

# FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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**BILL #:** [HB 223](#)

**TITLE:** Electronic Monitoring Devices in Long-term Care Facilities

**SPONSOR(S):** Plasencia

**COMPANION BILL:** [SB 64](#) (Garcia)

**LINKED BILLS:** None

**RELATED BILLS:** [SB 64](#) (Garcia)

## Committee References

[Health Care Facilities & Systems](#)

[Judiciary](#)

[Health & Human Services](#)

## SUMMARY

### Effect of the Bill:

The bill allows a resident of a nursing home or an assisted living facility (ALF) to install a video camera or an audio recorder in their room, and creates a regulatory framework around the use of these electronic monitoring devices (EMDs). The cost of installation, maintenance, and removal of the EMD must be paid by the resident or the resident's representative. Residents who share rooms must get their roommate's consent, and the roommate has the ability to place conditions on how the camera is used. Facilities must adopt their own consent forms, which must include, among other requirements, a release of liability in any civil or criminal action or administrative proceeding for a violation of the resident's rights to privacy in connection with using the device

The bill authorizes AHCA to impose a \$500 fine on a facility for denying a resident admission to, or discharging a resident from a facility, or otherwise discriminating against a resident for using an EMD.

### Fiscal or Economic Impact:

None

[JUMP TO](#)

[SUMMARY](#)

[ANALYSIS](#)

[RELEVANT INFORMATION](#)

[BILL HISTORY](#)

## ANALYSIS

### **EFFECT OF THE BILL:**

Current law does not prohibit or authorize the use of [electronic monitoring devices](#) (EMDs), also known as "granny cams" in [nursing homes](#) or [assisted living facilities](#) (ALFs). Some facilities prohibit it, and some allow it. As a result, many family members have resorted to using hidden cameras, which can cause privacy concerns. In addition, residents of these facilities may encounter the threat of retaliatory acts by facility staff or discharge for attempting to install EMDs in their rooms.

The bill allows a resident, or a resident's representative, of a nursing home (Section [1](#)) or an ALF (Section [2](#)) to install an EMD in the resident's room, which may be a video camera or an audio recording device that broadcasts or records movements or sounds.

The cost of installation, maintenance, and removal of the EMD must be paid by the resident or the resident's representative, and the resident or the resident's representative must provide consent to install an EMD. The resident or the resident's representative may withdraw their consent at any time, verbally or in writing.

Further, if the resident is living in a room with another resident, they must get consent from the other resident to install and use the EMD in the shared room. If the other resident refuses to provide consent, the bill requires the facility to make a reasonable attempt to accommodate the resident wishing to use an EMD by moving one of the residents to another available room. The bill also allows the other resident to place conditions on their consent to

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the use of an EMD, which at a minimum, must include pointing the device away from the other resident or limiting or prohibiting the use of specific devices.

The bill requires nursing homes and ALFs to adopt their own consent forms to accommodate the consent provisions of the bill detailed above. Consent forms are required by most of the other states that have adopted similar legislation to provide protection from litigation for the facility and owner of the EMD. The consent forms, at a minimum, must include:

- An explanation of the law;
- An acknowledgement that the resident or his or her representative has consented to the installation and use of the EMD in the resident's room;
- If the resident requesting installation and use of the EMD lives in a room with another resident, an acknowledgement that the other resident or the other resident's representative has provided consent to the installation and use of the EMD and a description of any conditions placed on their consent;
- A section to provide the facility with information about the type, function, and use of the EMD.

The bill also requires the consent form to include a section stating that the facility is released from liability in any civil or criminal action or administrative proceeding for a violation of the resident's rights to privacy in connection with using the device. According to AHCA, releasing facilities from civil and criminal liability violates the ALF Bill of Rights in s. [429.28, F.S.](#), which prohibits and protects ALF residents from being deprived of any civil or legal rights, benefits, or privileges guaranteed by law, or the Constitution of the United States.

The bill authorizes facilities to post a notice in a conspicuous location at the entrance of a resident's room having an electronic monitoring device, stating that such device is in use in that room. This provision has been included in similar legislation in most other states as a privacy protection for anyone who enters the room.

The bill prohibits a facility from denying a resident admission to, or discharging a resident from a facility, or otherwise discriminating or retaliating against a resident based on the resident's use of an EMD. The bill also authorizes AHCA to impose a \$500 fine on facilities for each violation of this provision.

The bill creates a criminal penalty for anyone other than the resident or their representative who authorized the use of an EMD to intentionally obstruct, tamper with, or destroy the device or a recording made by the device. The penalty for violating this provision is a first degree misdemeanor, which is punishable by up to one year in prison or a fine of up to \$1,000.

The bill prohibits anyone other than the resident or their representative, or law enforcement, from intentionally viewing or listening to a resident's EMD, unless that person receives authorization from the resident or the resident's representative.

The bill provides that an EMD installed by a law enforcement agency and used solely for legitimate law enforcement purposes are not subject to the provisions of the bill.

The bill provides an effective date of July 1, 2025. (Section [3](#)).

#### **RULEMAKING:**

The bill authorizes AHCA to adopt rules to implement the bill. AHCA will likely have to update rules for nursing homes [Rule 59A-4, F.A.C.](#), and ALFs [Rule 59A-36, F.A.C.](#)

***Lawmaking is a legislative power; however, the Legislature may delegate a portion of such power to executive branch agencies to create rules that have the force of law. To exercise this delegated power, an agency must have a grant of rulemaking authority and a law to implement.***

## RELEVANT INFORMATION

### SUBJECT OVERVIEW:

#### [Nursing Homes](#)

A nursing home is a facility that provides 24-hour nursing care, personal care, or custodial care to individuals who are ill or physically infirm.<sup>1</sup> Nursing homes are licensed and regulated by the Agency for Health Care Administration (AHCA) under part II of ch. 400, F.S. Nursing homes are required to meet certain conditions of participation (COPs) established by the federal Centers for Medicare and Medicaid Services (CMS) in order to participate in the Medicare and Medicaid programs.<sup>2</sup> The COPs include certain resident rights, including a resident's right to privacy and to freedom from abuse, neglect, and exploitation.<sup>3</sup>

Current Florida law also provides certain resident rights to protect nursing home residents from mental and physical abuse, sexual abuse, neglect, exploitation, corporal punishment, extended involuntary seclusion, and physical and chemical restraints.<sup>4</sup>

As of February 17, 2025, there are 696 licensed nursing homes with a total of 85,646 beds in Florida.<sup>5</sup> Of the 85,646 licensed beds, 13,612 are private rooms, meaning 84 percent of licensed nursing home beds in Florida are in shared bedrooms.<sup>6</sup>

#### [Assisted Living Facilities](#)

An assisted living facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.<sup>7</sup> ALFs are licensed and regulated by AHCA under part I of ch. 429, F.S.

The Resident Bill of Rights prohibits an ALF from depriving an ALF resident of any civil or legal rights, benefits, or privileges guaranteed by law, the Florida Constitution, or the Constitution of the United States. The Resident Bill of Rights requires ALFs to ensure that every resident is provided with certain enumerated rights, including, among other things, the right to live in a safe and decent living environment, free from abuse and neglect, and to be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.<sup>8</sup>

As of February 17, 2025, there are 2,966 licensed ALFs with a total of 117,330 beds in Florida.<sup>9</sup>

#### [Elder Abuse and Licensure Penalties](#)

Florida law includes criminal penalties for certain offenses committed on an elderly person, including violations for physical abuse, sexual abuse, neglect, and exploitation.<sup>10</sup>

Current law authorizes AHCA to suspend or revoke the license of a nursing home, or levy an administrative fine up to \$500 per violation per day against a nursing home for violations relating to corporal punishment, extended involuntary seclusion, and physical and chemical restraints.<sup>11</sup>

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<sup>1</sup> S. [400.021\(7\), F.S.](#)

<sup>2</sup> 42 C.F.R. § 483.1.

<sup>3</sup> 42 C.F.R. § 483.90 (e), and 42 C.F.R. § 483.12.

<sup>4</sup> S. 400.022 (1)(o), F.S.

<sup>5</sup> Florida Health Finder, Facility/Provider, Search by Location, Nursing Homes, available at <https://quality.healthfinder.fl.gov/Facility-Search/FacilityLocateSearch> (last visited February 17, 2025).

<sup>6</sup> Email from Jim Browne, Director of Legislative Affairs, Agency for Health Care Administration (February 17, 2025).

<sup>7</sup> S. [429.02\(5\), F.S.](#)

<sup>8</sup> S. [429.28\(1\), F.S.](#)

<sup>9</sup> Florida Health Finder, Facility/Provider, Search by Location, Assisted Living Facilities, available at <https://quality.healthfinder.fl.gov/Facility-Search/FacilityLocateSearch> (last visited February 17, 2025).

<sup>10</sup> Physical Abuse and Neglect [s. 825.102, F.S.](#), Sexual Abuse ("Lewd or Lascivious Battery Upon an Elderly Person or Disabled Person") [s. 825.1025, F.S.](#), and Exploitation [s. 825.103, F.S.](#)

Current law also authorizes AHCA to suspend or revoke the license of an assisted living facility, or impose administrative fines for a violation of The Resident Bill of Rights, or any violation of ch. 429, F.S.<sup>12</sup>

### [Electronic Monitoring Devices \(EMDs\)](#)

Electronic monitoring devices (EMDs), commonly known as “granny cams” are increasingly being utilized by nursing home and ALF residents and their family members to monitor the quality of care provided by facility staff.<sup>13</sup>

Residents of nursing homes and ALFs and their family members use EMDs to deter staff members from abusing or neglecting residents and to prevent theft of personal items. The media has reported on numerous cases of resident abuse captured by EMD videos.

In 2011, a Pennsylvania family filed a lawsuit against a nursing home after a hidden camera filmed three of the facility’s employees hitting and taunting a resident who suffers from dementia.<sup>14</sup>

In 2015, the family of a 96-year old resident of an Oklahoma City nursing home was awarded \$1.2 million for emotional distress after video footage from a camera hidden in the resident’s room filmed employees stuffing the resident’s mouth with latex gloves, taunting her, and throwing her on the bed. Oklahoma has since passed legislation to allow families to use cameras in nursing homes.<sup>15</sup>

In 2016, employees were arrested for alleged abuse of a 76-year old man in a nursing home in Winter Haven, Florida after footage from a camera hidden in the resident’s room filmed employees taunting the resident, slapping him, and making him hit himself in the face.<sup>16</sup>

In 2018, the family of an 89-year old resident sued a Michigan nursing home after a camera hidden in an alarm clock by the man’s son allegedly recorded caregivers physically abusing the resident and insulting him with ethnic slurs.<sup>17</sup>

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<sup>11</sup> S. [400.121, F.S.](#)

<sup>12</sup> Rule 59A-36.025(6), F.A.C.

<sup>13</sup> Karen Levy, Lauren Kilgour, and Clara Berridge, *Regulating Privacy in Public/Private Space: The Case of Nursing Home Monitoring Laws*, January 28, 2019, available at <https://micounties.org/wp-content/uploads/Levy-Report-on-Nursing-Home-Monitoring-Laws.pdf> (last visited February 18, 2025)

<sup>14</sup> ABC New, *Pennsylvania Nursing Home Workers Caught Abusing Woman on Hidden Camera*, April 7, 2011, available at <https://abcnews.go.com/US/pennsylvania-nursing-home-workers-elder-abuse-dementia-patient/story?id=13319535> (last visited February 18, 2025).

<sup>15</sup> Hoffman J., *Watchful eye in nursing homes*, New York Times, November 13, 2013, available at [https://well.blogs.nytimes.com/2013/11/18/watchful-eye-in-nursing-homes/?\\_r=0](https://well.blogs.nytimes.com/2013/11/18/watchful-eye-in-nursing-homes/?_r=0). (last visited February 18, 2025). *See also* Passoth K., *Jurors Rule in Favor of Family in Nursing Home Abuse Lawsuit*, KOCO News, February 13, 2015, available at <https://www.koco.com/article/jurors-rule-in-favor-of-family-in-nursing-home-abuse-lawsuit/4302594> (last visited February 18, 2025).

<sup>16</sup> Allen S., *2 Winter Haven Nursing Assistants Arrested for Abusing 76-Year-Old Patient*, Lakeland Ledger, October 30, 2014, available at <https://www.theledger.com/story/news/2014/10/30/2-winter-haven-nursing-assistants-arrested-for-abusing-76-year-old-patient/27002315007/> (last visited February 18, 2025).

<sup>17</sup> Long A., *Family Sues Michigan Nursing Home Over Abuse Caught on Video*, WCMH TV, March 6, 2018, available at <https://www.nbc4i.com/news/u-s-world/family-sues-michigan-nursing-home-over-abuse-caught-on-video/1096465448>. (last visited February 18, 2025).

## EMD Regulation in Other States

Currently, 19 states have laws authorizing the use of EMDs in nursing home resident rooms.<sup>18</sup> Of those 19 states, 17 also allow the use of EMDs in ALF resident rooms. Texas was the first state to pass such legislation, in 2001.<sup>19</sup>

EMDs are also being installed across the country, including in Florida, in facilities that specifically authorize their use, or that do not prohibit their use.<sup>20</sup>

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### BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
<a href="#">Health Care Facilities &amp; Systems Subcommittee</a>			Calamas	Guzzo
<a href="#">Judiciary Committee</a>				
<a href="#">Health &amp; Human Services Committee</a>				

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<sup>18</sup> Staff of the Health Care Facilities & Systems Subcommittee conducted a 50-state analysis on laws relating to the use of EMDs in nursing home and ALF resident rooms.

<sup>19</sup> 77<sup>th</sup> Texas Legislature, 2001 SB 177, Texas Health & Safety Code § 242-Nursing Homes and § 247-Assisted Living Facilities.

<sup>20</sup> Law Offices of Thomas Gallivan, PLLC, *After Nursing Home Abuses Exposed on Hidden Cameras, States Move to Legalize "Granny Cams"*, <https://www.gallivanlawfirm.com/after-nursing-home-abuses-exposed-on-hidden-cameras-states-move-to-legalize-granny-cams/> (last visited February 19, 2025).