental unit, including the state
2 department and the state ombudsman (as defined in IC 12-10-13-6)
3 or a designee of the state ombudsman, are prohibited from
4 accessing any recording created by an electronic monitoring device
5 without the written consent of all parties, or their respective legal
6 guardians or designated representatives, if applicable, subject to
7 the authorized electronic monitoring agreement described in
8 subsection (p). Except as otherwise required by applicable state or
9 federal law, a copy of a recording created by an electronic
10 monitoring device may only be disseminated for a purpose
11 concerning the health, safety, or welfare of a resident.

12 (s) The prohibition and penalties described in this subsection do
13 not apply to:

- 14 (1) a resident;
15 (2) a person authorized under law to make health care
16 decisions for a resident if the person is responsible for
17 authorizing the use of authorized electronic monitoring on
18 behalf of the resident;
19 (3) a facility employee who operates, turns off, or otherwise
20 manipulates an electronic monitoring device for the purpose
21 of complying with an applicable condition or restriction
22 imposed on the operation of an electronic monitoring device
23 or a withdrawal of authorized electronic monitoring consent;
24 or
25 (4) any person who disables an electronic monitoring device
26 that is discovered in a resident's room that was not installed
27 in compliance with this section.

28 A person may not knowingly or intentionally hamper, obstruct,
29 tamper with, or destroy an electronic monitoring device or a
30 recording created by an electronic monitoring device that complies
31 with this section. A person who violates this section commits
32 spoliation, a Class A misdemeanor. However, the offense is a Level
33 6 felony if the person conceals, or attempts to conceal, a violation
34 of this subsection. A facility employee or authorized person who
35 operates, turns off, or otherwise manipulates an electronic
36 monitoring device for the purpose of complying with an applicable
37 condition or restriction imposed on the operation of an electronic
38 monitoring device or a withdrawal of authorized electronic
39 monitoring consent does not violate this subsection. A recording
40 created through the use of an electronic monitoring device that
41 complies with this section shall be considered the personal property
42 of the resident and may not be accessed by the facility, facility



1 personnel, or a governmental unit, including the state department
2 and the state ombudsman (as defined in IC 12-10-13-6) or a
3 designee of the state ombudsman, without the written consent of
4 the resident or the resident's legal guardian or designated
5 representative, as applicable.

6 (t) If an electronic monitoring device is located in a resident's
7 room, the facility shall conspicuously post signage on the resident's
8 door. Signage described in this subsection must indicate that
9 authorized electronic monitoring:

10 (1) may be used; or

11 (2) is ongoing;

12 in the resident's room. An electronic monitoring device must be
13 visible and conspicuously placed in a resident's room.

14 (u) Each resident, or person authorized to make health care
15 decisions on behalf of the resident, as applicable, shall be informed,
16 in writing, of their right to make use of authorized electronic
17 monitoring at the time of the resident's admission to the facility
18 and at least once each year thereafter on a form prescribed by the
19 state department.

20 (v) A resident choosing to conduct authorized electronic
21 monitoring must do so at the resident's own expense. Purchase,
22 installation, maintenance, and removal costs are the sole
23 responsibility of the resident. If a resident chooses to install an
24 electronic monitoring device that requires Internet technology for
25 visual or audio monitoring, the resident is responsible for
26 contracting with an Internet service provider. A facility shall make
27 a reasonable effort to accommodate a resident's installation needs,
28 including access to the facility's telecommunications or equipment
29 room. A facility has the burden of proving that a requested
30 accommodation is not reasonable. A facility may not charge the
31 resident a fee for the cost of electricity used by an electronic
32 monitoring device.

33 (w) A facility may not deny a person admission or discharge, or
34 otherwise discriminate or retaliate against a resident or a person
35 authorized to make health care decisions on behalf of a resident,
36 for their decision to make use of authorized electronic monitoring.
37 A facility, facility employee, or facility contractor that, in good
38 faith, implements or complies with this section may not be held:

39 (1) civilly liable for damages, including punitive damages, for
40 any act or omission related to the implementation of this
41 section; or

42 (2) criminally liable for any inadvertent disclosure of a



1 recording created by an electronic monitoring device;
 2 unless the act or omission constitutes gross negligence or willful or
 3 wanton misconduct. If a person described under this section is not
 4 liable for damages, no other person or entity incurs liability by
 5 reason of an agency relationship with the applicable person or
 6 entity.

7 (x) The state department may adopt rules under IC 4-22-2,
 8 including emergency rules under IC 4-22-2-37.1, for the purpose of
 9 implementing this section. An emergency rule adopted under this
 10 subsection expires on the earlier of the following:

11 (1) The expiration date stated in the emergency rule.

12 (2) The date the emergency rule is amended or repealed by a
 13 later rule adopted under IC 4-22-2-24 through IC 4-22-2-36
 14 or IC 4-22-2-37.1.

15 The state department shall adopt rules under IC 4-22-2 to
 16 implement this section not later than July 1, 2022.

17 (y) Nothing in this section may be construed to:

18 (1) authorize or permit the use of an electronic monitoring
 19 device for the purpose of:

20 (A) taking still photographs; or

21 (B) nonconsensually intercepting private communications;
 22 or

23 (2) exempt a person from, or provide a defense to, a criminal
 24 prosecution under IC 35-45-4-5 (concerning voyeurism).

25 SECTION 5. IC 34-30-2-64.4 IS ADDED TO THE INDIANA
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2021]: **Sec. 64.4. IC 16-28-2-12.5 (Concerning**
 28 **authorized electronic monitoring in health facilities and residential**
 29 **care facilities).**

30 SECTION 6. IC 35-52-16-0.5 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2021]: **Sec. 0.5. IC 16-18-2-12.5 (defines a**
 33 **crime concerning health facilities and residential care facilities).**

