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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3561

03/08/2018 Authored by Zerwas The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to health; providing for authorized electronic monitoring in certain health
1.3 care settings; proposing coding for new law in Minnesota Statutes, chapter 144.

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

1.5 Section 1. 144.6502 AUTHORIZED ELECTRONIC MONITORING IN CERTAIN
1.6 HEALTH CARE FACILITIES.

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

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

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

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

1.14 (e) "Electronic monitoring device" means a surveillance instrument with a fixed position
1.15 video camera or an audio recording device, or a combination thereof, that is installed in a
1.16 resident's room or private living space under the provisions of this section and broadcasts
1.17 or records activity or sounds occurring in the room or private living space.

1.18 (f) "Facility" means a facility that is licensed as a nursing home under chapter 144A or
1.19 as a boarding care home under sections 144.50 to 144.56, or registered as a housing with
1.20 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 Subd. 3. **Consent to electronic monitoring.** (a) Except as otherwise provided in this
2.13 subdivision, a resident must consent in writing on a notification and consent form prescribed
2.14 by the commissioner to the authorized electronic monitoring in the resident's room or private
2.15 living space. If the resident has not affirmatively objected to the authorized electronic
2.16 monitoring and the resident's physician determines that the resident lacks the ability to
2.17 understand and appreciate the nature and consequences of electronic monitoring, the resident's
2.18 legal representative may consent on behalf of the resident. For the purposes of this
2.19 subdivision, a resident affirmatively objects when the resident orally, visually, or through
2.20 the use of auxiliary aids or services declines authorized electronic monitoring. The resident's
2.21 response must be documented on the notification and consent form.

2.22 (b) Prior to a resident's legal representative consenting on behalf of a resident, the resident
2.23 must be asked by the resident's legal guardian in the presence of a facility employee if the
2.24 resident wants authorized electronic monitoring to be conducted. The resident's legal
2.25 representative must explain to the resident:

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

2.27 (2) the standard conditions that may be placed on the electronic monitoring device's use,
2.28 including those listed in subdivision 4;

2.29 (3) with whom the recording may be shared according to subdivisions 8 and 9; and

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

2.31 (c) A resident or roommate may consent to authorized electronic monitoring with any
2.32 conditions of the resident's or roommate's choosing, including, but not limited to, the list
2.33 of standard conditions provided in subdivision 4. A resident or roommate may request that

3.1 the electronic monitoring device be turned off or the visual or audio recording component
3.2 of the electronic monitoring device be blocked at any time.

3.3 (d) Prior to implementing authorized electronic monitoring, a resident must obtain the
3.4 written consent of any other resident residing in the room or private living space on the
3.5 notification and consent form prescribed by the commissioner. Except as otherwise provided
3.6 in this subdivision, a roommate must consent in writing to the authorized electronic
3.7 monitoring in the resident's room or private living space. If the roommate has not
3.8 affirmatively objected to the authorized electronic monitoring in accordance with this
3.9 subdivision and the roommate's physician determines that the roommate lacks the ability
3.10 to understand and appreciate the nature and consequences of electronic monitoring, the
3.11 roommate's legal representative may consent on behalf of the roommate. Consent by a
3.12 roommate under this paragraph authorizes the resident's use of any recording obtained under
3.13 this section, as provided in subdivisions 8 and 9.

3.14 (e) Any resident conducting authorized electronic monitoring must obtain consent from
3.15 any new roommate before the resident may resume authorized electronic monitoring. If a
3.16 new roommate does not consent to authorized electronic monitoring and the resident
3.17 conducting the authorized electronic monitoring does not remove or disable the electronic
3.18 monitoring device, the facility must remove the electronic monitoring device.

3.19 (f) Consent may be withdrawn by the resident or roommate at any time, and the
3.20 withdrawal of consent shall be documented in the resident's clinical record. If a roommate
3.21 withdraws consent and the resident conducting the authorized electronic monitoring does
3.22 not remove or disable the electronic monitoring device, the facility must remove the electronic
3.23 monitoring device.

3.24 (g) If a resident of a nursing home or boarding care home who is residing in a shared
3.25 room wants to conduct authorized electronic monitoring and another resident living in or
3.26 moving into the same shared room refuses to consent to the use of an electronic monitoring
3.27 device, the facility shall make a reasonable attempt to accommodate the resident who wants
3.28 to conduct authorized electronic monitoring. A nursing home or boarding care home has
3.29 met the requirement to make a reasonable attempt to accommodate a resident who wants
3.30 to conduct authorized electronic monitoring when upon notification that a roommate has
3.31 not consented to the use of an electronic monitoring device in the resident's room, the nursing
3.32 home or boarding care home offers to move either resident to another shared room that is
3.33 available at the time of the request. If a resident chooses to reside in a private room in a
3.34 nursing home or boarding care home in order to accommodate the use of an electronic
3.35 monitoring device, the resident must pay the private room rate. If a nursing home or boarding

4.1 care home is unable to accommodate a resident due to lack of space, the nursing home or
4.2 boarding care home must reevaluate the request every two weeks until the request is fulfilled.
4.3 A nursing home or boarding care home is not required to provide a private room or a
4.4 single-bed room to a resident who is not a private-pay resident.

4.5 Subd. 4. **Notice to the facility.** (a) Authorized electronic monitoring may begin only
4.6 after the resident who intends to install an electronic monitoring device completes a
4.7 notification and consent form prescribed by the commissioner and submits the form to the
4.8 facility, and the facility places the form in the resident's and any roommate's clinical records.

4.9 (b) The notification and consent form prescribed by the commissioner and completed
4.10 by the resident must include, at a minimum, the following information:

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

4.14 (i) the date the resident was asked if the resident wants authorized electronic monitoring
4.15 to be conducted;

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

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

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

4.21 (i) the date the roommate was asked if the roommate wants authorized electronic
4.22 monitoring to be conducted;

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

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

4.25 (3) the type of electronic monitoring device to be used;

4.26 (4) any installation needs, such as mounting of a device to a wall or ceiling;

4.27 (5) the proposed date of installation for scheduling purposes;

4.28 (6) a list of standard conditions or restrictions that the resident or a roommate may elect
4.29 to place on the use of the electronic monitoring device, including, but not limited to:

4.30 (i) prohibiting audio recording;

4.31 (ii) prohibiting video recording;

5.1 (iii) prohibiting broadcasting of audio or video;

5.2 (iv) turning off the electronic monitoring device or blocking the visual recording
5.3 component of the electronic monitoring device for the duration of an exam or procedure by
5.4 a health care professional;

5.5 (v) turning off the electronic monitoring device or blocking the visual recording
5.6 component of the electronic monitoring device while dressing or bathing is performed; and

5.7 (vi) turning off the electronic monitoring device for the duration of a visit with a spiritual
5.8 advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor; and

5.9 (7) any other condition or restriction elected by the resident or roommate on the use of
5.10 an electronic monitoring device.

5.11 (c) A copy of the completed notification and consent form shall be placed in the resident's
5.12 and any roommate's clinical records and a copy shall be provided to the resident and the
5.13 resident's roommate, if applicable.

5.14 (d) The commissioner shall prescribe the notification and consent form required in this
5.15 section no later than January 1, 2019, and shall make the form available on the department's
5.16 Web site.

5.17 (e) Beginning January 1, 2019, facilities must make the notification and consent form
5.18 available to the residents and inform residents of their option to conduct electronic monitoring
5.19 of their rooms or private living spaces.

5.20 (f) Any resident, legal representative of a resident, or other person conducting electronic
5.21 monitoring of a resident's room prior to enactment of this section must comply with the
5.22 requirements of this section by January 1, 2019.

5.23 Subd. 5. **Cost and installation.** (a) A resident choosing to conduct authorized electronic
5.24 monitoring must do so at the resident's own expense, including paying purchase, installation,
5.25 maintenance, and removal costs.

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

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

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

6.3 Subd. 6. **Notice to visitors.** (a) A facility shall post a sign at each facility entrance
6.4 accessible to visitors that states "Security cameras and audio devices may be present to
6.5 record persons and activities."

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

6.8 Subd. 7. **Obstruction of electronic monitoring devices.** (a) A person or entity is
6.9 prohibited from knowingly hampering, obstructing, tampering with, or destroying an
6.10 electronic monitoring device installed in a resident's room or private living space without
6.11 the permission of the resident or the resident's legal representative.

6.12 (b) It is not a violation of the prohibitions of this subdivision if a person or facility turns
6.13 off the electronic monitoring device or blocks the visual recording component of the
6.14 electronic monitoring device at the direction of the resident or the resident's legal
6.15 representative, or if consent has been withdrawn.

6.16 Subd. 8. **Dissemination of recordings.** (a) A facility may not access any video or audio
6.17 recording created through authorized electronic monitoring without the written consent of
6.18 the resident or the resident's legal representative.

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

6.22 (c) The resident or the resident's legal representative must provide a copy of any video
6.23 or audio recording to parties involved in a civil, criminal, or administrative proceeding,
6.24 upon a party's request, if the video or audio recording was made during the time period that
6.25 the conduct at issue in the proceeding allegedly occurred.

6.26 Subd. 9. **Admissibility of evidence.** Subject to applicable rules of evidence and
6.27 procedure, any video or audio recording created through authorized electronic monitoring
6.28 in accordance with this section may be admitted into evidence in a civil, criminal, or
6.29 administrative proceeding if the contents of the recording have not been edited or artificially
6.30 enhanced and the video recording includes the date and time the events occurred.

6.31 Subd. 10. **Mandated reporters.** Any person who observes treatment of or interactions
6.32 with a vulnerable adult through authorized electronic monitoring conducted under this

7.1 section and who, through those observations, has reason to believe the vulnerable adult is
7.2 being maltreated, is a mandated reported as defined in section 626.5572, subdivision 16.

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

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

7.8 Subd. 12. **Resident protections.** A facility shall not:

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

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

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

7.15 **EFFECTIVE DATE.** This section is effective January 1, 2019.