Proposed Substitute
Bill No. 5208

February Session, 2020

LCO No. 2613

AN ACT DETERRING ABUSE IN NURSING HOMES AND CONGREGATE HOUSING FOR ELDERLY PERSONS WITH ASSISTED LIVING SERVICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (Effective October 1, 2020) (a) For purposes of this section: (1) "Ombudsman" means the Office of the Long-Term Care Ombudsman established pursuant to section 17a-405 of the general statutes; (2) "electronic monitoring" means the placement and use of an electronic monitoring device by a resident in the resident's room or private living unit in accordance with this section; (3) "electronic monitoring device" means a camera or other device that captures, records or broadcasts audio, video, or both, and may operate over the Internet and offer two-way communication; (4) "facility" means a nursing home facility as defined in section 19a-490 of the general statutes or a congregate housing facility as defined in section 8-119e of the general statutes with assisted living services; (5) "resident" means a resident of a facility; and (6) "resident representative" means (A) a court-appointed guardian, (B) a health care representative appointed pursuant to section 19a-575a of the general statutes, or (C) a person who is not an agent of the facility and who is designated in a written document signed by the resident and included in the resident's records on file with the facility.
(b) A resident may install an electronic monitoring device in the resident's room or private living unit provided: (1) The purchase, installation, maintenance, operation and removal of the device is at the expense of the resident, (2) the resident and any roommate of the resident sign a written consent form pursuant to subsection (c) of this section, (3) the resident or resident representative places a clear and conspicuous notice on the door of the room or private living unit that electronic monitoring is or may be taking place, and (4) except as provided in subsection (e) of this section, the consent form is filed with the facility not less than seven days before installation of the electronic monitoring device.

(c) No electronic monitoring device shall be installed in a resident's room or private living unit unless the resident and any roommate of the resident, or a resident representative, has signed a consent form that includes, but is not limited to:

(I) (A) The signed consent of the resident and any roommate of the resident; or (B) the signed consent of a resident representative if (i) the resident or roommate lacks the physical capacity to sign the form but has verbally consented, or (ii) a treating health care professional certifies the resident or roommate lacks the mental capacity to sign the form. If a resident representative signs the consent form, the form must document the following:

(I) The date the resident or any roommate was asked if the resident or roommate wants electronic monitoring to be conducted;

(II) Who was present when the resident or roommate was asked if he or she consented to electronic monitoring;

(III) An acknowledgment that the resident or roommate did not affirmatively object to electronic monitoring; and

(IV) The source of the authority allowing the resident representative of the resident or roommate to sign the consent form on behalf of the resident.
roommate or resident.

(2) A waiver of liability for the facility for any breach of privacy involving the resident's use of an electronic monitoring device unless such breach of privacy occurred because of unauthorized use of the device or a recording made by the device by facility staff.

(3) The type of electronic monitoring device to be used.

(4) A list of conditions or restrictions that the resident or any roommate of the resident may elect to place on the use of the electronic monitoring device, including, but not limited to: (A) Prohibiting audio recording, (B) prohibiting video recording, (C) prohibiting broadcasting of audio or video, (D) turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device for the duration of an exam or procedure by a health care professional, (E) turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device while the resident or any roommate of the resident is dressing or bathing, and (F) turning off the electronic monitoring device for the duration of a visit with a spiritual advisor, ombudsman, attorney, financial planner, intimate partner or other visitor.

(5) An acknowledgment that the resident, roommate or their resident representatives shall be responsible for operating the electronic monitoring device in accordance with the conditions and restrictions listed in subdivision (4) of this subsection unless the resident, roommate or their resident representatives have signed a written agreement with the facility under which facility staff operate the electronic monitoring device for this purpose. Such agreement may contain a waiver of liability for the facility related to such operation of the device by facility staff.

(6) A statement of the circumstances under which a recording from the electronic monitoring device may be disseminated.
(7) A signature box for documenting that the resident or roommate has consented or withdrawn consent to electronic monitoring.

d) The ombudsman, within available appropriations, shall make available on the ombudsman's Internet web site a downloadable copy of a standard form containing all of the provisions required in subsection (c) of this section. Facilities shall (1) make the consent form available to residents and inform residents of their option to conduct electronic monitoring of their rooms or private living units at their own expense, (2) maintain a copy of the consent form in the resident's records, and (3) place a notice in a conspicuous place near the entry to the facility stating that some rooms and living areas may be subject to electronic monitoring.

e) Notwithstanding subdivision (4) of subsection (b) of this section, a resident or resident representative may install an electronic monitoring device without submitting the consent form to a facility if: (1) The resident or the resident representative reasonably fears retaliation against the resident by the facility for recording or reporting alleged abuse or neglect of the resident by facility staff, submits a completed consent form to the ombudsman and submits a report to the ombudsman, the Commissioner of Social Services, the Commissioner of Public Health or the police, with evidence from an electronic monitoring device that suspected abuse or neglect has occurred; (2) the facility has failed to respond for more than two business days to a written communication from the resident or resident representative about a concern relating to the safety or well-being of the resident that prompted the resident's desire for electronic monitoring and the resident or a resident representative has submitted a consent form to the ombudsman; or (3) the resident or resident representative has already submitted a report to the ombudsman, the Commissioner of Social Services, the Commissioner of Public Health or the police regarding a concern relating to the resident's safety or well-being that prompted the resident's desire for electronic monitoring and the resident or resident representative has submitted a consent form to the ombudsman.
(f) If a resident is conducting electronic monitoring and a new roommate moves into the room or private living unit, the resident shall cease use of the electronic monitoring device unless and until the new roommate signs the consent form and the resident or resident representative files the completed form with the roommate's consent to electronic monitoring with the facility. If any roommate of a resident wishing to use electronic monitoring refuses to sign the consent form, the resident may request to be moved to another room with a roommate who has agreed to consent to such monitoring or a private room, if either are available. A facility shall make a reasonable effort to accommodate such request in not more than thirty days. The resident shall pay any difference in price if the new room is more costly than the resident's previous room.

(g) If facility staff need to move or remove an electronic monitoring device installed in accordance with the provisions of this section, the staff shall immediately notify the resident or resident representative and use caution to ensure that neither the device nor any recordings made by the device are damaged.

(h) Subject to applicable rules of evidence and procedure, any video or audio recording created through electronic monitoring under this section may be admitted into evidence in a civil, criminal or administrative proceeding. For purposes of section 1-210 of the general statutes, a consent form signed by a resident or a resident's representative requesting electronic monitoring shall not be considered a public record.

This act shall take effect as follows and shall amend the following sections:

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<tr>
<th>Section 1</th>
<th>October 1, 2020</th>
<th>New section</th>
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