

An Act

ENROLLED SENATE
BILL NO. 1739

By: Leewright and Bergstrom of
the Senate

and

Lawson, Fugate and Davis of
the House

An Act relating to long-term care facilities; creating the "Barbara E. Hoover Act"; amending Sections 1, 2, 3, 5 and 6, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Sections 1-1953.1, 1-1953.2, 1-1953.3, 1-1953.5 and 1-1953.6), which relate to electronic monitoring in long-term care facilities; broadening certain provisions to apply to assisted living centers and continuum of care facilities; updating statutory references; renumbering Sections 1, 2, 3, as amended by Sections 1, 2 and 3 of this act, 4, 5, 6, as amended by Sections 4 and 5 of this act and 7, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Sections 1-1953.1, 1-1953.2, 1-1953.3, 1-1953.4, 1-1953.5, 1-1953.6 and 1-1953.7), which relate to electronic monitoring in long-term care facilities; providing for recodification; providing for noncodification; and providing an effective date.

SUBJECT: Long-term care facilities

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Barbara E. Hoover Act".

SECTION 2. AMENDATORY Section 1, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1953.1), is amended to read as follows:

Section 1-1953.1. As used in ~~this act~~ Section 1-1953.1 et seq. of this title:

1. "Assisted living center" shall have the same meaning as provided by Section 1-890.2 of this title;

2. "Authorized electronic monitoring" means the placement of electronic monitoring devices in the common areas or room of a resident of a nursing facility, assisted living center or continuum of care facility and the tapes or recordings from such devices pursuant to the provisions of ~~this act~~ Section 1-1953.1 et seq. of this title;

~~2.~~ 3. "Authorized electronic monitoring devices" means:

- a. video surveillance cameras installed in the common areas or resident's room under the provisions of ~~this act~~ Section 1-1953.1 et seq. of this title, or
- b. audio devices installed in the room of a resident under the provisions of ~~this act~~ Section 1-1953.1 et seq. of this title that are designed to acquire communications or other sounds occurring in the room;

~~3.~~ 4. "Continuum of care facility" shall have the same meaning as provided by Section 1-890.2 of this title;

5. "Nursing facility" means the term as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes;

~~4.~~ 6. "Representative of a resident" means ~~the term as is defined in Section 1-1902 of Title 63 of the Oklahoma Statutes~~ a court-appointed guardian or, if there is no court-appointed guardian, the parent of a minor, a relative or other person, designated in writing by the resident; provided, that any owner,

operator, administrator or employee of a facility subject to the provisions of the Nursing Home Care Act, the Continuum of Care and Assisted Living Act, the Residential Care Act or the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act shall not be appointed guardian or limited guardian of a resident of the nursing facility, assisted living center or continuum of care facility unless the owner, operator, administrator or employee is the spouse of the resident or a relative of the resident within the second degree of consanguinity and is otherwise eligible for appointment;

~~5. 7.~~ "Resident" means ~~the term as is defined in Section 1-1902 of Title 63 of the Oklahoma Statutes~~ a person residing in a nursing facility, assisted living center or continuum of care facility; and

~~6. 8.~~ "Unauthorized electronic monitoring" means electronic, mechanical, or other devices that do not meet the provisions of ~~this act~~ Section 1-1953.1 et seq. of this title and that are specifically used for the nonconsensual interception of wire or electronic communications.

SECTION 3. AMENDATORY Section 2, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1953.2), is amended to read as follows:

Section 1-1953.2. A. A nursing facility, assisted living center or continuum of care facility shall provide written notice to each resident, or to the representative of a resident, that authorized electronic monitoring of a resident's room conducted under the provisions of ~~this act~~ Section 1-1953.1 et seq. of this title is not compulsory and shall only be conducted with the written consent of the resident or the representative of the resident.

B. A nursing facility, assisted living center or continuum of care facility shall not refuse to admit an individual to residency in the facility or center and shall not remove a resident from a facility or center because of authorized electronic monitoring of a resident's room.

C. A nursing facility, assisted living center or continuum of care facility shall post at or near its main entrances a sign that

clearly states that electronic monitoring and audio devices may be in use in the facility or center.

SECTION 4. AMENDATORY Section 3, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1953.3), is amended to read as follows:

Section 1-1953.3. A. No person or entity shall intentionally hamper, obstruct, tamper with, or destroy an electronic monitoring device installed in a nursing facility, assisted living center or continuum of care facility.

B. Any person or entity that intentionally hampers, obstructs, tampers with, or destroys a recording or an electronic monitoring device installed in a nursing facility, assisted living center or continuum of care facility shall be subject to the penalties prescribed in Section 1993 of Title 21 of the Oklahoma Statutes.

C. No person or entity shall intercept a communication or disclose or use an intercepted communication of an electronic monitoring device placed or installed in a common area of a nursing facility, assisted living center or continuum of care facility without the express written consent of the facility, or, for an electronic monitoring device installed in a resident's room, the express written consent of the resident or the representative of the resident.

SECTION 5. AMENDATORY Section 5, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1953.5), is amended to read as follows:

Section 1-1953.5. A. A resident or the representative of a resident may conduct authorized electronic monitoring of the resident's room through the use of authorized electronic monitoring devices placed in the room pursuant to the provisions of ~~this act~~ Section 1-1953.1 et seq. of this title at the expense of such person or representative of the resident and with the written consent of any other resident living in the room.

B. A resident who conducts authorized electronic monitoring or the representative of the resident may post and maintain a notice at

the entrance to the resident's room stating that the room is being monitored by an electronic monitoring device.

C. Nothing in ~~this act~~ Section 1-1953.1 et seq. of this title shall be construed to prevent a resident or the representative of the resident from placing an electronic monitoring device in the resident's room at the expense of such person; however, if such resident is sharing a room with any other resident, the resident or the representative of the resident shall obtain written consent from such other resident or the representative of the resident living in the room and such consent shall be on a form prescribed by the State Department of Health and shall be placed on file with the administrator of the facility.

D. If a resident residing in a shared room, or the representative of a resident residing in a shared room, desires to utilize an authorized electronic monitoring device and another resident living in such shared room refuses to consent to the use of an authorized electronic monitoring device, the nursing facility, assisted living center or continuum of care facility shall accommodate the resident or the representative of the resident desiring to utilize an authorized electronic monitoring device to move to another room if the resident or resident's representative requests such a room change within a reasonable amount of time.

SECTION 6. AMENDATORY Section 6, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1953.6), is amended to read as follows:

Section 1-1953.6. A. A resident or representative of a resident who wishes to conduct authorized electronic monitoring shall be required to notify the nursing facility, assisted living center or continuum of care facility on the consent form prescribed by the State Department of Health.

B. The consent form prescribed by the Department shall require the resident or the representative of a resident to obtain the consent of any other resident in the room or the representative of a resident, using the consent form prescribed for this purpose by the Department, if the resident resides in a room with another resident.

C. Consent may be given only:

1. By the resident or any other resident in the room; or

2. By the representative of the resident or representative of any other resident in the room.

D. Another resident in the room may:

1. When the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

2. Condition consent on the use of an audio electronic monitoring device being limited or prohibited.

E. Except as provided for in ~~Section 7 of this act~~ Section 1-1953.7 of this title, authorized electronic monitoring may begin only after the required consent forms specified in ~~this act~~ Section 1-1953.1 et seq. of this title have been completed and returned to the nursing facility, assisted living center or continuum of care facility and placed on file with the administrator of such facility or center.

F. If authorized electronic monitoring is being conducted in the room of a resident, another resident may not be moved into the room unless the resident or representative of the resident has consented to the use of existing electronic monitoring, in accordance with ~~this act~~ Section 1-1953.1 et seq. of this title.

G. The Department may include other information that it considers to be appropriate on any form it is required to prescribe under the provisions of ~~this act~~ Section 1-1953.1 et seq. of this title.

H. The Department shall prescribe the forms required by ~~this act~~ Section 1-1953.1 et seq. of this title no later than November 1, 2013, and shall make such forms available on its website.

SECTION 7. RECODIFICATION Section 1, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1953.1), as amended by Section 1 of this act, shall be recodified as Section 1-1956.1 of Title 63 of

the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 8. RECODIFICATION Section 2, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1953.2), as amended by Section 2 of this act, shall be recodified as Section 1-1956.2 of Title 63 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 9. RECODIFICATION Section 3, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1953.3), as amended by Section 3 of this act, shall be recodified as Section 1-1956.3 of Title 63 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 10. RECODIFICATION Section 4, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1953.4), shall be recodified as Section 1-1956.4 of Title 63 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 11. RECODIFICATION Section 5, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1953.5), as amended by Section 4 of this act, shall be recodified as Section 1-1956.5 of Title 63 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 12. RECODIFICATION Section 6, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1953.6), as amended by Section 5 of this act, shall be recodified as Section 1-1956.6 of Title 63 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 13. RECODIFICATION Section 7, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2019, Section 1-1953.7), shall be recodified as Section 1-1956.7 of Title 63 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 14. This act shall become effective November 1, 2020.

Passed the Senate the 3rd day of March, 2020.

Presiding Officer of the Senate

Passed the House of Representatives the 11th day of May, 2020.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____