

HOUSE BILL 1798

By Hall

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 63; Title 68 and Title 71, relative to nursing
homes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, is amended by adding the following as a new part:

68-11-2201. Short title.

This act shall be known and may be cited as the "Nursing Home Resident Care Monitoring Act."

68-11-2202. Part definitions.

As used in this part:

(1) "Department" means the department of health;

(2) "Legal representative" means a legal guardian or a legally appointed substitute decision maker who is authorized to act on behalf of a resident;

(3) "Monitoring device":

(A) Means a surveillance instrument that transmits and records activity and is connected to the nursing home's computer network;

(B) Includes audio devices installed in a resident's room designed to acquire communications or other sounds occurring in the room; and

(C) Does not include a camera that records still images exclusively or an interception device that is specifically used for the nonconsensual interception of wire or electronic communications;

(4) "Nursing home" means a nursing home licensed under this chapter;

and

(5) "Resident" means a person who is a resident of a nursing home.

68-11-2203. Authorization to install monitoring devices in resident rooms.

(a) Every nursing home in this state shall equip a resident's room with a functioning monitoring device at no cost to the resident for the installation and maintenance of the device if requested to do so, in writing, by the resident or the resident's legal representative.

(b) At the time of a resident's admission to a nursing home, the nursing home shall notify the resident, or the resident's legal representative, in writing of the resident's right to have a monitoring device installed in the resident's room. The resident, or the resident's legal representative, may submit a removal form to remove a requested monitoring device at any time during which the resident resides in the nursing home. The nursing home shall keep a record of each resident's choice to request or remove a monitoring device. The nursing home shall make the record described in this subsection (b) accessible to the department upon request.

(c) If the resident, or the resident's legal representative, submits a removal form, then the nursing home shall remove the monitoring device from the resident's room at no cost to the resident.

(d) The nursing home shall permit the resident, or the resident's legal representative, to monitor the resident's room through use of the monitoring device.

(e) If the monitoring device records activity visually, then the recordings made by the device must include a record of the date and time. The monitoring device must be in a fixed, stationary position and be placed in a conspicuously visible location in the room.

(f) All monitoring device installations and supporting services must comply with the requirements of the edition of the National Fire Protection Association (NFPA) 101

Life Safety Code in force at the time of installation and remain in compliance with that or any subsequent edition of NFPA 101 enforced pursuant to 42 CFR Part 483.

68-11-2204. Accommodation for residents sharing a room.

(a) If a resident who is residing in a shared room wishes to have a monitoring device installed in the resident's room, and another resident living in or moving into the same shared room does not want a monitoring device in the room, then the nursing home shall make a reasonable attempt to accommodate each resident by offering to move either resident to another shared room that is available at the time of the request.

(b) If a resident chooses to move to a private room in order to avoid the use of a monitoring device in a shared room, then the resident shall pay the private room rate.

(c) If a nursing home is unable to accommodate a resident due to lack of space, then the nursing home shall reevaluate the request to move to another room at least once every two (2) weeks until the request is fulfilled. In the meantime, the nursing home shall not use a monitoring device in any shared room in which a resident does not want a monitoring device operating.

68-11-2205. Written notification upon admission.

(a) Upon admission, a nursing home shall provide a resident, or the resident's legal representative, a written notification about the resident's right to have a monitoring device installed in the resident's room. The written notification must include, at a minimum, the following:

(1) A description of the type, function, and use of the monitoring device available for use in the room;

(2) A statement that, by requesting a monitoring device in the resident's room, the resident waives the resident's right to privacy in connection with the use of the monitoring device; and

(3) An explanation of the process for rescinding a request for the use of a monitoring device in the resident's room.

(b) The department shall create a template form for the written notification required by this section and make the template form available for free on its website.

68-11-2206. Signage providing notice of monitoring devices.

(a) Each nursing home shall post a sign clearly and conspicuously at the main entrance of the nursing home to inform visitors that monitoring devices are being used. The sign must be in a large, clearly legible type and font and must state in equally legible type and font "The rooms of some residents may be equipped with monitoring devices".

(b) Each nursing home shall post a sign clearly and conspicuously at the entrance of each resident's room where monitoring devices are being used. The sign must be in large, clearly legible type and font and bear the words "This room is being monitored".

(c) The nursing home is responsible for the costs of installation and maintenance of the signs required by this section.

68-11-2207. Liability.

(a) Compliance with this part is a complete defense to any civil or criminal action brought against the resident, the resident's legal representative, or the nursing home for the use of a monitoring device as described in this part.

(b) A communication or other sound acquired by a monitoring device installed under this part is not a violation of § 39-13-601.

(c) A facility is not civilly or criminally liable for the inadvertent or intentional disclosure of a recording by a monitoring device by a resident or the resident's legal representative.

(d) A facility is not civilly or criminally liable for a violation of a resident's right to privacy arising out of any monitoring conducted pursuant to this part.

68-11-2208. Discrimination and retaliation prohibited.

A nursing home shall not deny a person or resident admission to a nursing home, or otherwise discriminate or retaliate against a person or resident, because the person or resident chooses not to authorize the use of a monitoring device in the resident's room.

68-11-2209. Reporting abuse and neglect.

(a) Any person who views an incident that a reasonable person would consider abuse or neglect after viewing a recording by a monitoring device in a resident's room shall report the incident to the nursing home as soon as is practicable after the viewing.

(b) Any staff member of a nursing home who views an incident that a reasonable person would consider abuse or neglect after viewing a recording by a monitoring device in a resident's room shall report the incident to the department as soon as is practicable after the viewing.

68-11-2210. Use of tape or recording as evidence.

(a) Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of monitoring devices described in this part may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency shall not admit into evidence a tape or recording created through the use of monitoring devices described in this part, or take or authorize action based on the tape or recording, unless:

- (1) The tape or recording shows the time and date the events acquired on the tape or recording occurred; and

(2) The contents of the tape or recording have not been edited or artificially enhanced.

(c) A person who sends more than one (1) tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found. The commissioner may adopt rules encouraging persons who send a tape or recording to the department to identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

68-11-2211. Enforcement.

The department may impose appropriate sanctions under this part on any person who knowingly:

(1) Refuses to permit a resident, or the resident's legal representative, to monitor the resident's room through the use of the monitoring device;

(2) Refuses to admit a person to residency or allows the removal of a resident from the nursing home because the person, or the person's legal representative, requests that a monitoring device not be used in the resident's room; or

(3) Violates this part.

68-11-2212. Obstruction of electronic monitoring devices; criminal offense.

(a) A person who intentionally hampers, obstructs, tampers with, or destroys a monitoring device installed in a resident's room in accordance with this part, or a tape or recording made by the monitoring device, commits a Class B misdemeanor.

(b) It is a defense to prosecution under subsection (a) that the person took the action with the effective consent of the resident or the resident's legal representative.

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. The commissioner of health may promulgate rules to effectuate the purposes of this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. This act shall take effect July 1, 2020, the public welfare requiring it.