

1 A bill to be entitled
2 An act relating to nursing homes; requiring the
3 Agency for Health Care Administration to
4 conduct a pilot project to demonstrate the use
5 of electronic monitoring equipment in nursing
6 homes; establishing requirements for nursing
7 homes participating in the pilot project;
8 establishing procedures for the use of
9 electronic monitoring equipment; specifying who
10 may request electronic monitoring; providing
11 for conditional consent to electronic
12 monitoring; providing for review of tapes
13 documenting questionable activity; prohibiting
14 the admission of tapes as evidence in civil
15 litigation against a nursing home, a licensed
16 health care practitioner, or staff of a nursing
17 home; providing for rebasing of Medicaid costs;
18 requiring the Agency for Health Care
19 Administration to convene an advisory panel;
20 requiring a report; providing an effective
21 date.

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23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. By July 1, 2002, the Agency for Health Care
26 Administration shall solicit two private nursing homes, one
27 for-profit and one not-for-profit, in two different geographic
28 areas of the state to participate in a 1-year pilot project to
29 demonstrate the use of electronic monitoring equipment in
30 nursing homes licensed under part II of chapter 400, Florida
31 Statutes. If no nursing homes volunteer, the agency shall

1 select the two facilities with the lowest rank in
2 quality-of-care performance under section 400.191, Florida
3 Statutes, and applicable rules. This selection shall not be
4 subject to review or challenge. If more than two nursing homes
5 apply, the Agency for Health Care Administration shall select
6 two nursing homes, the one with the highest ranking and the
7 one with the lowest ranking in quality-of-care performance
8 under section 400.191, Florida Statutes, and applicable rules.

9 (1) The nursing homes that participate in the pilot
10 project shall develop policies and procedures that permit each
11 resident or, if appropriate, the resident's legal
12 representative, to request electronic monitoring of the
13 resident's room. The nursing homes that participate in the
14 pilot project shall also install equipment to electronically
15 monitor and shall monitor activities in common areas of the
16 facility. The policies and procedures must include steps to
17 address the privacy and dignity of residents, roommates, and
18 visitors.

19 (2) The request for electronic monitoring of a
20 resident's room must be in writing and signed by the resident
21 or the resident's representative.

22 (a) If a resident has the capacity to request
23 electronic monitoring and has not been judicially declared to
24 lack the required capacity, only the resident may request the
25 electronic monitoring, notwithstanding the terms of any
26 durable power of attorney or similar instrument.

27 (b) If a resident has been judicially declared to lack
28 the capacity required to request electronic monitoring, only
29 the guardian of the resident may request electronic
30 monitoring.

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1 (c) If a resident does not have the capacity to
2 request electronic monitoring and has not been judicially
3 declared to lack the required capacity, the resident's
4 physician may make the determination regarding the capacity of
5 the resident to request electronic monitoring and must
6 document the determination in the resident's clinical record.

7 In that case, only the legal representative of the resident
8 may request the electronic monitoring. A person from the
9 following list, in order of priority, may act as the
10 resident's legal representative for the limited purpose of
11 requesting electronic monitoring of the resident's room.

12 1. A person named in the resident's medical power of
13 attorney or other advance directive.

14 2. The resident's spouse.

15 3. An adult child of the resident who has the waiver
16 and consent of all other qualified adult children of the
17 resident to act as the sole decision-maker.

18 4. A majority of the resident's reasonably available
19 adult children.

20 5. The resident's parents.

21 6. The individual clearly identified as suitable to
22 act for the resident by the resident before the resident
23 became incapacitated or the resident's nearest living
24 relative.

25 (3) A resident, or resident's legal representative,
26 who wishes to conduct electronic monitoring must obtain the
27 written, signed consent of other residents in the room. The
28 written consent must be submitted to the administrator of the
29 nursing home or his or her designee.

30 (a) Consent of other residents may be given only by:

31 1. The other resident or residents in the room;

1 2. The guardian of the other resident, if the resident
2 has been judicially declared to lack the required capacity; or

3 3. The legal representative of the other resident,
4 determined by following the same procedure established under
5 (2)(c).

6 (b) Another resident in the room may condition consent
7 on:

8 1. Pointing the camera away from the consenting
9 resident, when the proposed electronic monitoring device is a
10 video surveillance camera; and

11 2. Limiting or prohibiting the use of an audio
12 electronic monitoring device.

13 (c) Electronic monitoring must be conducted in
14 accordance with any limitations placed on the monitoring as a
15 condition of the consent given by or on behalf of another
16 resident of the room.

17 (4) When the request for electronic monitoring and all
18 required consents have been given to the nursing home
19 administrator or his or her designee, electronic monitoring
20 may begin. If electronic monitoring is being conducted in a
21 resident's room, and another resident is moved into the room
22 who has not yet consented to electronic monitoring, the
23 monitoring must cease until the new resident, or the
24 resident's legal representative, consents.

25 (5) Anyone conducting electronic monitoring must post
26 and maintain a conspicuous notice at the entrance to the
27 resident's room stating that the room is being monitored by an
28 electronic monitoring device. The nursing homes participating
29 in the pilot project must post a notice in a prominent
30 location in common areas that the areas are being
31 electronically monitored.

1 (6) The resident or resident's legal representative
2 who requests the electronic monitoring of the resident's room
3 is responsible for the costs associated with conducting
4 electronic monitoring in the resident's room, including the
5 equipment and tapes and the installation, maintenance, or
6 removal of the equipment, other than the costs of electricity.
7 The electronic monitoring equipment and tapes must be the
8 property of the resident. The nursing home must make
9 reasonable physical accommodation for electronic monitoring
10 which includes:

11 (a) A reasonably secure place to mount the video
12 surveillance camera or other electronic monitoring device; and

13 (b) Access to power sources for the video surveillance
14 camera or other electronic monitoring device.

15 (7) The nursing home may:

16 (a) Require an electronic monitoring device to be
17 installed in a manner that is safe for residents, employees,
18 or visitors who may be moving about the room and that meets
19 all local and state regulations;

20 (b) Require the electronic monitoring to be conducted
21 in plain view; and

22 (c) Place a resident in a different room to
23 accommodate a request for electronic monitoring.

24 (8) A participating nursing home may not refuse to
25 admit an individual and may not discharge a resident solely
26 because of a request to conduct electronic monitoring.

27 (9) Any questionable activity discovered as a result
28 of viewing a tape produced by the electronic monitoring
29 equipment shall be reported to the nursing home's
30 administrator and the Agency for Health Care Administration
31 within 24 hours after discovery of the questionable activity.

1 (a) When a questionable activity that occurred in a
2 resident's room has been reported to the nursing home
3 administrator and the Agency for Health Care Administration,
4 the nursing home administrator shall arrange a meeting for
5 viewing or listening to the recording of the activity as soon
6 as is practicable. The following persons must be at the
7 meeting:

8 1. The resident or the resident's legal
9 representative;

10 2. A long-term care ombudsman, if requested by the
11 resident or the resident's legal representative;

12 3. A quality-of-care monitor from the Agency for
13 Health Care Administration;

14 4. The nursing home's designated risk manager; and

15 5. The nursing home administrator.

16 (b) When a questionable activity that has purportedly
17 occurred in a common area of the nursing home is reported to
18 the nursing home administrator and the Agency for Health Care
19 Administration, the nursing home administrator shall arrange a
20 meeting for viewing or listening to the recording of the
21 activity as soon as is practicable. The following persons must
22 be at the meeting:

23 1. The resident or residents involved in the
24 questionable activity, or the resident's or residents' legal
25 representatives;

26 2. A long-term care ombudsman, if requested by the
27 resident or the resident's legal representative;

28 3. A representative of the nursing home's resident
29 council;

30 4. A quality-of-care monitor from the Agency for
31 Health Care Administration;

1 5. The nursing home's designated risk manager; and

2 6. The nursing home administrator.

3 (c) The purpose of such a meeting is to facilitate
4 discussion of the quality of care being provided to the
5 resident and, if necessary, how to improve the quality of care
6 being provided.

7 (d) The Agency for Health Care Administration may take
8 any regulatory action authorized under part II of chapter 400,
9 Florida Statutes, in response to a questionable activity
10 documented through electronic monitoring and reported to the
11 agency.

12 (10) Because of the nature of the pilot project, any
13 activity or information recorded on tape shall be used to
14 improve care and is not admissible as evidence in civil
15 litigation against the nursing home, a licensed health care
16 practitioner, or staff of the nursing home.

17 (11) Each nursing home that participates in the pilot
18 project shall receive the sum of \$10,000 to:

19 (a) Research and purchase an electronic monitoring
20 system for common areas which would tape activities in the
21 common areas so as to minimize security risks; and

22 (b) Submit 6-month progress reports to the Agency for
23 Health Care Administration on the status of the pilot project.
24 The reports must describe efforts by the nursing home to
25 inform residents and their legal representatives of the
26 circumstances under which electronic monitoring equipment will
27 be installed in residents' rooms; must provide an evaluation
28 of resident, family, and staff response to the availability
29 and use of electronic monitoring equipment; and must document
30 staff turnover and changes in liability insurance premiums and

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1 deductibles attributed to the use of electronic monitoring
2 equipment.

3 (12) The nursing homes that participate in the pilot
4 project are entitled to a one-time rebasing of operating costs
5 under the Medicaid program to cover any increased costs in
6 liability insurance because of the installation of the
7 electronic monitoring equipment during the 12 months that the
8 pilot project is in effect and for 6 months thereafter.

9 (13) The Agency for Health Care Administration shall
10 convene a panel to advise the agency as it reviews the outcome
11 of the pilot project and produces a report. The panel shall be
12 comprised of a representative of AARP, a member of the clergy,
13 a registered nurse, a physician licensed under chapter 458 or
14 chapter 459, Florida Statutes, a long-term care ombudsman, a
15 representative of the Agency for Health Care Administration,
16 and a representative of the Office of the Attorney General.
17 The Agency for Health Care Administration shall submit to the
18 Governor, the President of the Senate, and the Speaker of the
19 House of Representatives, by October 1, 2003, a report on the
20 outcome of the pilot project.

21 Section 2. This act shall take effect upon becoming a
22 law.

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