



Illinois Passes Authorized Electronic Monitoring in Long-Term Care Facilities Act

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September 1, 2015

Previously published on September 1, 2015

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On Friday, August 21, 2015, Illinois Governor Bruce Rauner signed into law **Public Act 099-0430**, the Authorized Electronic Monitoring in Long-Term Care Facilities Act, which permits a resident of a nursing home and her family members to place video and/or audio recording devices in the resident's room. There are conditions, requirements and limitations that affect the resident and the facility.

Responsibilities of the Resident

First, the resident must provide written notice to the facility that she intends to place recording devices that can record or broadcast events that take place in her room. That requires the resident to provide proper written consent. If the resident is unable to provide her consent, the statute sets forth a number of substitute decision makers who can consent on the resident's behalf.

In the event the resident has a roommate, the roommate *also must* provide consent. The Illinois Department of Public Health is tasked with creating the Consent form and Notice to Facility form.

If the roommate refuses to consent to the resident's recording, the facility must seek to accommodate the resident who desires to install a recording device by moving one of the two residents to a different room. The resident is responsible for the cost of a private room if that is the only room available and the resident insists on installing recording devices.

The resident and the roommate can place conditions or restrictions on the recording, such as requiring the device to stop recording or broadcasting during physical examinations, bathing, or dressing changes, or during meetings with an attorney, spiritual advisor or visitor. The resident and roommate may request that the device be turned off or the visual recording component be blocked at any time.

The resident is financially responsible for the purchase of the electronic monitoring device as well as its installation, maintenance and removal. The resident is also responsible for contracting with an Internet service provider. The Department of Public Health may distribute up to \$50,000 per year to recipients of Public Aid for the purchase and installation of electronic recording devices, subject to the State appropriating the funds.

The Act also amends the Illinois Nursing Home Care Act to allow the use of electronic recording devices in nursing homes.

Obligations of the Facility

Pursuant to the Act, the facility has a number of obligations in connection with the installation and the use of electronic monitoring devices in its facility, including, among other things:

- Allowing the installation of electronic recording devices
- Not retaliating or discriminating against the resident for consenting to the use of the devices
- Making reasonable attempts to accommodate the resident if the roommate refuses to consent to the installation of the device
- Cooperating in obtaining the resident's consent
- Ensuring the Notice to the Facility and the Consent forms are properly completed
- Making reasonable attempts to accommodate the installation needs, such as allowing access to the facility's telecommunications
- Not charging a fee for the use of electricity for the device
- Placing appropriate signage alerting visitors of the use of electronic monitoring
- Not hampering, obstructing, tampering with or destroying the device

- Not accessing the video or audio recording without written consent.

The Act does provide the facility with some protection. A facility is not civilly or criminally liable for (1) the inadvertent or intentional disclosure of a recording by a resident for any purpose not authorized by the Act and (2) a violation of the resident’s right to privacy relating to the use of an electronic recording device.

Finally, the law takes effect on January 1, 2016. The Department of Public Health is to promulgate rules necessary to implement the Act. It remains to be seen how onerous - in terms of time and expense - those rules may be to the facility.

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