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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 146

01/17/2019 Authored by Schultz
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act
1.2 relating to health; establishing requirements for authorized electronic monitoring
1.3 in nursing facilities and assisted living facilities; amending Minnesota Statutes
1.4 2018, sections 144.651, by adding a subdivision; 144A.44, subdivision 1; proposing
1.5 coding for new law in Minnesota Statutes, chapter 144.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. [144.6502] AUTHORIZED ELECTRONIC MONITORING IN CERTAIN
1.8 HEALTH CARE FACILITIES.

1.9 Subdivision 1. Definitions. (a) For the purposes of this section, the terms defined in this
1.10 subdivision have the meanings given.

1.11 (b) "Authorized electronic monitoring" means the placement and use of an electronic
1.12 monitoring device by a resident in the resident's room or private living space in accordance
1.13 with this section.

1.14 (c) "Commissioner" means the commissioner of health.

1.15 (d) "Department" means the Department of Health.

1.16 (e) "Electronic monitoring device" means a surveillance instrument with a fixed position
1.17 video camera or an audio recording device, or both, that is installed in a resident's room or
1.18 private living space and broadcasts or records activity or sounds occurring in the room or
1.19 private living space.

1.20 (f) "Facility" means a facility that is licensed as a nursing home under chapter 144A or
1.21 as a boarding care home under sections 144.50 to 144.56, or registered as a housing with
1.22 services establishment under chapter 144D that is also subject to chapter 144G.

2.1 (g) "Legal representative" means a court-appointed guardian or other representative with
2.2 legal authority to make decisions about health care services for the resident, including a
2.3 health care agent or an attorney-in-fact authorized through a health care directive or a power
2.4 of attorney.

2.5 (h) "Resident" means a person 18 years of age or older residing in a facility.

2.6 Subd. 2. **Authorized electronic monitoring.** (a) A resident or a resident's legal
2.7 representative may conduct authorized electronic monitoring of the resident's room or private
2.8 living space through the use of electronic monitoring devices placed in the room or private
2.9 living space as provided in this section.

2.10 (b) Nothing in this section allows the use of an electronic monitoring device to take still
2.11 photographs or for the nonconsensual interception of private communications.

2.12 (c) Nothing in this section precludes the use of electronic monitoring of health care
2.13 allowed under other law.

2.14 (d) Electronic monitoring authorized under this section, for the purpose of monitoring
2.15 the actions of individuals other than the resident or to verify the delivery of services, is not
2.16 a covered service under home and community-based waivers under sections 256B.0913,
2.17 256B.0915, 256B.092, and 256B.49.

2.18 Subd. 3. **Consent to electronic monitoring.** (a) Except as otherwise provided in this
2.19 subdivision, a resident must consent to electronic monitoring in the resident's room or private
2.20 living space in writing on a notification and consent form prescribed by the ombudsman
2.21 for long-term care, in consultation with the department and representatives of facilities. If
2.22 the resident has not affirmatively objected to electronic monitoring and the resident's
2.23 physician determines that the resident lacks the ability to understand and appreciate the
2.24 nature and consequences of electronic monitoring, the resident's legal representative may
2.25 consent on behalf of the resident. For purposes of this subdivision, a resident affirmatively
2.26 objects when the resident orally, visually, or through the use of auxiliary aids or services
2.27 declines electronic monitoring. The resident's response must be documented on the
2.28 notification and consent form.

2.29 (b) Prior to a resident's legal representative consenting on behalf of a resident, the resident
2.30 must be asked by the resident's legal guardian in the presence of a facility employee if the
2.31 resident wants electronic monitoring to be conducted. The resident's legal representative
2.32 must explain to the resident:

2.33 (1) the type of electronic monitoring device to be used;

3.1 (2) the standard conditions that may be placed on the electronic monitoring device's use,
3.2 including those listed in subdivision 5;

3.3 (3) with whom the recording may be shared under subdivision 9 or 10; and

3.4 (4) the resident's ability to decline all recording.

3.5 (c) A resident or roommate may consent to electronic monitoring with any conditions
3.6 of the resident's or roommate's choosing, including the list of standard conditions provided
3.7 in subdivision 5. A resident or roommate may request that the electronic monitoring device
3.8 be turned off or the visual or audio recording component of the electronic monitoring device
3.9 be blocked at any time.

3.10 (d) Prior to implementing electronic monitoring, a resident must obtain the written
3.11 consent of any other resident residing in the room or private living space on the notification
3.12 and consent form prescribed by the ombudsman for long-term care. Except as otherwise
3.13 provided in this subdivision, a roommate must consent in writing to electronic monitoring
3.14 in the resident's room or private living space. If the roommate has not affirmatively objected
3.15 to electronic monitoring in accordance with this subdivision and the roommate's physician
3.16 determines that the roommate lacks the ability to understand and appreciate the nature and
3.17 consequences of electronic monitoring, the roommate's legal representative may consent
3.18 on behalf of the roommate. Consent by a roommate under this paragraph authorizes the
3.19 resident's use of any recording obtained under this section, as provided under subdivision
3.20 9 or 10.

3.21 (e) Any resident conducting authorized electronic monitoring must obtain consent from
3.22 any new roommate before the resident may resume authorized electronic monitoring. If a
3.23 new roommate does not consent to electronic monitoring and the resident conducting the
3.24 electronic monitoring does not remove or disable the electronic monitoring device, the
3.25 facility must remove the electronic monitoring device.

3.26 **Subd. 4. Withdrawal of consent; refusal of roommate to consent.** (a) Consent may
3.27 be withdrawn by the resident or roommate at any time and the withdrawal of consent must
3.28 be documented in the resident's clinical record. If a roommate withdraws consent and the
3.29 resident conducting the electronic monitoring does not remove or disable the electronic
3.30 monitoring device, the facility must remove the electronic monitoring device.

3.31 (b) If a resident of a nursing home or boarding care home who is residing in a shared
3.32 room wants to conduct electronic monitoring and another resident living in or moving into
3.33 the same shared room refuses to consent to the use of an electronic monitoring device, the
3.34 facility shall make a reasonable attempt to accommodate the resident who wants to conduct

4.1 electronic monitoring. A nursing home or boarding care home has met the requirement to
 4.2 make a reasonable attempt to accommodate a resident who wants to conduct electronic
 4.3 monitoring when, upon notification that a roommate has not consented to the use of an
 4.4 electronic monitoring device in the resident's room, the nursing home or boarding care home
 4.5 offers to move either resident to another shared room that is available at the time of the
 4.6 request. If a resident chooses to reside in a private room in a nursing home or boarding care
 4.7 home in order to accommodate the use of an electronic monitoring device, the resident must
 4.8 pay the private room rate. If a nursing home or boarding care home is unable to accommodate
 4.9 a resident due to lack of space, the nursing home or boarding care home must reevaluate
 4.10 the request every two weeks until the request is fulfilled. A nursing home or boarding care
 4.11 home is not required to provide a private room or a single-bed room to a resident who is
 4.12 not a private-pay resident.

4.13 Subd. 5. **Notice to facility; form requirements.** (a) Authorized electronic monitoring
 4.14 may begin only after the resident who intends to install an electronic monitoring device
 4.15 completes the notification and consent form prescribed by the ombudsman for long-term
 4.16 care and submits the form to the facility and the facility places the form in the resident's
 4.17 and any roommate's clinical records.

4.18 (b) The notification and consent form completed by the resident must include, at a
 4.19 minimum, the following information:

4.20 (1) the resident's signed consent to electronic monitoring or the signature of the resident's
 4.21 legal representative, if applicable. If a person other than the resident signs the consent form,
 4.22 the form must document the following:

4.23 (i) the date the resident was asked if the resident wants electronic monitoring to be
 4.24 conducted;

4.25 (ii) who was present when the resident was asked; and

4.26 (iii) an acknowledgment that the resident did not affirmatively object;

4.27 (2) the resident's roommate's signed consent or the signature of the roommate's legal
 4.28 representative, if applicable. If a roommate's legal representative signs the consent form,
 4.29 the form must document the following:

4.30 (i) the date the roommate was asked if the roommate wants electronic monitoring to be
 4.31 conducted;

4.32 (ii) who was present when the roommate was asked; and

4.33 (iii) an acknowledgment that the roommate did not affirmatively object;

- 5.1 (3) the type of electronic monitoring device to be used;
- 5.2 (4) any installation needs, such as mounting of a device to a wall or ceiling;
- 5.3 (5) the proposed date of installation for scheduling purposes;
- 5.4 (6) a list of standard conditions or restrictions that the resident or a roommate may elect
5.5 to place on the use of the electronic monitoring device, including but not limited to:
- 5.6 (i) prohibiting audio recording;
- 5.7 (ii) prohibiting video recording;
- 5.8 (iii) prohibiting broadcasting of audio or video;
- 5.9 (iv) turning off the electronic monitoring device or blocking the visual recording
5.10 component of the electronic monitoring device for the duration of an exam or procedure by
5.11 a health care professional;
- 5.12 (v) turning off the electronic monitoring device or blocking the visual recording
5.13 component of the electronic monitoring device while dressing or bathing is performed; and
- 5.14 (vi) turning off the electronic monitoring device for the duration of a visit with a spiritual
5.15 adviser, ombudsman, attorney, financial planner, intimate partner, or other visitor;
- 5.16 (7) any other condition or restriction elected by the resident or roommate on the use of
5.17 an electronic monitoring device; and
- 5.18 (8) a signature box for documenting that the resident or roommate has withdrawn consent.
- 5.19 (c) A copy of the completed notification and consent form must be placed in the resident's
5.20 and any roommate's clinical records and a copy must be provided to the resident and the
5.21 resident's roommate, if applicable.
- 5.22 (d) The ombudsman for long-term care shall prescribe the notification and consent form
5.23 required in this section no later than January 1, 2020. The commissioner shall make the
5.24 form available on the department's website.
- 5.25 (e) Beginning January 1, 2020, facilities must make the notification and consent form
5.26 available to the residents and inform residents of their option to conduct electronic monitoring
5.27 of their rooms or private living spaces.
- 5.28 (f) Any resident, legal representative of a resident, or other person conducting electronic
5.29 monitoring of a resident's room prior to enactment of this section must comply with the
5.30 requirements of this section by January 1, 2020.

6.1 Subd. 6. **Cost and installation.** (a) A resident choosing to conduct authorized electronic
6.2 monitoring must do so at the resident's own expense, including paying purchase, installation,
6.3 maintenance, and removal costs.

6.4 (b) If a resident chooses to install an electronic monitoring device that uses Internet
6.5 technology for visual or audio monitoring, the resident may be responsible for contracting
6.6 with an Internet service provider.

6.7 (c) The facility shall make a reasonable attempt to accommodate the resident's installation
6.8 needs, including allowing access to the facility's telecommunications or equipment room.
6.9 A facility has the burden of proving that a requested accommodation is not reasonable.

6.10 (d) All electronic monitoring device installations and supporting services must be
6.11 UL-listed.

6.12 Subd. 7. **Notice to visitors.** (a) A facility shall post a sign at each facility entrance
6.13 accessible to visitors that states "Security cameras and audio devices may be present to
6.14 record persons and activities."

6.15 (b) The facility is responsible for installing and maintaining the signage required in this
6.16 subdivision.

6.17 Subd. 8. **Obstruction of electronic monitoring devices.** (a) A person must not knowingly
6.18 hamper, obstruct, tamper with, or destroy an electronic monitoring device installed in a
6.19 resident's room or private living space without the permission of the resident or the resident's
6.20 legal representative.

6.21 (b) It is not a violation of paragraph (a) if a person turns off the electronic monitoring
6.22 device or blocks the visual recording component of the electronic monitoring device at the
6.23 direction of the resident or the resident's legal representative, or if consent has been
6.24 withdrawn.

6.25 Subd. 9. **Dissemination of recordings.** (a) A facility may not access any video or audio
6.26 recording created through authorized electronic monitoring without the written consent of
6.27 the resident or the resident's legal representative.

6.28 (b) Except as required under other law, a recording or copy of a recording made as
6.29 provided in this section may only be disseminated for the purpose of addressing health,
6.30 safety, or welfare concerns of a resident or residents.

6.31 (c) The resident or the resident's legal representative must provide a copy of any video
6.32 or audio recording to parties involved in a civil, criminal, or administrative proceeding,

7.1 upon a party's request, if the video or audio recording was made during the time period that
 7.2 the conduct at issue in the proceeding allegedly occurred.

7.3 Subd. 10. **Admissibility of evidence.** Subject to applicable rules of evidence and
 7.4 procedure, any video or audio recording created through authorized electronic monitoring
 7.5 under this section may be admitted into evidence in a civil, criminal, or administrative
 7.6 proceeding if the contents of the recording have not been edited or artificially enhanced and
 7.7 the video recording includes the date and time the events occurred.

7.8 Subd. 11. **Liability.** (a) A facility is not civilly or criminally liable for the inadvertent
 7.9 or intentional disclosure of a recording by a resident or a resident's legal representative for
 7.10 any purpose not authorized by this section.

7.11 (b) A facility is not civilly or criminally liable for a violation of a resident's right to
 7.12 privacy arising out of any electronic monitoring conducted as provided in this section.

7.13 Subd. 12. **Resident protections.** A facility must not:

7.14 (1) refuse to admit a potential resident or remove a resident because the facility disagrees
 7.15 with the potential resident's or the resident's decisions regarding electronic monitoring;

7.16 (2) intentionally retaliate or discriminate against any resident for consenting or refusing
 7.17 to consent to electronic monitoring under this section; or

7.18 (3) prevent the installation or use of an electronic monitoring device by a resident who
 7.19 has provided the facility with notice and consent as required under this section.

7.20 **EFFECTIVE DATE.** This section is effective January 1, 2020.

7.21 Sec. 2. Minnesota Statutes 2018, section 144.651, is amended by adding a subdivision to
 7.22 read:

7.23 Subd. 34. **Electronic monitoring.** A resident has the right to install and use electronic
 7.24 monitoring, provided the requirements of section 144.6502 are met.

7.25 Sec. 3. Minnesota Statutes 2018, section 144A.44, subdivision 1, is amended to read:

7.26 Subdivision 1. **Statement of rights.** A person who receives home care services has these
 7.27 rights:

7.28 (1) the right to receive written information about rights before receiving services,
 7.29 including what to do if rights are violated;

8.1 (2) the right to receive care and services according to a suitable and up-to-date plan, and
8.2 subject to accepted health care, medical or nursing standards, to take an active part in
8.3 developing, modifying, and evaluating the plan and services;

8.4 (3) the right to be told before receiving services the type and disciplines of staff who
8.5 will be providing the services, the frequency of visits proposed to be furnished, other choices
8.6 that are available for addressing home care needs, and the potential consequences of refusing
8.7 these services;

8.8 (4) the right to be told in advance of any recommended changes by the provider in the
8.9 service plan and to take an active part in any decisions about changes to the service plan;

8.10 (5) the right to refuse services or treatment;

8.11 (6) the right to know, before receiving services or during the initial visit, any limits to
8.12 the services available from a home care provider;

8.13 (7) the right to be told before services are initiated what the provider charges for the
8.14 services; to what extent payment may be expected from health insurance, public programs,
8.15 or other sources, if known; and what charges the client may be responsible for paying;

8.16 (8) the right to know that there may be other services available in the community,
8.17 including other home care services and providers, and to know where to find information
8.18 about these services;

8.19 (9) the right to choose freely among available providers and to change providers after
8.20 services have begun, within the limits of health insurance, long-term care insurance, medical
8.21 assistance, or other health programs;

8.22 (10) the right to have personal, financial, and medical information kept private, and to
8.23 be advised of the provider's policies and procedures regarding disclosure of such information;

8.24 (11) the right to access the client's own records and written information from those
8.25 records in accordance with sections 144.291 to 144.298;

8.26 (12) the right to be served by people who are properly trained and competent to perform
8.27 their duties;

8.28 (13) the right to be treated with courtesy and respect, and to have the client's property
8.29 treated with respect;

8.30 (14) the right to be free from physical and verbal abuse, neglect, financial exploitation,
8.31 and all forms of maltreatment covered under the Vulnerable Adults Act and the Maltreatment
8.32 of Minors Act;

- 9.1 (15) the right to reasonable, advance notice of changes in services or charges;
- 9.2 (16) the right to know the provider's reason for termination of services;
- 9.3 (17) the right to at least ten days' advance notice of the termination of a service by a
9.4 provider, except in cases where:
- 9.5 (i) the client engages in conduct that significantly alters the terms of the service plan
9.6 with the home care provider;
- 9.7 (ii) the client, person who lives with the client, or others create an abusive or unsafe
9.8 work environment for the person providing home care services; or
- 9.9 (iii) an emergency or a significant change in the client's condition has resulted in service
9.10 needs that exceed the current service plan and that cannot be safely met by the home care
9.11 provider;
- 9.12 (18) the right to a coordinated transfer when there will be a change in the provider of
9.13 services;
- 9.14 (19) the right to complain about services that are provided, or fail to be provided, and
9.15 the lack of courtesy or respect to the client or the client's property;
- 9.16 (20) the right to know how to contact an individual associated with the home care provider
9.17 who is responsible for handling problems and to have the home care provider investigate
9.18 and attempt to resolve the grievance or complaint;
- 9.19 (21) the right to know the name and address of the state or county agency to contact for
9.20 additional information or assistance; ~~and~~
- 9.21 (22) the right to assert these rights personally, or have them asserted by the client's
9.22 representative or by anyone on behalf of the client, without retaliation; and
- 9.23 (23) the right to place an electronic monitoring device in the person's own private space,
9.24 provided the requirements in section 144.6502 are met.