**A** **BILL**

TO AMEND TITLE 44 OF THE 1976 CODE, RELATING TO HEALTH, BY ADDING CHAPTER 83, TO AUTHORIZE ELECTRONIC MONITORING OF A RESIDENT’S ROOM IN A LONG‑TERM CARE FACILITY, TO PROVIDE THAT A LONG‑TERM CARE FACILITY SHALL PROVIDE NOTICE THAT AUTHORIZED ELECTRONIC MONITORING IS PERMITTED AND MAY BE CONDUCTED ONLY WITH CONSENT, TO PROVIDE THAT A LONG‑TERM CARE FACILITY SHALL NOT REFUSE TO ADMIT OR REMOVE AN INDIVIDUAL AS A RESIDENT FOR A REASON RELATED TO THE USE OF AUTHORIZED ELECTRONIC MONITORING, TO PROVIDE WHO MAY REQUEST ELECTRONIC MONITORING, TO PROVIDE THAT THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL SHALL DEVELOP CERTAIN GUIDELINES TO ASSIST IN DECIDING WHETHER A RESIDENT LACKS THE REQUIRED CAPACITY TO CONSENT AND GUIDELINES TO DETERMINE WHETHER A PERSON MAY SERVE AS A RESIDENT’S LEGAL REPRESENTATIVE FOR PURPOSES OF THIS CHAPTER, TO PROVIDE THAT REQUESTS FOR AUTHORIZED ELECTRONIC MONITORING MUST BE MADE ON A FORM DEVELOPED BY THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND TO OUTLINE THE REQUIREMENTS TO BE INCLUDED IN THE FORM, TO PROVIDE WHEN AND WHERE AUTHORIZED ELECTRONIC MONITORING MAY BE CONDUCTED, TO PROVIDE REQUIREMENTS FOR AND OF A LONG‑TERM CARE FACILITY RELATED TO AUTHORIZED ELECTRONIC MONITORING, TO PROVIDE FOR SANCTIONS AND PENALTIES AGAINST ANY PERSON OR ENTITY WHO REFUSES TO ADMIT AN INDIVIDUAL, ALLOWS REMOVAL OF A RESIDENT, OR DOES NOT PERMIT A RESIDENT TO CONDUCT AUTHORIZED ELECTRONIC MONITORING, TO PROVIDE PENALTIES AGAINST ANY PERSON OR ENTITY WHO INTENTIONALLY HAMPERS, OBSTRUCTS, TAMPERS WITH OR DESTROYS AN ELECTRONIC MONITORING DEVICE INSTALLED IN A LONG‑TERM CARE FACILITY, TO PROVIDE THAT A TAPE OR RECORDING CREATED THROUGH THE USE OF AUTHORIZED ELECTRONIC MONITORING MAY BE ADMITTED INTO EVIDENCE IN A CIVIL OR CRIMINAL COURT ACTION OR ADMINISTRATIVE PROCEEDING, AND TO PROVIDE FOR NECESSARY FORMS AND DISCLOSURES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 44 of the 1976 Code is amended by adding:

“Chapter 83

Authorized Electronic Monitoring in Long‑Term Care Facilities

Section 44‑83‑10. As used in this chapter, the term:

(1) ‘Authorized electronic monitoring’ means the placement of an electronic monitoring device in the room of a resident of a long‑term care facility and making tapes or recordings with the device after making a request to the facility to allow electronic monitoring and obtaining required consents.

(2) ‘Department’ means the South Carolina Department of Health and Environmental Control.

(3) ‘Electronic monitoring device’ means a video surveillance camera or audio device installed in the room of a resident designed to acquire communications or other sounds occurring in the room but does not include an electronic, mechanical, or other device that is used specifically for the nonconsensual interception of wire or electronic communications.

(4) ‘Long‑term care facility’ means an intermediate care facility, nursing care facility, or residential care facility subject to regulation and licensure by the South Carolina Department of Health and Environmental Control.

Section 44‑83‑20. (A) A long‑term care facility shall provide notice to current and prospective residents, and guardians or legal representatives of residents, that authorized electronic monitoring of a resident’s room conducted pursuant to this chapter is permitted and may be conducted only with the consent of the resident, the other residents of the room, or the guardians or legal representatives of the other residents of the room, as applicable.

(B) A long‑term care facility shall not refuse to admit an individual as a resident to the facility or remove a resident from the facility for a reason related to the use of authorized electronic monitoring of a resident’s room.

Section 44‑83‑30. (A) The department shall develop a form that must be completed and signed at the time of a resident’s admission to a long‑term care facility by or on behalf of the resident. The form must state that:

(1) a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) a resident, or the resident’s guardian or legal representative, is entitled to conduct authorized electronic monitoring pursuant to this chapter; and

(4) if the long‑term care facility refuses to allow authorized electronic monitoring pursuant to this chapter, or fails to make reasonable physical accommodations for the use of authorized electronic monitoring, the person should contact the South Carolina Department of Health and Environmental Control.

(B) The form required pursuant to subsection (A) must include:

(1) the basic procedures to follow to request authorized electronic monitoring;

(2) the manner in which this chapter affects the legal requirement to report abuse or neglect when electronic monitoring is being conducted; and

(3) any other information regarding covert or authorized electronic monitoring that the department considers appropriate to include on the form.

(C) The department shall provide a copy of the form required pursuant to this section to all individuals, or to their guardians or legal representatives, who are a resident of a long‑term care facility at the time of the enactment of this chapter.

Section 44‑83‑40. (A) If a resident has the required capacity to request electronic monitoring and has not been declared judicially to lack the required capacity, only the resident may request authorized electronic monitoring pursuant to this chapter, notwithstanding the terms of a durable power of attorney or similar instrument.

(B) If a resident has been declared judicially to lack the required capacity to request electronic monitoring, only the guardian or legal representative of the resident may request electronic monitoring pursuant to this chapter.

(C) If a resident does not have the required capacity to request electronic monitoring but has not been declared judicially to lack the required capacity, only the guardian or legal representative of the resident may request electronic monitoring.

Section 44‑83‑50. The department shall develop guidelines to:

(1) assist long‑term care facilities, family members of residents, advocates for residents, and other interest person in deciding whether a resident lacks the required capacity to request or consent to electronic monitoring; and

(2) determine whether a person may serve as a resident’s legal representative for purposes of this chapter, including a person who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had the required capacity and a person who becomes the legal representative of a resident for the limited purposes of this chapter.

Section 44‑83‑60. (A) A resident, or the guardian or legal representative of a resident, who wishes to conduct authorized electronic monitoring shall make the request to the long‑term care facility on a form developed by the department. The form must require the resident, or the resident’s guardian or legal representative, to:

(1) release the long‑term care facility from any civil liability for a violation of the resident’s privacy rights in connection with the use of the electronic monitoring device;

(2) when the electronic monitoring device is a video surveillance camera, choose whether the camera always will be unobstructed or whether the camera must be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room pursuant to Section 44‑83‑70, using a form developed for this purpose by the department, if the resident resides in a multi‑person room.

(B) The form may include any other information the department considers appropriate for the purposes of this section.

Section 44‑83‑70. (A) The department shall develop a consent form to be signed by a resident, or the resident’s guardian or legal representative, who agrees to allow the use of authorized electronic monitoring by another resident of the room.

(B) Consent to authorize a resident to use an electronic monitoring device may be given only by:

(1) the other resident or residents of the room;

(2) the guardian or another resident of the room who has been declared judicially to lack the required capacity to consent; or

(3) the legal representative of another resident of the room if that other resident does not have the required capacity to sign the consent but has not been declared judicially to lack the required capacity.

(C) Another resident in the room, or the other resident’s guardian or legal representative, may:

(1) when the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(D) If authorized electronic monitoring is being conducted in the room of a resident, and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with the section.

(E) The consent form developed for the purposes of this section may include any other information the department considers appropriate for purposes of obtaining and authorizing consent.

(F) The department may adopt procedures prescribing where and how long to maintain the consent forms signed pursuant to this section.

Section 44‑83‑80. Authorized monitoring:

(1) may not commence until all request and consent forms required pursuant to Sections 44‑83‑60 and 44‑83‑70 have been completed and returned to the long‑term care facility;

(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room; and

(3) may not be utilized in common or public areas of the long‑term care facility unless otherwise allowed by that facility.

Section 44‑83‑90. (A) a long‑term care facility shall:

(1) authorize a resident, or the resident’s guardian or legal representative, to monitor the resident’s own room through the use of an electronic monitoring device; and

(2) require a resident, or the resident’s guardian or legal representative, who conducts authorized electronic monitoring to post and maintain a conspicuous notice at the entrance to the resident’s room, which states that the room is being monitored by an electronic monitoring device.

(B) Authorized electronic monitoring conducted pursuant to this chapter is not compulsory and may be conducted only at the request of a resident, or the resident’s guardian or legal representative.

(C) A long‑term care facility shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place on which to mount the video surveillance camera or other electronic monitoring device; and

(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

Section 44‑83‑100. (A) A resident, or the resident’s guardian or legal representative, shall pay for all costs associated with:

(1) conducting electronic monitoring, other than the costs of electricity; and

(2) installing and monitoring the equipment.

(B) A long‑term care facility may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The department may adopt procedures regarding the safe placement of an electronic monitoring device.

(C) If authorized electronic monitoring is conducted, the long‑term care facility may require the resident, or the resident’s guardian or legal representative, to conduct the electronic monitoring in plain view.

(D) A long‑term care facility may place a resident in a different room o accommodate a request to conduct authorized electronic monitoring.

Section 44‑83‑110. Each long‑term care facility shall post a notice at the entrance to the facility stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The department shall prescribe the format and the precise content of the notice.

Section 44‑83‑120. (A) The department may impose appropriate sanctions pursuant to this chapter on an administrator of a long‑term care facility who knowingly:

(1) refuses to permit a resident, or the resident’s guardian or legal representative, to conduct authorized electronic monitoring;

(2) refuses to admit an individual as a resident or allows the removal of a resident from the facility related to a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the facility because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this chapter.

(B) The department may assess an administrative penalty against a long‑term care facility that:

(1) refuses to permit a resident, or the resident’s guardian or legal representative, to conduct authorized electronic monitoring;

(2) refuses to admit an individual as a resident or allows the removal of a resident from the facility related to a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the facility because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this chapter.

Section 44‑83‑130. (A) A person or entity must not intentionally hamper, obstruct, tamper with, or destroy an electronic monitoring device installed in a long‑term care facility.

(B) A person or entity that receives an unauthorized electronic communication or that refocuses, repositions, covers, manipulates disconnects, or otherwise tampers with or disables a security or surveillance camera or security system is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(C) A person who uses, refocuses, repositions, covers, manipulates, disconnects, or otherwise tampers with or disables a security or surveillance camera or security system for the purpose of avoiding detection when committing, attempting to commit, or aiding another person to commit or attempt to commit a misdemeanor is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(D) A person who uses, refocuses, repositions, covers, manipulates, disconnects, or otherwise tampers with or disables a security or surveillance camera or security system for the purpose of avoiding detection when committing, attempting to commit, or aiding another person to commit or attempt to commit a felony is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both.

Section 44‑83‑140. Subject to any other provision of law, a tape or recording created through the use of authorized electronic monitoring pursuant to this chapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.”

SECTION 2. This act takes effect upon approval by the Governor.

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