

By Senator Hutson

7-00964-23

20231486__

1 A bill to be entitled
2 An act relating to electronic monitoring devices in
3 long-term care facilities; creating ss. 400.025 and
4 429.265, F.S.; defining the terms "electronic
5 monitoring device" and "representative"; authorizing a
6 resident, or his or her representative, of a nursing
7 home facility or assisted living facility,
8 respectively, to authorize the installation and use of
9 an electronic monitoring device in the resident's room
10 if specified conditions are met; providing for
11 installation and use of such device if the resident
12 lives in a shared room with another resident;
13 requiring the consent of such other resident or his or
14 her representative; authorizing such other resident or
15 his or her representative to impose conditions on the
16 consent; providing that consent may be withdrawn at
17 any time, verbally or in writing; authorizing
18 facilities to adopt a consent form; providing
19 requirements for the form; prohibiting facilities from
20 denying admission to a person or discharging a
21 resident or otherwise discriminating or retaliating
22 against a resident for the decision to install and use
23 such electronic monitoring device in the resident's
24 room; providing an administrative penalty; providing a
25 criminal penalty for unlawfully obstructing, tampering
26 with, or destroying an electronic monitoring device or
27 a recording made by such device; specifying who may
28 view or listen to images and sounds broadcast or
29 recorded by an electronic monitoring device; providing

7-00964-23

20231486__

30 applicability; authorizing the Agency for Health Care
31 Administration to adopt rules; providing an effective
32 date.

33
34 Be It Enacted by the Legislature of the State of Florida:

35
36 Section 1. Section 400.025, Florida Statutes, is created to
37 read:

38 400.025 Electronic monitoring devices in residents' rooms.-

39 (1) As used in this section, the term:

40 (a) "Electronic monitoring device" means a surveillance
41 instrument with a fixed-position video camera or an audio
42 recording device, or a combination thereof, which broadcasts or
43 records movement or sounds occurring in the area being
44 surveilled.

45 (b) "Representative" means a person granted a durable power
46 of attorney under chapter 709, a guardian appointed under
47 chapter 744, or a person designated as a health care surrogate
48 under chapter 765 to make health care decisions on behalf of a
49 person.

50 (2) A resident or a resident's representative may authorize
51 the installation and use of an electronic monitoring device in
52 the resident's room in a nursing home facility if all of the
53 following conditions are met:

54 (a) If the facility has adopted a consent form pursuant to
55 subsection (5), the resident or the resident's representative
56 completes the form.

57 (b) The cost of the device and the cost of installing,
58 maintaining, and removing the device, not including the cost of

7-00964-23

20231486__

59 electricity used for the device, are paid for by the resident or
60 the resident's representative.

61 (c) If the resident is living in a room with another
62 resident, the other resident or that resident's representative
63 consents to the installation and use of the device in the shared
64 room. If the facility has adopted a consent form pursuant to
65 subsection (5), such consent must be obtained by having the
66 other resident or his or her representative complete the form.

67 (3) (a) If a resident living in a room with another resident
68 wishes to use an electronic monitoring device in the residents'
69 shared room, but the other resident or his or her representative
70 refuses to consent to the installation and use of an electronic
71 monitoring device in the shared room, the facility must make a
72 reasonable attempt to accommodate the resident wishing to use
73 such device by moving one of the residents to another available
74 room with the consent of such resident or his or her
75 representative.

76 (b) If the resident wishing to use an electronic monitoring
77 device lives in the same room as another resident, the other
78 resident or his or her representative may place conditions on
79 his or her consent to the use of such device, including, but not
80 limited to, pointing the device away from the other resident or
81 limiting or prohibiting the use of specific devices. If
82 conditions are placed on a resident's consent in this manner,
83 the electronic monitoring device must be installed and used in a
84 manner consistent with such conditions as long as the resident
85 who imposed the conditions is living in the same room.

86 (4) A resident or his or her representative who has
87 authorized the installation and use of an electronic monitoring

7-00964-23

20231486__

88 device under this section may withdraw that authorization
89 verbally or in writing at any time.

90 (5) A nursing home facility may adopt a consent form for
91 installation and use of an electronic monitoring device in the
92 facility. Such form must, at a minimum, include all of the
93 following:

94 (a) An explanation of this section.

95 (b) An acknowledgment that the resident or his or her
96 representative has consented to the installation and use of the
97 device in the resident's room.

98 (c) If the resident requesting installation and use of the
99 electronic monitoring devices lives in a room with another
100 resident, an acknowledgment that the other resident or other
101 resident's representative has consented to the installation and
102 use of the device and a description of any conditions placed on
103 that consent as authorized under paragraph (3) (b).

104 (d) A section for providing the facility with information
105 regarding the type, function, and use of the device to be
106 installed and used.

107 (e) A section stating that the facility is released from
108 liability in any civil or criminal action or administrative
109 proceeding for a violation of the resident's right to privacy in
110 connection with using the device.

111 (6) A nursing home facility may post a notice in a
112 conspicuous location at the entrance of a resident's room with
113 an electronic monitoring device stating that such device is in
114 use in that room.

115 (7) A nursing home facility may not deny a person admission
116 to, or discharge a resident from, the facility or otherwise

7-00964-23

20231486__

117 discriminate or retaliate against a resident based on his or her
118 decision to install and use an electronic monitoring device in
119 the resident's room at the facility. A nursing home facility
120 shall be fined \$500 for each violation of this subsection.

121 (8) It is unlawful for a person, other than the resident
122 and resident's representative, if any, who authorized the
123 installation and use of an electronic monitoring device in the
124 resident's room in a nursing home facility, to intentionally
125 obstruct, tamper with, or destroy the device or a recording made
126 by the device. A person who violates this subsection commits a
127 misdemeanor of the first degree, punishable as provided in s.
128 775.082 or s. 775.083.

129 (9) A person may not intentionally view or listen to the
130 images and sounds broadcast or recorded by an electronic
131 monitoring device installed in a resident's room, unless that
132 person is:

133 (a) The resident;

134 (b) The resident's representative;

135 (c) Law enforcement personnel; or

136 (d) Authorized by the resident or the resident's
137 representative to view or listen to the images and sounds
138 broadcast or recorded by the device.

139 (10) This section does not apply to an electronic
140 monitoring device installed by a law enforcement agency and used
141 solely for legitimate law enforcement purposes.

142 (11) The agency may adopt rules to implement this section.
143 Section 2. Section 429.265, Florida Statutes, is created to
144 read:

145 429.265 Electronic monitoring devices in residents' rooms.-

7-00964-23

20231486__

146 (1) As used in this section, the term:

147 (a) "Electronic monitoring device" means a surveillance
148 instrument with a fixed-position video camera or an audio
149 recording device, or a combination thereof, which broadcasts or
150 records movement or sounds occurring in the area being
151 surveilled.

152 (b) "Representative" means a guardian appointed under
153 chapter 744, a person designated as a health care surrogate
154 under chapter 765, or a person granted a durable power of
155 attorney under chapter 709 to make health care decisions on
156 behalf of a person.

157 (2) A resident or a resident's representative may authorize
158 the installation and use of an electronic monitoring device in
159 the resident's room in an assisted living facility if all of the
160 following conditions are met:

161 (a) If the facility has adopted a consent form pursuant to
162 subsection (5), the resident or the resident's representative
163 completes the form.

164 (b) The cost of the device and the cost of installing,
165 maintaining, and removing the device, not including the cost of
166 electricity used for the device, is paid for by the resident or
167 the resident's representative.

168 (c) If the resident is living in a room with another
169 resident, the other resident or that resident's representative
170 consents to the installation and use of the device in the shared
171 room. If the facility has adopted a consent form pursuant to
172 subsection (5), such consent must be obtained by having the
173 other resident or his or her representative complete the form.

174 (3) (a) If a resident living in a room with another resident

7-00964-23

20231486__

175 wishes to use an electronic monitoring device in the residents'
176 shared room, but the other resident or his or her representative
177 refuses to consent to the installation and use of an electronic
178 monitoring device in the shared room, the facility must make a
179 reasonable attempt to accommodate the resident wishing to use
180 such device by moving one of the residents to another available
181 room with the consent of such resident or his or her
182 representative.

183 (b) If the resident wishing to use an electronic monitoring
184 device lives in the same room as another resident, the other
185 resident or his or her representative may place conditions on
186 his or her consent to the use of such device, including, but not
187 limited to, pointing the device away from the other resident or
188 limiting or prohibiting the use of specific devices. If
189 conditions are placed on a resident's consent in this manner,
190 the electronic monitoring device must be installed and used in a
191 manner consistent with such conditions as long as the resident
192 who imposed the conditions is living in the same room.

193 (4) A resident or his or her representative who has
194 authorized the installation and use of an electronic monitoring
195 device under this section may withdraw that authorization
196 verbally or in writing at any time.

197 (5) An assisted living facility may adopt a consent form
198 for installation and use of an electronic monitoring device in
199 the facility. Such form must, at a minimum, include all of the
200 following:

201 (a) An explanation of this section.

202 (b) An acknowledgment that the resident or his or her
203 representative has consented to the installation and use of the

7-00964-23

20231486__

204 device in the resident's room.

205 (c) If the resident requesting installation and use of the
206 electronic monitoring devices lives in a room with another
207 resident, an acknowledgment that the other resident or other
208 resident's representative has consented to the installation and
209 use of the device and a description of any conditions placed on
210 that consent as authorized under paragraph (3) (b).

211 (d) A section for providing the facility with information
212 regarding the type, function, and use of the device to be
213 installed and used.

214 (e) A section stating that the facility is released from
215 liability in any civil or criminal action or administrative
216 proceeding for a violation of the resident's right to privacy in
217 connection with using the device.

218 (6) An assisted living facility may post a notice in a
219 conspicuous location at the entrance of a resident's room with
220 an electronic monitoring device stating that such device is in
221 use in that room.

222 (7) An assisted living facility may not deny a person
223 admission to, or discharge a resident from, the facility or
224 otherwise discriminate or retaliate against a resident based on
225 his or her decision to install and use an electronic monitoring
226 device in the resident's room at the facility. An assisted
227 living facility shall be fined \$500 for each violation of this
228 subsection.

229 (8) It is unlawful for a person, other than the resident
230 and resident's representative, if any, who authorized the
231 installation and use of an electronic monitoring device in the
232 resident's room in an assisted living facility, to intentionally

7-00964-23

20231486__

233 obstruct, tamper with, or destroy the device or a recording made
234 by the device. A person who violates this subsection commits a
235 misdemeanor of the first degree, punishable as provided in s.
236 775.082 or s. 775.083.

237 (9) A person may not intentionally view or listen to the
238 images and sounds broadcast or recorded by an electronic
239 monitoring device installed in a resident's room, unless that
240 person is:

241 (a) The resident;

242 (b) The resident's representative;

243 (c) Law enforcement personnel; or

244 (d) Authorized by the resident or the resident's
245 representative to view or listen to the images and sounds
246 broadcast or recorded by the device.

247 (10) This section does not apply to an electronic
248 monitoring device installed by a law enforcement agency and used
249 solely for legitimate law enforcement purposes.

250 (11) The agency may adopt rules to implement this section.

251 Section 3. This act shall take effect July 1, 2023.