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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3746

03/31/2016 Authored by Newton

The bill was read for the first time and referred to the Committee on Aging and Long-Term Care Policy

1.1 A bill for an act
1.2 relating to health; permitting residents of nursing facilities to electronically
1.3 monitor their rooms; proposing coding for new law in Minnesota Statutes,
1.4 chapter 144.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. [144.6502] AUTHORIZED ELECTRONIC MONITORING IN
1.7 NURSING FACILITIES.

1.8 Subdivision 1. Authorized electronic monitoring. (a) A resident 18 years of age or
1.9 older may conduct authorized electronic monitoring of the resident's room through the use
1.10 of electronic monitoring devices placed in the room as provided in this section.

1.11 (b) Nothing in this section allows the use of an electronic monitoring device to take
1.12 still photographs or for the nonconsensual interception of private communications.

1.13 Subd. 2. Definitions. (a) For the purposes of this section, the terms defined in
1.14 this subdivision have the meanings given.

1.15 (b) "Authorized electronic monitoring" means the placement and use of an electronic
1.16 monitoring device by a resident in the resident's room in accordance with this section.

1.17 (c) "Commissioner" means the commissioner of health.

1.18 (d) "Department" means the Department of Health.

1.19 (e) "Electronic monitoring device" means a surveillance instrument with a fixed
1.20 position video camera or an audio recording device, or a combination thereof, that is
1.21 installed in a resident's room under the provisions of this section and broadcasts or records
1.22 activity or sounds occurring in the room.

1.23 (f) "Facility" means a facility that is licensed as a nursing home under chapter 144A
1.24 or as a boarding care home under sections 144.50 to 144.56.

2.1 (g) "Resident" means a person 18 years of age or older residing in a facility.

2.2 (h) "Legal representative" means a court-appointed guardian or other representative
2.3 with legal authority to make decisions about health care services for the resident, including
2.4 a health care agent or an attorney-in-fact authorized through a health care directive or a
2.5 power of attorney.

2.6 Subd. 3. **Consent to electronic monitoring.** (a) Except as otherwise provided in
2.7 this subdivision, a resident must consent in writing on a notification and consent form
2.8 prescribed by the commissioner to the authorized electronic monitoring in the resident's
2.9 room. If the resident has not affirmatively objected to the authorized electronic monitoring
2.10 and the resident's physician determines that the resident lacks the ability to understand
2.11 and appreciate the nature and consequences of electronic monitoring, the resident's legal
2.12 representative may consent on behalf of the resident.

2.13 (b) Prior to a resident's legal representative consenting on behalf of a resident,
2.14 the resident must be asked by the resident's legal guardian in the presence of a facility
2.15 employee if the resident wants authorized electronic monitoring to be conducted. The
2.16 resident's legal representative must explain to the resident:

2.17 (1) the type of electronic monitoring device to be used;

2.18 (2) the standard conditions that may be placed on the electronic monitoring device's
2.19 use, including those listed in subdivision 4;

2.20 (3) with whom the recording may be shared according to subdivisions 9 and 10; and

2.21 (4) the resident's ability to decline all recording.

2.22 For the purposes of this subdivision, a resident affirmatively objects when the resident
2.23 orally, visually, or through the use of auxiliary aids or services declines authorized
2.24 electronic monitoring. The resident's response must be documented on the notification
2.25 and consent form.

2.26 (c) A resident or roommate may consent to authorized electronic monitoring with
2.27 any conditions of the resident's or roommate's choosing, including, but not limited to,
2.28 the list of standard conditions provided in subdivision 4. A resident or roommate may
2.29 request that the electronic monitoring device be turned off or the visual or audio recording
2.30 component of the electronic monitoring device be blocked at any time.

2.31 (d) Prior to the authorized electronic monitoring, a resident must obtain the written
2.32 consent of any other resident residing in the room on the notification and consent form
2.33 prescribed by the commissioner. Except as otherwise provided in this subdivision,
2.34 a roommate must consent in writing to the authorized electronic monitoring in the
2.35 resident's room. If the roommate has not affirmatively objected to the authorized
2.36 electronic monitoring in accordance with this subdivision and the roommate's physician

3.1 determines that the roommate lacks the ability to understand and appreciate the nature and
3.2 consequences of electronic monitoring, the roommate's legal representative may consent
3.3 on behalf of the roommate. Consent by a roommate under this paragraph authorizes the
3.4 resident's use of any recording obtained under this section, as provided in subdivisions
3.5 9 and 10.

3.6 (e) Any resident previously conducting authorized electronic monitoring must obtain
3.7 consent from any new roommate before the resident may resume authorized electronic
3.8 monitoring. If a new roommate does not consent to authorized electronic monitoring and
3.9 the resident conducting the authorized electronic monitoring does not remove or disable
3.10 the electronic monitoring device, the facility must remove the device.

3.11 (f) Consent may be withdrawn by the resident or roommate at any time, and the
3.12 withdrawal of consent shall be documented in the resident's clinical record. If a roommate
3.13 withdraws consent and the resident conducting the authorized electronic monitoring does
3.14 not remove or disable the electronic monitoring device, the facility must remove the
3.15 electronic monitoring device.

3.16 (g) If a resident who is residing in a shared room wants to conduct authorized
3.17 electronic monitoring and another resident living in or moving into the same shared room
3.18 refuses to consent to the use of an electronic monitoring device, the facility shall make
3.19 a reasonable attempt to accommodate the resident who wants to conduct authorized
3.20 electronic monitoring. A facility has met the requirement to make a reasonable attempt to
3.21 accommodate a resident who wants to conduct authorized electronic monitoring when
3.22 upon notification that a roommate has not consented to the use of an electronic monitoring
3.23 device in the resident's room, the facility offers to move either resident to another shared
3.24 room that is available at the time of the request. If a resident chooses to reside in a private
3.25 room in order to accommodate the use of an electronic monitoring device, the resident
3.26 must pay the private room rate. If a facility is unable to accommodate a resident due to
3.27 lack of space, the facility must reevaluate the request every two weeks until the request is
3.28 fulfilled. A facility is not required to provide a private room or a single-bed room to a
3.29 resident who is not a private-pay resident.

3.30 Subd. 4. **Notice to the facility.** (a) Authorized electronic monitoring may begin only
3.31 after a notification and consent form prescribed by the commissioner has been completed
3.32 and submitted to the facility and placed in the resident's and any roommate's clinical record.

3.33 (b) A resident must notify the facility in writing of the resident's intent to install
3.34 an electronic monitoring device by providing a completed notification and consent
3.35 form prescribed by the commissioner that must include, at a minimum, the following
3.36 information:

4.1 (1) the resident's signed consent to electronic monitoring or the signature of the
4.2 resident's legal representative, if applicable. If a person other than the resident signs the
4.3 consent form, the form must document the following:

4.4 (i) the date the resident was asked if the resident wants authorized electronic
4.5 monitoring to be conducted;

4.6 (ii) who was present when the resident was asked; and

4.7 (iii) an acknowledgment that the resident did not affirmatively object;

4.8 (2) the resident's roommate's signed consent or the signature of the roommate's
4.9 legal representative, if applicable. If a roommate's legal representative signs the consent
4.10 form, the form must document the following:

4.11 (i) the date the roommate was asked if the roommate wants authorized electronic
4.12 monitoring to be conducted;

4.13 (ii) who was present when the roommate was asked; and

4.14 (iii) an acknowledgment that the roommate did not affirmatively object;

4.15 (3) the type of electronic monitoring device to be used;

4.16 (4) any installation needs, such as mounting of a device to a wall or ceiling;

4.17 (5) the proposed date of installation for scheduling purposes;

4.18 (6) a copy of any contract for maintenance of the electronic monitoring device
4.19 by a commercial entity;

4.20 (7) a list of standard conditions or restrictions that the resident or a roommate may
4.21 elect to place on use of the electronic monitoring device, including, but not limited to:

4.22 (i) prohibiting audio recording;

4.23 (ii) prohibiting video recording;

4.24 (iii) prohibiting broadcasting of audio or video;

4.25 (iv) turning off the electronic monitoring device or blocking the visual recording
4.26 component of the electronic monitoring device for the duration of an exam or procedure
4.27 by a health care professional;

4.28 (v) turning off the electronic monitoring device or blocking the visual recording
4.29 component of the electronic monitoring device while dressing or bathing is performed; and

4.30 (vi) turning the electronic monitoring device off for the duration of a visit with
4.31 a spiritual advisor, ombudsman, attorney, financial planner, intimate partner, or other
4.32 visitor; and

4.33 (8) any other condition or restriction elected by the resident or roommate on the use
4.34 of an electronic monitoring device.

5.1 (c) A copy of the completed notification and consent form shall be place in the
5.2 resident's and any roommate's clinical record and a copy shall be provided to the resident
5.3 and the resident's roommate, if applicable.

5.4 (d) The commissioner shall prescribe the notification and consent form required
5.5 in this section no later than July 1, 2016, and shall make the form available on the
5.6 department's Web site.

5.7 (e) Beginning July 1, 2016, facilities must make the notification and consent form
5.8 available to the residents and inform residents of their option to conduct electronic
5.9 monitoring of their rooms.

5.10 (f) Any resident, legal representative of a resident, or other person conducting
5.11 electronic monitoring of a resident's room prior to enactment of this section must comply
5.12 with the requirements of this section by July 1, 2016.

5.13 Subd. 5. **Cost and installation.** (a) A resident choosing to conduct authorized
5.14 electronic monitoring must do so at the resident's own expense, including paying purchase,
5.15 installation, maintenance, and removal costs.

5.16 (b) If a resident chooses to install an electronic monitoring device that uses Internet
5.17 technology for visual or audio monitoring, that resident is responsible for contracting
5.18 with an Internet service provider.

5.19 (c) The facility shall make a reasonable attempt to accommodate the resident's
5.20 installation needs, including, but not limited to, allowing access to the facility's
5.21 telecommunications or equipment room. A facility has the burden of proving that a
5.22 requested accommodation is not reasonable.

5.23 (d) The electronic monitoring device must be placed in a conspicuously visible
5.24 location in the room.

5.25 (e) A facility may not charge the resident a fee for the cost of electricity used by
5.26 an electronic monitoring device.

5.27 (f) All electronic monitoring device installations and supporting services shall
5.28 comply with the requirements of the National Fire Protection Association (NFPA) 101
5.29 Life Safety Code (2000 edition).

5.30 Subd. 6. **Assistance program.** (a) Subject to appropriation, the department shall
5.31 establish a grant program for the purchase and installation of authorized electronic
5.32 monitoring devices to assist residents receiving medical assistance in accessing authorized
5.33 electronic monitoring.

5.34 (b) Applications for funds and disbursement of funds must be made in a manner
5.35 prescribed by the commissioner.

6.1 Subd. 7. **Notice to visitors.** (a) If a resident of a facility conducts authorized
6.2 electronic monitoring, a sign shall be clearly and conspicuously posted at all building
6.3 entrances accessible to visitors. The notice must be entitled "Electronic Monitoring" and
6.4 must state, in large, easy-to-read type, "The rooms of some residents may be monitored
6.5 electronically by or on behalf of the residents."

6.6 (b) A sign shall be clearly and conspicuously posted at the entrance to a resident's
6.7 room where authorized electronic monitoring is being conducted. The notice must state,
6.8 in large, easy-to-read type, "This room is electronically monitored."

6.9 (c) The facility is responsible for installing and maintaining the signage required
6.10 in this section.

6.11 Subd. 8. **Obstruction of electronic monitoring devices.** (a) A person or entity is
6.12 prohibited from knowingly hampering, obstructing, tampering with, or destroying an
6.13 electronic monitoring device installed in a resident's room without the permission of the
6.14 resident or the resident's legal representative.

6.15 (b) A person or entity is prohibited from knowingly hampering, obstructing,
6.16 tampering with, or destroying a video or audio recording obtained in accordance with this
6.17 section without the permission of the resident or the resident's legal representative.

6.18 (c) A person or entity that violates the prohibitions of this subdivision is guilty of a
6.19 misdemeanor. A person or entity that violates the prohibitions of this subdivision during
6.20 the commission of another misdemeanor offense or to conceal a misdemeanor offense, is
6.21 guilty of a gross misdemeanor. A person or entity that violates the prohibitions of this
6.22 subdivision during the commission of or to conceal a felony offense, is guilty of a felony.

6.23 (d) It is not a violation of the prohibitions of this subdivision if a person or facility
6.24 turns off the electronic monitoring device or blocks the visual recording component of
6.25 the electronic monitoring device at the direction of the resident or the resident's legal
6.26 representative, or if consent has been withdrawn.

6.27 Subd. 9. **Dissemination of recordings.** (a) A facility may not access any video or
6.28 audio recording created through authorized electronic monitoring without the written
6.29 consent of the resident or the resident's legal representative.

6.30 (b) Except as required under other law, a recording or copy of a recording made as
6.31 provided in this section may only be disseminated for the purpose of addressing concerns
6.32 relating to the health, safety, or welfare of a resident or residents.

6.33 (c) The resident or the resident's legal representative must provide a copy of
6.34 any video or audio recording to parties involved in a civil, criminal, or administrative
6.35 proceeding, upon a party's request, if the video or audio recording was made during the
6.36 time period that the conduct at issue in the proceeding allegedly occurred.

7.1 Subd. 10. **Admissibility of evidence.** Subject to applicable rules of evidence and
7.2 procedure, any video or audio recording created through authorized electronic monitoring
7.3 in accordance with this section may be admitted into evidence in a civil, criminal,
7.4 or administrative proceeding if the contents of the recording have not been edited or
7.5 artificially enhanced and the video recording includes the date and time the events occurred.

7.6 Subd. 11. **Report.** Each facility shall report to the commissioner, in a manner
7.7 prescribed by the commissioner, the number of authorized electronic monitoring
7.8 notification and consent forms received annually. The commissioner shall report the total
7.9 number of authorized electronic monitoring notification and consent forms received by
7.10 facilities to the Office of the Attorney General annually.

7.11 Subd. 12. **Liability.** (a) A facility is not civilly or criminally liable for the
7.12 inadvertent or intentional disclosure of a recording by a resident or a resident's legal
7.13 representative for any purpose not authorized by this section.

7.14 (b) A facility is not civilly or criminally liable for a violation of a resident's right to
7.15 privacy arising out of any electronic monitoring conducted as provided in this section.

7.16 Subd. 13. **Resident protections.** A facility shall not:

7.17 (1) refuse to admit a potential resident or remove a resident because the facility
7.18 disagrees with the potential resident's or the resident's decisions regarding electronic
7.19 monitoring;

7.20 (2) intentionally retaliate or discriminate against any resident for consenting or
7.21 refusing to consent to electronic monitoring under this section; or

7.22 (3) prevent the installation or use of an electronic monitoring device by a resident
7.23 who has provided the facility with notice and consent as required under this section.

7.24 **EFFECTIVE DATE.** This section is effective the day following final enactment.