

FIRST REGULAR SESSION

HOUSE BILL NO. 843

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCDANIEL.

1966L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 198, RSMo, by adding thereto eleven new sections relating to the patient care monitoring act, 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 eleven new sections, to
2 be known as sections 198.575, 198.578, 198.581, 198.584, 198.587, 198.590, 198.593, 198.596,
3 198.599, 198.602, and 198.605, to read as follows:

198.575. 1. Sections 198.575 to 198.605 shall be known and may be cited as the
2 **"Patient Monitoring Care Act".**

3 **2. As used in sections 198.575 to 198.605, the following terms shall mean:**

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

5 **(2) "Facility", any residential care facility, assisted living facility, intermediate care**
6 **facility, or skilled nursing facility;**

7 **(3) "Monitoring device", a surveillance instrument that broadcasts or records**
8 **activity, but does not include a still camera;**

9 **(4) "Patient", a person who is a resident of a facility;**

10 **(5) "State ombudsman", the office of state ombudsman for long-term care facility**
11 **residents created under section 192.2305;**

12 **(6) "Surrogate", a legal guardian or legally appointed health care proxy who is**
13 **authorized to act on behalf of a patient.**

198.578. 1. A patient or a surrogate may authorize installation and use of a
2 **monitoring device in a facility provided that:**

3 **(1) The facility is given notice of the installation;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

4 **(2) If the monitoring device records activity visually, such recording shall include**
5 **a record of the date and time;**

6 **(3) The monitoring device and all installation and maintenance costs are paid for**
7 **by the patient; and**

8 **(4) Written consent is given by each patient or surrogate of each patient occupying**
9 **the same room.**

10 **2. The patient may establish and the facility shall accommodate limits on the use,**
11 **including the time of operation, direction, focus or volume, of a monitoring device.**

198.581. 1. At the time of admission to a facility, a patient shall be offered the
2 **option to have a monitoring device, and a record of the patient's authorization or choice**
3 **not to have a monitoring device shall be kept by the facility and shall be made accessible**
4 **to the state ombudsman.**

5 **2. After authorization, consent, and notice, a patient or surrogate may install,**
6 **operate, and maintain a monitoring device in the patient's room at the patient's expense.**

7 **3. The facility shall cooperate to accommodate the installation of the monitoring**
8 **device, provided the installation does not place undue burden on the facility.**

9 **4. The patient or surrogate shall be responsible for removal of the monitoring**
10 **device, at the patient's or surrogate's expense, upon discharge of the patient from the**
11 **facility or upon the death of the patient.**

198.584. 1. Consent to the authorization for the installation and use of a monitoring
2 **device may be given only by the patient or the surrogate.**

3 **2. Consent to the authorization for the installation and use of a monitoring device**
4 **shall include a release of liability for the facility for a violation of the patient's right to**
5 **privacy insofar as the use of the monitoring device is concerned.**

6 **3. A patient or the surrogate may reverse a choice to have or not have a monitoring**
7 **device installed and used at any time, after notice to the facility and to the state**
8 **ombudsman upon a form prescribed by the department.**

198.587. The form for the authorization of installation and use of a monitoring
2 **device shall provide for:**

3 **(1) Consent of the patient or the surrogate authorizing the installation and use of**
4 **the monitoring device;**

5 **(2) Notice to the facility of the patient's installation of a monitoring device and**
6 **specifics as to its type, function, and use;**

7 **(3) Consent of any other patient or that patient's surrogate sharing the same room;**

8 **(4) Notice of release from liability for privacy violation through the use of the**
9 **monitoring device; and**

10 (5) Waiver of the patient's right to privacy in conjunction with the use of the
11 monitoring device.

198.590. 1. In any civil action against the facility, material obtained through the
2 use of a monitoring device shall not be used if the monitoring device was installed or used
3 without the knowledge of the facility or without the prescribed form.

2. Compliance with the provisions of sections 198.575 to 198.605 shall be a complete
4 defense against any civil or criminal action brought against the patient, surrogate, or
5 facility for the use or presence of a monitoring device.

198.593. Within six months of the effective date of sections 198.575 to 198.605, all
2 facilities shall provide to each patient or surrogate a form prescribed by the department
3 explaining the provisions of sections 198.575 to 198.605 and giving each patient or
4 surrogate a choice to have a monitoring device installed in the patient's room. Copies of
5 the completed form shall be kept by the facility and shall be made accessible to the state
6 ombudsman.

198.596. The facility shall post a notice in a conspicuous place at the entrance to a
2 room with a monitoring device that a monitoring device is in use in that room of the
3 facility.

198.599. The department shall promulgate rules to implement the provisions of
2 sections 198.575 to 198.605. Any rule or portion of a rule, as that term is defined in section
3 536.010, that is created under the authority delegated in sections 198.575 to 198.605 shall
4 become effective only if it complies with and is subject to all of the provisions of chapter
5 536 and, if applicable, section 536.028. Sections 198.575 to 198.605 and chapter 536 are
6 nonseverable and if any of the powers vested with the general assembly pursuant to
7 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are
8 subsequently held unconstitutional, then the grant of rulemaking authority and any rule
9 proposed or adopted after August 28, 2015, shall be invalid and void.

198.602. No person or patient shall be denied admission to or discharged from a
2 facility or be otherwise discriminated against or retaliated against because of a choice to
3 authorize installation and use of a monitoring device. Any person who violates this section
4 shall be subject to a civil penalty of up to ten thousand dollars per occurrence.

198.605. Any person other than a patient or surrogate found guilty of intentionally
2 hampering, obstructing, tampering with, or destroying a monitoring device or a recording
3 made by a monitoring device installed in a facility under sections 198.575 to 198.605 is
4 guilty of a class D felony until December 31, 2016, and a class E felony beginning January
5 1, 2017.

✓