

hbd-08

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Green offered the following:

**Amendment to Amendment (805735) (with title amendment)**

On page 33, between lines 4 and 5,

insert:

Section 21. By July 1, 2002, the Agency for Health Care Administration shall solicit two private nursing homes, one for-profit and one not-for-profit, in two different geographic areas of the state to participate in a 1-year pilot project to demonstrate the use of electronic monitoring equipment in nursing homes licensed under part II of chapter 400, Florida Statutes. If no nursing homes volunteer, the agency shall select the two facilities with the lowest rank in quality-of-care performance under s. 400.191, Florida Statutes, and applicable rules. This selection shall not be subject to review or challenge. If more than two nursing homes apply, the Agency for Health Care Administration shall select two nursing homes, the one with the highest ranking and the one with the lowest ranking in quality-of-care performance under s. 400.191, Florida Statutes, and applicable rules.

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1           (1) The nursing homes that participate in the pilot  
2 project shall develop policies and procedures that permit each  
3 resident or, if appropriate, the resident's legal  
4 representative, to request electronic monitoring of the  
5 resident's room. The nursing homes that participate in the  
6 pilot project shall also install equipment to electronically  
7 monitor and shall monitor activities in common areas of the  
8 facility. The policies and procedures must include steps to  
9 address the privacy and dignity of residents, roommates, and  
10 visitors.

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

14           (a) If a resident has the capacity to request  
15 electronic monitoring and has not been judicially declared to  
16 lack the required capacity, only the resident may request the  
17 electronic monitoring, notwithstanding the terms of any  
18 durable power of attorney or similar instrument.

19           (b) If a resident has been judicially declared to lack  
20 the capacity required to request electronic monitoring, only  
21 the guardian of the resident may request electronic  
22 monitoring.

23           (c) If a resident does not have the capacity to  
24 request electronic monitoring and has not been judicially  
25 declared to lack the required capacity, the resident's  
26 physician may make the determination regarding the capacity of  
27 the resident to request electronic monitoring and must  
28 document the determination in the resident's clinical record.  
29 In that case, only the legal representative of the resident  
30 may request the electronic monitoring. A person from the  
31 following list, in order of priority, may act as the

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1 resident's legal representative for the limited purpose of  
2 requesting electronic monitoring of the resident's room.  
3 1. A person named in the resident's medical power of  
4 attorney or other advance directive.  
5 2. The resident's spouse.  
6 3. An adult child of the resident who has the waiver  
7 and consent of all other qualified adult children of the  
8 resident to act as the sole decision-maker.  
9 4. A majority of the resident's reasonably available  
10 adult children.  
11 5. The resident's parents.  
12 6. The individual clearly identified as suitable to  
13 act for the resident by the resident before the resident  
14 became incapacitated or the resident's nearest living  
15 relative.  
16 (3) A resident, or resident's legal representative,  
17 who wishes to conduct electronic monitoring must obtain the  
18 written, signed consent of other residents in the room. The  
19 written consent must be submitted to the administrator of the  
20 nursing home or his or her designee.  
21 (a) Consent of other residents may be given only by:  
22 1. The other resident or residents in the room;  
23 2. The guardian of the other resident, if the resident  
24 has been judicially declared to lack the required capacity; or  
25 3. The legal representative of the other resident,  
26 determined by following the same procedure established under  
27 (2)(c).  
28 (b) Another resident in the room may condition consent  
29 on:  
30 1. Pointing the camera away from the consenting  
31 resident, when the proposed electronic monitoring device is a

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1 video surveillance camera; and

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

4 (c) Electronic monitoring must be conducted in  
5 accordance with any limitations placed on the monitoring as a  
6 condition of the consent given by or on behalf of another  
7 resident of the room.

8 (4) When the request for electronic monitoring and all  
9 required consents have been given to the nursing home  
10 administrator or his or her designee, electronic monitoring  
11 may begin. If electronic monitoring is being conducted in a  
12 resident's room, and another resident is moved into the room  
13 who has not yet consented to electronic monitoring, the  
14 monitoring must cease until the new resident, or the  
15 resident's legal representative, consents.

16 (5) Anyone conducting electronic monitoring must post  
17 and maintain a conspicuous notice at the entrance to the  
18 resident's room stating that the room is being monitored by an  
19 electronic monitoring device. The nursing homes participating  
20 in the pilot project must post a notice in a prominent  
21 location in common areas that the areas are being  
22 electronically monitored.

23 (6) The resident or resident's legal representative  
24 who requests the electronic monitoring of the resident's room  
25 is responsible for the costs associated with conducting  
26 electronic monitoring in the resident's room, including the  
27 equipment and tapes and the installation, maintenance, or  
28 removal of the equipment, other than the costs of electricity.  
29 The electronic monitoring equipment and tapes must be the  
30 property of the resident. The nursing home must make  
31 reasonable physical accommodation for electronic monitoring

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1 which includes:

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

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

6 (7) The nursing home may:

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

11 (b) Require the electronic monitoring to be conducted  
12 in plain view; and

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

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

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

23 (a) When a questionable activity that occurred in a  
24 resident's room has been reported to the nursing home  
25 administrator and the Agency for Health Care Administration,  
26 the nursing home administrator shall arrange a meeting for  
27 viewing or listening to the recording of the activity as soon  
28 as is practicable. The following persons must be at the  
29 meeting:

30 1. The resident or the resident's legal  
31 representative;

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1           2. A long-term care ombudsman, if requested by the  
2 resident or the resident's legal representative;  
3           3. A quality-of-care monitor from the Agency for  
4 Health Care Administration;  
5           4. The nursing home's designated risk manager; and  
6           5. The nursing home administrator.  
7           (b) When a questionable activity that has purportedly  
8 occurred in a common area of the nursing home is reported to  
9 the nursing home administrator and the Agency for Health Care  
10 Administration, the nursing home administrator shall arrange a  
11 meeting for viewing or listening to the recording of the  
12 activity as soon as is practicable. The following persons must  
13 be at the meeting:  
14           1. The resident or residents involved in the  
15 questionable activity, or the resident's or residents' legal  
16 representatives;  
17           2. A long-term care ombudsman, if requested by the  
18 resident or the resident's legal representative;  
19           3. A representative of the nursing home's resident  
20 council;  
21           4. A quality-of-care monitor from the Agency for  
22 Health Care Administration;  
23           5. The nursing home's designated risk manager; and  
24           6. The nursing home administrator.  
25           (c) The purpose of such a meeting is to facilitate  
26 discussion of the quality of care being provided to the  
27 resident and, if necessary, how to improve the quality of care  
28 being provided.  
29           (d) The Agency for Health Care Administration may take  
30 any regulatory action authorized under part II of chapter 400,  
31 Florida Statutes, in response to a questionable activity

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1 documented through electronic monitoring and reported to the  
2 agency.

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

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

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

13 (b) Submit 6-month progress reports to the Agency for  
14 Health Care Administration on the status of the pilot project.  
15 The reports must describe efforts by the nursing home to  
16 inform residents and their legal representatives of the  
17 circumstances under which electronic monitoring equipment will  
18 be installed in residents' rooms; must provide an evaluation  
19 of resident, family, and staff response to the availability  
20 and use of electronic monitoring equipment; and must document  
21 staff turnover and changes in liability insurance premiums and  
22 deductibles attributed to the use of electronic monitoring  
23 equipment.

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

30 (13) The Agency for Health Care Administration shall  
31 convene a panel to advise the agency as it reviews the outcome

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1 of the pilot project and produces a report. The panel shall be  
 2 comprised of a representative of the American Association of  
 3 Retired Persons, a member of the clergy, a registered nurse, a  
 4 physician licensed under chapter 458 or chapter 459, Florida  
 5 Statutes, a long-term care ombudsman, a representative of the  
 6 Agency for Health Care Administration, and a representative of  
 7 the Office of the Attorney General. The Agency for Health Care  
 8 Administration shall submit to the Governor, the President of  
 9 the Senate, and the Speaker of the House of Representatives,  
 10 by October 1, 2003, a report on the outcome of the pilot  
 11 project.

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14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 On page 36, line 22, of the amendment

17

18 after the semicolon, insert:

19 requiring the Agency for Health Care  
 20 Administration to conduct a pilot project to  
 21 demonstrate the use of electronic monitoring  
 22 equipment in nursing homes; establishing  
 23 requirements for nursing homes participating in  
 24 the pilot project; establishing procedures for  
 25 the use of electronic monitoring equipment;  
 26 specifying who may request electronic  
 27 monitoring; providing for conditional consent  
 28 to electronic monitoring; providing for review  
 29 of tapes documenting questionable activity;  
 30 prohibiting the admission of tapes as evidence  
 31 in civil litigation against a nursing home, a



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licensed health care practitioner, or staff of  
a nursing home; providing for rebasing of  
Medicaid costs; requiring the Agency for Health  
Care Administration to convene an advisory  
panel; requiring a report;