



House of Representatives

File No. 627

General Assembly

January Session, 2021

(Reprint of File No. 173)

Substitute House Bill No. 6552
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 28, 2021

AN ACT CONCERNING THE RIGHTS OF RESIDENTS IN NURSING HOME FACILITIES TO USE THE TECHNOLOGY OF THEIR CHOICE FOR VIRTUAL CONNECTIONS TO FAMILY, FRIENDS AND OTHER PERSONS.

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

1 Section 1. (NEW) (*Effective October 1, 2021*) (a) For purposes of this
2 section:

3 (1) "Nursing home facility" has the same meaning as provided in
4 section 19a-490 of the general statutes;

5 (2) "Resident" means a resident of a nursing home facility;

6 (3) "Resident representative" means (A) a court-appointed
7 conservator of the person or guardian, (B) a health care representative
8 appointed pursuant to section 19a-575a of the general statutes, or (C) if
9 there is no court-appointed conservator of the person or guardian, or
10 health care representative, a person who is (i) designated in a written

11 document signed by the resident and included in the resident's records
12 on file with the facility, or (ii) if there is no such written document, a
13 person who is a legally liable relative or other responsible party,
14 provided such person is not an employer or contractor of the facility;

15 (4) "Technology" means a device capable of remote audio or video
16 communications that may include recording capabilities;

17 (5) "Virtual monitoring" means remote monitoring of a resident by a
18 third party via technology owned and operated by the resident in the
19 resident's room or living quarters; and

20 (6) "Virtual visitation" means remote visitation between a resident
21 and family members or other persons with technology.

22 (b) A resident shall have the right to use technology of the resident's
23 choice that facilitates virtual monitoring or virtual visitation, provided:

24 (1) The purchase, activation, installation, maintenance, repair,
25 operation, deactivation and removal of such technology is at the
26 expense of the resident;

27 (2) The technology and any recordings and images obtained
28 therefrom are used by the resident and any person communicating with
29 the resident or monitoring the resident in a manner that does not violate
30 any individual's right to privacy under state or federal law and in
31 accordance with the provisions of this section;

32 (3) A clear and conspicuous notice is placed on the door of the
33 resident's room or living unit indicating that technology enabling
34 virtual monitoring and intended for such use may be in use;

35 (4) In cases where the resident intends to use technology for virtual
36 monitoring in shared living situations, the resident or resident
37 representative provides advance notice to a roommate or the
38 roommate's representative specifying the type of technology, the
39 proposed location of the device, its intended use, intended hours of
40 operation and whether the device is capable of recording audio or video

41 or being activated remotely;

42 (5) The resident or resident representative (A) obtains the written
43 consent of all roommates or resident representatives of all roommates
44 for the use of the technology for virtual monitoring, and (B) if any
45 roommate withdraws consent, ceases using the technology for virtual
46 monitoring until consent is obtained; and

47 (6) The resident or resident representative files a signed, written
48 notice with the nursing home facility and a copy of any written consent
49 of any roommate not less than seven days before installing or using such
50 technology for virtual monitoring that (A) identifies the type of
51 technology, its intended use, intended hours of operation and location
52 of such technology in the room or living quarters, (B) states whether the
53 technology is capable of recording audio or video or being activated or
54 controlled remotely, (C) acknowledges that the resident is responsible
55 for the purchase, activation, installation, maintenance, repair, operation,
56 deactivation and removal of such technology, and (D) includes a waiver
57 of all civil, criminal and administrative liability for the nursing home
58 facility in accordance with subsection (d) of this section.

59 Except for the provisions of subdivision (2) of this subsection, the
60 provisions of this subsection shall not apply to cellular mobile
61 telephones used primarily for telephonic communication or tablets not
62 used for virtual monitoring. If a roommate withdraws consent for the
63 use of technology for virtual monitoring, a resident or resident
64 representative shall inform the facility, in writing, not later than seven
65 days after the roommate withdraws consent.

66 (c) (1) A nursing home facility shall provide Internet access, electricity
67 and a power source for technology used for virtual monitoring or virtual
68 visitation at no cost to a resident, provided (A) a nursing home facility
69 includes the cost of providing Internet access in cost reports filed with
70 the Department of Social Services for purposes of Medicaid
71 reimbursement, (B) the cost is reimbursed to the facility if the
72 department determines that such cost is eligible for reimbursement

73 pursuant to section 17b-340 of the general statutes, (C) the
74 Commissioner of Social Services uses any available funding provided
75 by the federal government to the state and authorized by the federal
76 government for expenses related to COVID-19 at nursing home facilities
77 to provide grants-in-aid to such facilities for such upgrades, provided
78 such use is approved by the federal government, and (D) a nursing
79 home facility may assess a prorated portion of any unreimbursed cost
80 of such upgrades to any resident privately paying for a residence in such
81 facility and using such technology. A resident may also procure his or
82 her own Internet connectivity. A private-paying resident who procures
83 his or her own Internet connectivity shall not be charged for the cost of
84 any Internet infrastructure upgrades by the nursing home facility
85 necessary for residents to use such technology.

86 (2) A nursing home facility may establish policies and procedures on
87 the use of technology for virtual monitoring addressing (A) except for
88 cellular mobile telephones used primarily for telephonic
89 communication or tablets not used for virtual monitoring, placement of
90 any technology device in a conspicuously visible, stationary location in
91 the resident's room or living quarters, (B) restrictions on use of the
92 technology to record video or audio outside the resident's room or living
93 quarters or in any shared common space, (C) compliance with
94 applicable federal, state and local life safety and fire protection
95 requirements, (D) limitations on use of technology for virtual
96 monitoring when such use will interfere with resident care or privacy
97 unless the resident, a roommate of the resident, or his or her resident
98 representative, consents to such use, (E) the ability to limit use of
99 technology in the event of a disruption to the facility's Internet service,
100 and (F) actions that the nursing home facility may take for failure to
101 comply with applicable federal, state and local laws or facility policy in
102 the use of technology and the process by which a resident may appeal
103 such actions.

104 (d) A nursing home facility shall be immune from any civil, criminal
105 or administrative liability for any (1) violation of privacy rights of any
106 individual under state or federal law caused by a resident's use of

107 technology; (2) damage to the resident's technology, including, but not
108 limited to, malfunction not caused by the negligence of the nursing
109 home facility; and (3) instance when audio or video produced by the
110 resident's technology is inadvertently or intentionally disclosed to,
111 intercepted or used by an unauthorized third party.

112 (e) A nursing home facility shall place a conspicuous notice (1) at the
113 entrance to the facility indicating that technology enabling virtual
114 monitoring or virtual visitation may be in use in some residents' rooms
115 or living quarters; and (2) except for cellular mobile telephones used
116 primarily for telephonic communication or tablets not used for virtual
117 monitoring, on the door of any resident's room or living quarters where
118 such technology may be used for virtual monitoring. In cases where any
119 roommate of a resident refuses to give consent for use of technology for
120 virtual monitoring that may capture audio or video of the roommate, a
121 nursing home facility shall work with both the resident and the
122 roommate to seek an acceptable accommodation for use of the
123 technology with the roommate's consent. If the roommate continues to
124 refuse consent, the nursing home facility shall work with the resident
125 wishing to use such technology to develop an alternative, including
126 transfer to another room with a roommate who consents to use of the
127 technology, provided an appropriate room is available and the resident
128 is able to pay any difference in price if the new room is more costly than
129 the resident's current room.

130 (f) The Office of the Long-Term Care Ombudsman may provide
131 standard forms on its Internet web site for (1) notice by a resident to a
132 nursing home facility of the resident's plan to install and use technology
133 of his or her choice for virtual monitoring; (2) consent forms for any
134 roommate of a resident who wishes to use technology for virtual
135 monitoring that may capture audio or video of the roommate; and (3)
136 forms for a resident or resident representative to notify the facility that
137 a roommate has withdrawn consent for use of technology for virtual
138 monitoring. The Office of the Long-Term Care Ombudsman shall
139 develop such standard forms in consultation with nursing home facility
140 representatives and the Department of Public Health.

141 (g) The Commissioner of Public Health may adopt regulations in
142 accordance with the provisions of chapter 54 of the general statutes to
143 implement the provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2021</i>	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which creates various nursing home requirements and expands nursing home residents' ability to access certain technologies for virtual visitation, is not anticipated to result in a fiscal impact to the state or municipalities.

House "A" makes clarifying changes and has no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 6552 (as amended by House "A")******AN ACT CONCERNING THE RIGHTS OF RESIDENTS IN NURSING HOME FACILITIES TO USE THE TECHNOLOGY OF THEIR CHOICE FOR VIRTUAL CONNECTIONS TO FAMILY, FRIENDS AND OTHER PERSONS.*****SUMMARY**

This bill allows nursing home residents to use technology of their choosing that facilitates virtual monitoring or virtual visitation. A resident may do this only if:

1. the resident pays for the technology and its installation, maintenance, operation, deactivation, and removal;
2. the resident submits to the nursing home a signed, written notice and any roommate's signed, written consent at least seven days before installing or using virtual monitoring technology;
3. the resident stops using virtual monitoring technology if any roommate withdraws his or her consent to its use;
4. the nursing home places a clear and conspicuous notice at the facility's entrance and on the door of the resident's room or living unit stating that this technology may be in use; and
5. the technology and any recordings or images obtained from it are used by the resident and any person communicating with or monitoring the resident in a manner that does not violate an individual's right to privacy under state or federal law.

The bill's requirements for virtual monitoring technology do not apply to mobile telephones that are used primarily for phone

communication or tablets not used for virtual monitoring (hereafter “mobile phones and tablets”), except for requirements related to (1) nursing home policies and procedures on the use of this technology; (2) civil, criminal, and administrative liability for nursing homes; (3) nursing home notification requirements; (4) long-term care ombudsman notification and consent forms; and (5) Department of Public Health (DPH) regulations (see below).

Additionally, the bill:

1. requires nursing homes to provide residents with free internet access, electricity, and a power source for virtual monitoring or virtual visitation technology, under certain conditions;
2. generally grants nursing homes immunity from civil, criminal, or administrative liability related to residents’ use of this technology;
3. allows nursing homes to establish policies and procedures for using virtual monitoring technology;
4. allows the long-term care ombudsman to develop and provide on its website standard consent and notification forms for the use of virtual monitoring technology; and
5. allows the DPH commissioner to adopt regulations to implement the bill’s provisions.

Under the bill, “technology” means a device capable of remote audio or video communications that may include recording capabilities. A “resident representative” is a person who is the resident’s (1) legally appointed health care representative, guardian, or conservator; (2) designee, as indicated in a signed written document in the resident’s facility records; or (3) legally liable relative or other responsible party who is not a facility employee or contractor.

*House Amendment “A” adds provisions (1) requiring images, in addition to technology and recordings, obtained from virtual

monitoring to be used in a manner that does not violate an individual's privacy rights; (2) extending certain virtual monitoring requirements to mobile telephones and tablets; and (3) requiring the Department of Social Services (DSS) to reimburse nursing homes for the cost of free internet access for residents if the department determines the cost is eligible for reimbursement under its fair rent rate.

EFFECTIVE DATE: October 1, 2021

NOTIFICATION AND CONSENT

Roommate Notice and Consent

If the resident intends to use technology for virtual monitoring in a shared living situation, the bill requires the resident or the resident's representative to provide advanced notice to the roommate or the roommate's representative specifying the type and location of the technology, its intended use and hours of operation, and whether it is capable of recording audio or video or being activated remotely.

The resident or the resident's representative must also obtain the roommate's or representative's consent to use virtual monitoring technology. If the roommate withdraws consent, the resident or resident's representative must stop using the virtual monitoring technology until consent is obtained.

Under the bill, if the roommate continues to refuse consent, the nursing home must work with the resident on an alternative, including transferring the resident to another room with a roommate who has agreed to consent to such monitoring. The nursing home must do this only if an appropriate room is available and the resident is able to pay any price difference.

Facility Notification

Under the bill, the resident or resident's representative must file a signed, written notice with the facility and a copy of the roommate's consent, if applicable, at least seven days before installing or using the virtual monitoring technology. The notice must:

1. identify the type of technology and its intended use, hours of use, and location in the resident's room or living unit;
2. state whether the technology is capable of recording audio or video or being remotely activated or controlled;
3. acknowledge that the resident is responsible for purchasing, installing, maintaining, repairing, operating, deactivating, and removing the technology; and
4. include a waiver of all civil, criminal, and administrative liability for the nursing home.

The resident or resident's representative must also notify the nursing home in writing within seven days after a roommate or roommate's representative withdraws his or her consent for the technology's use.

INTERNET ACCESS

The bill requires nursing home facilities to provide residents free internet access, electricity, and a power source for virtual monitoring or virtual visitation technology. The nursing home must do so under the following conditions:

1. the nursing home includes the cost of providing internet access in cost reports that it files with DSS for Medicaid reimbursement;
2. the cost is reimbursed to the facility if the department determines it is eligible for reimbursement under DSS's fair rent rate;
3. the DSS commissioner uses any available federal funding for COVID-19 related expenses (see BACKGROUND) to provide nursing homes grants to make these internet infrastructure upgrades; and
4. the nursing home may assess a prorated portion of any unreimbursed cost of these upgrades to any private-pay resident using this technology.

Residents may also procure their own internet. Private-pay residents who do so cannot be charged for the cost of the nursing home's internet infrastructure upgrades.

VIRTUAL MONITORING POLICIES AND PROCEDURES

The bill authorizes nursing homes to set policies and procedures for using virtual monitoring technology that address:

1. placement of technology devices in a conspicuously visible, stationary location in the resident's room or living quarters, except for mobile phones and tablets;
2. restrictions on the technology's use to record video or audio outside the resident's room or living quarters or in any shared common space;
3. compliance with applicable federal, state, and local life, safety, and fire protection requirements;
4. limitations on the technology's use for virtual monitoring when its use will interfere with resident care or privacy unless the resident, any roommate, or their representatives consent to its use;
5. the ability to limit the technology's use in the event of a disruption to the facility's internet service; and
6. actions that the nursing home may take for a resident's or resident representative's failure to comply with applicable federal, state, and local laws or facility policy in using the technology and the process for a resident to appeal these actions.

IMMUNITY FROM LIABILITY

Under the bill, a nursing home is immune from any civil, criminal, or administrative liability for:

1. violations of any individual's privacy rights under state or federal law caused by a resident's use of technology;

2. damage to the resident's technology, including malfunction not caused by the nursing home's negligence; and
3. instances when the audio or video produced by the resident's technology is inadvertently or intentionally disclosed to, or intercepted or used by, an unauthorized third party.

FACILITY NOTICE

The bill requires nursing homes to place a conspicuous notice:

1. at the facility's entrance indicating that virtual monitoring or virtual visitation technology may be in use in some resident rooms or living quarters and
2. on the door of a resident's room or living quarters where this technology may be used, except for mobile phones and tablets.

NOTIFICATION AND CONSENT FORMS

The bill authorizes the long-term care ombudsman, in consultation with DPH and nursing home representatives, to develop and provide standard forms on its website for:

1. residents' notice to a nursing home of their intent to install and use virtual monitoring technology;
2. roommate consent forms for residents who wish to use virtual monitoring technology that may capture audio or video of a roommate; and
3. resident notice to the nursing home that a roommate has withdrawn consent for using virtual monitoring technology.

BACKGROUND

Related Executive Order

The governor's May 13, 2020, executive order authorizes the DSS commissioner to distribute Coronavirus Relief Funds (CRF) the state receives under the federal "Coronavirus Aid, Relief, and Economic

Security Act” (“CARES Act,” P.L. 116-136) to nursing homes as well as CRF grants of \$600 per bed per day to cover necessary expenditures incurred due to the COVID-19 pandemic.

Nursing homes must use these grants to cover necessary expenditures incurred due to the COVID-19 pandemic and report to DSS that the funds were used on eligible expenditures in accordance with related federal requirements and guidance (EO 7NN, §§ 5 & 6, May 13, 2020).

COMMITTEE ACTION

Aging Committee

Joint Favorable Substitute

Yea 16 Nay 0 (03/11/2021)