

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Senators Runestad, Lucido, Johnson and Horn

ENROLLED SENATE BILL No. 77

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending sections 20199, 21702, and 21703 (MCL 333.20199, 333.21702, and 333.21703), section 21702 as amended by 1994 PA 73 and section 21703 as amended by 2015 PA 155, and by adding sections 21788, 21788a, 21788b, 21788c, 21788d, 21788e, 21788f, 21788g, and 21788i.

The People of the State of Michigan enact:

Sec. 20199. (1) Except as otherwise provided in this article, a person who violates this article or a rule promulgated or an order issued under this article is guilty of a misdemeanor, punishable by fine of not more than \$1,000.00 for each day the violation continues or, for a violation of sections 20551 to 20554, a fine of not more than \$1,000.00 for each occurrence.

(2) A person who violates sections 20181 to 20184 is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$2,000.00, or both.

Sec. 21702. (1) “Discharge” means the voluntary or involuntary movement of a patient out of a nursing home regardless of the individual’s destination or reason for the movement.

(2) “Electronic monitoring” means the placement and use of an electronic monitoring device in a resident’s room pursuant to this part.

(3) "Electronic monitoring device" means a camera or other device that captures, records, or broadcasts audio or video, or both, or logs events or occurrences in accordance with the health insurance portability and accountability act of 1996, Public Law 104-191, and is installed in a resident's room to monitor activities occurring in the room. Electronic monitoring device includes, but is not limited to, a monitoring system, video surveillance camera, web-based camera, or video phone that is installed in the room of a resident. An electronic monitoring device may be an interactive or recording device.

(4) "Full-time" means being usually present in the nursing home or conducting or participating in activities directly related to the nursing home during the normal 40-hour business week.

(5) "Involuntary transfer" means a transfer not agreed to in writing by the patient or, in the case of a plenary guardianship, by the patient's legal guardian.

(6) "Medicaid" means the program for medical assistance established under title XIX of the social security act, 42 USC 1396 to 1396w-5, and administered by the department of health and human services under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(7) "Medical reasons" means a medical justification for either of the following:

(a) The transfer or discharge of a patient in accord with the written orders of the attending physician that is written into the patient's clinical record by the physician in the progress notes.

(b) The transfer or discharge of a patient who is a Medicaid recipient due to a change in level of care required by the patient and the fact that the nursing home or nursing care facility is not certified to provide the needed level of care.

(8) "Medicare" means that term as defined in section 2701.

(9) "Modification of a license" means an action by the department to alter the number of beds, the levels of care, the portions of the physical plant that may be operated or maintained by a licensee in a particular nursing home, or to restrict the nursing home from engaging in activity that violates this article or a rule promulgated under this article.

(10) "Negative case action" means an action taken by the department of social services to deny an application for medical assistance, cancel medical assistance, or reduce medical assistance coverage.

(11) "Nonpayment" means:

(a) Failure to collect from the patient or any other source the full amount of the facility charges to a non-Medicaid patient based on a written contract signed on or after that patient's admission to the facility.

(b) Failure to collect a Medicaid patient's stipulated contribution toward his or her care.

(12) "Notification and consent form" means the form required to be prescribed by the department under section 21788b.

(13) "Private pay rate" means the amount charged by a nursing home for the care of a patient who is not entitled to state or federal benefits for that patient's nursing home care.

Sec. 21703. (1) "Patient" means a resident.

(2) "Patient's representative", "resident's representative", or "roommate's representative" means a person, other than the licensee or an employee or person having a direct or indirect ownership interest in the nursing home, designated in writing by a resident or a resident's guardian for a specific, limited purpose or for general purposes, or, if a written designation of a representative is not made, the guardian of the resident.

(3) "Relocation" means the movement of a resident from 1 bed to another or from 1 room to another within the same nursing home or within a certified distinct part of a nursing home.

(4) "Resident" means an individual who receives care or services at a nursing home.

(5) "Transfer" means the movement of a resident from 1 nursing home to another nursing home or from 1 certified distinct part of a nursing home to another certified distinct part of the same nursing home.

(6) "Welfare" means, with reference to a resident, the physical, emotional, or social well-being of a resident in a nursing home, including a resident awaiting transfer or discharge, as documented in the resident's clinical record by a licensed or certified health care professional.

Sec. 21788. (1) Subject to the requirements of this part, a nursing home that receives from a resident or resident's representative a written request for electronic monitoring on a notification and consent form shall permit the resident or the resident's representative to monitor the resident in the resident's room through the use of an electronic monitoring device.

(2) This part does not allow the use of an electronic monitoring device to capture, record, or broadcast audio, to take still photographs, or for the nonconsensual interception of private communications.

(3) This part does not alter, abrogate, or limit a resident's right to otherwise use a device to record audio or video, or both, in the resident's room pursuant to the law.

Sec. 21788a. (1) Except as otherwise provided in this section, a resident must consent to electronic monitoring in the resident's room in writing on a notification and consent form.

(2) The resident's representative may consent to electronic monitoring on behalf of the resident if all of the following requirements are met:

(a) An individual licensed or otherwise authorized to engage in a health profession under part 170 or 175 determines that the resident currently lacks the ability to understand and appreciate the nature and consequences of electronic monitoring.

(b) The resident's representative explains all of the following to the resident:

(i) The type of electronic monitoring to be used.

(ii) The standard conditions or restrictions that may be placed on the use of the electronic monitoring device.

(iii) The persons with whom the recording may be shared.

(iv) The resident's ability to decline all recording.

(c) After explaining the items required in subdivision (b), the resident's representative asks the resident if the resident wants electronic monitoring to be conducted. The resident's response must be documented on the notification and consent form.

(d) The resident does not affirmatively object to electronic monitoring when asked under subdivision (c). For purposes of this subdivision, a resident affirmatively objects if the resident orally, visually, or through the use of auxiliary aids or services declines electronic monitoring.

(3) If a resident shares a room with another resident, before conducting electronic monitoring, the consent of the resident's roommate or, subject to subsection (2), the roommate's representative must be obtained in writing on the notification and consent form.

(4) Consent under this section may include any conditions of the individual's choosing, including, but not limited to, the list of standard conditions or restrictions described in section 21788b. Regardless of whether consent is subject to any conditions, the electronic monitoring device may be turned off, the visual recording component of the electronic device may be blocked, or a curtain may be used to screen an individual from the visual recording component of the electronic monitoring device during care according to a plan of care or at any time at the request of the resident or roommate, or the resident's or roommate's representative if subsection (2) applies. The nursing home shall comply with a plan of care or a request described in this subsection. The nursing home shall ensure that its staff are familiar with the requirements of this subsection and follow a plan of care or request described in this subsection, including by assisting a resident or resident's roommate, as necessary, in accordance with the plan of care or request.

(5) The resident or roommate, or the resident's or roommate's representative if subsection (2) applies, may withdraw his or her consent at any time by giving written notice to the nursing home and any other resident who resides in the room. If consent is withdrawn under this subsection or if a new roommate moves into the shared room and consent cannot be obtained from the new roommate or the roommate's representative, 1 of the following must occur:

(a) Unless subdivision (b) applies, the resident or the resident's representative shall turn off the electronic monitoring device within 24 hours and remove the electronic monitoring device from the room within 7 days. If the resident or the resident's representative does not turn off or remove the electronic monitoring device within the timeframe required under this subdivision, the nursing home may turn off or remove the electronic monitoring device.

(b) If the nursing home provides electronic monitoring services to the resident under section 21788c(4), the nursing home shall turn off the electronic monitoring device within 24 hours and remove the electronic monitoring device from the room within 7 days.

(6) A nursing home shall make a reasonable effort to allow a resident to change rooms if consent cannot be obtained from or is withdrawn by a roommate or the roommate's representative. If a resident chooses to reside in a private room in order to accommodate the use of an electronic monitoring device, the resident must pay the private room rate. If a nursing home is unable to accommodate a resident's request to change rooms, the nursing home shall reevaluate the request every 2 weeks until the request is fulfilled.

Sec. 21788b. (1) A resident or resident's representative who wishes to install an electronic monitoring device shall make the request to the nursing home in writing on a notification and consent form prescribed by the department.

(2) The notification and consent form must include, at a minimum, all of the following information:

(a) The resident's signed consent to electronic monitoring or, if section 21788a(2) applies, the signed consent of the resident's representative.

(b) If the resident shares a room with another resident, the roommate's signed consent to electronic monitoring or, if section 21788a(2) applies, the signed consent of the roommate's representative.

(c) The type of electronic monitoring device to be used or, if the resident or resident's representative plans to use electronic monitoring services provided by the nursing home under section 21788c(4), a statement to that effect.

(d) The proposed date of installation for scheduling purposes.

(e) A copy of any contract for maintenance of the electronic monitoring device by another person.

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

(i) Prohibiting broadcasting of video.

(ii) Turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device for the duration of an exam or procedure by a health care professional.

(iii) Turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device while dressing or bathing is performed.

(iv) Turning off the electronic monitoring device for the duration of a visit with a spiritual advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor.

(g) Any other condition or restriction elected by the resident or roommate on the use of the electronic monitoring device.

(h) An explanation of the right to report suspected abuse or neglect based on a video recording created by an electronic monitoring device to the nursing home, the long-term care ombudsman program, or the department. The explanation under this subdivision must include telephone numbers for the long-term care ombudsman program and the department. As used in this subdivision, "long-term care ombudsman program" means the long-term care ombudsman program established pursuant to section 6(aa) of the older Michiganians act, 1981 PA 180, MCL 400.586.

(i) A statement that an individual is advised to report suspected abuse or neglect after viewing the recording on which the suspected abuse or neglect is based.

(j) An acknowledgement of the explanation of rights described in subdivision (h) and the statement described in subdivision (i) signed by the resident or, if section 21788a(2) applies, the resident's representative.

(3) The nursing home shall place a copy of the completed notification and consent form in the resident's and any roommate's clinical record and provide a copy of the notification and consent form to the resident and any roommate.

(4) The department shall prescribe the notification and consent form not later than 60 days after the effective date of the amendatory act that added this section.

(5) If an electronic monitoring device is installed or used without a completed notification and consent form, a video or audio recording created by the electronic monitoring device is inadmissible as evidence in a civil action against the nursing home.

Sec. 21788c. (1) Except as otherwise provided in subsection (3)(b) or (4), if a resident or resident's representative chooses to conduct electronic monitoring, the resident or resident's representative shall pay for all costs of the electronic monitoring, including, but not limited to, all of the following:

(a) The purchase cost of the electronic monitoring device.

(b) Installation costs.

(c) Maintenance costs.

(d) Activation costs.

(e) Removal costs, including, but not limited to, deactivation costs and cancellation fees.

(2) If a resident or resident's representative chooses to install an electronic monitoring device that uses internet technology for visual monitoring, the resident or resident's representative is responsible for contracting with an internet service provider or paying any additional costs incurred by the nursing home for use of the nursing home's internet provider to conduct the electronic monitoring.

(3) A nursing home shall make reasonable accommodation for electronic monitoring, including, but not limited to, by providing both of the following:

(a) A reasonably secure place to locate the electronic monitoring device. An electronic monitoring device must be placed in a conspicuously visible location in the room.

(b) Access to a power source for the electronic monitoring device. A nursing home shall not charge the resident a fee for the cost of electricity used by an electronic monitoring device.

(4) Subject to the requirements of this part, a nursing home may provide electronic monitoring services to a resident or resident's representative, including, but not limited to, providing electronic monitoring on a subscription basis. If a resident or resident's representative chooses to receive electronic monitoring services from a nursing home, the resident or resident's representative shall pay the amount charged by the nursing home for the services as reflected in a written agreement with the nursing home. In providing electronic monitoring services under this subsection, a nursing home may contract with a third-party video monitoring company to provide video monitoring services if both of the following requirements are met:

(a) The third-party video monitoring company provides video monitoring through live-streaming, nonrecording video systems that include video privacy features and event log capabilities.

(b) The live-stream video is monitored 24 hours a day, 7 days a week for resident and staff safety by 1 or more trained staff members.

(5) A nursing home that provides electronic monitoring services under subsection (4) shall not require a resident or resident's representative to use those services to receive electronic monitoring.

(6) All electronic monitoring device installations and supporting services must comply with the requirements of the National Fire Protection Association (NFPA) 101 Life Safety Code (2000 edition).

Sec. 21788d. (1) If a resident of a nursing home is electronically monitored, a sign must be clearly and conspicuously posted at all building entrances accessible to visitors. The sign must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents."

(2) In addition to the language required under subsection (1), the signage required under this section must include a warning to visitors that they may be electronically monitored, that recordings made by an electronic monitoring device may be disclosed, and that they should not have an expectation of privacy.

(3) The nursing home is responsible for installing and maintaining the signage required under this section.

Sec. 21788e. (1) A nursing home shall not refuse to admit an individual as a resident of or remove a resident from the nursing home because of a request to install an electronic monitoring device.

(2) A nursing home shall not require an applicant to agree to forego electronic monitoring as a condition of admission.

(3) A nursing home shall not otherwise retaliate against a resident because of a request to install an electronic monitoring device.

Sec. 21788f. (1) An electronic monitoring device must include a time and date stamp on all video recorded.

(2) Subject to the Michigan rules of evidence and except as otherwise provided in this part, a video recording created by an electronic monitoring device under this part is admissible in a civil, criminal, or administrative proceeding in this state.

(3) A video recording created by an electronic monitoring device under this part must not be used as evidence in a civil, criminal, or administrative proceeding in this state that is initiated more than 8 years after the date of the video recording.

Sec. 21788g. (1) A video recording created by an electronic monitoring device under this part belongs to the resident.

(2) A nursing home is not civilly or criminally liable for the inadvertent or intentional disclosure of a recording by a resident or a resident's representative for a purpose not authorized by law.

(3) If suspected abuse or neglect of a resident based on a video or audio recording created by an electronic monitoring device is reported to the nursing home and the nursing home requests a copy of the relevant recording, the individual in possession of the recording shall provide a copy to the nursing home. The nursing home shall pay all reasonable costs incurred by the individual in providing the copy.

Sec. 21788i. (1) The department may promulgate rules in consultation with the long-term care ombudsman program to establish all of the following:

(a) The procedure by which a resident or a resident's representative must submit a notification and consent form to a nursing home as required under section 21788b to begin electronic monitoring.

(b) Requirements for obtaining and documenting a determination by an individual licensed in a health profession under part 170 or 175 that a resident currently lacks the ability to understand and appreciate the nature and consequences of electronic monitoring as required for the application of section 21788a(2).

(c) The process a resident or resident's representative must follow to obtain consent to electronic monitoring from the resident's roommate or the roommate's representative as required under section 21788a(3).

(d) Requirements for retention and distribution of the completed notification and consent form under section 21788b(3).

(e) Standards for reasonable accommodation by the nursing home to allow for the installation, maintenance, and use of an electronic monitoring device as required under section 21788c(3).

(f) Requirements and procedures for turning off an electronic monitoring device or audio recording, blocking the visual recording component of an electronic monitoring device, or using a curtain to screen an individual from the visual recording component of an electronic monitoring device pursuant to a condition on consent, request, or plan of care under section 21788a(4).

(g) The procedure a resident, resident's representative, roommate, or roommate's representative must follow to withdraw his or her consent to electronic monitoring under section 21788a(5).

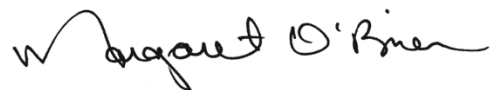
(h) Requirements and procedures for turning off an electronic monitoring device and removing an electronic monitoring device when consent is withdrawn or cannot be obtained from a new roommate or the roommate's representative under section 21788a(5).

(i) Requirements and procedures a nursing home must follow in installing and maintaining the signage required under section 21788d.

(2) In promulgating rules under this section, the department shall consider similar rules of other states.

(3) As used in this section, "long-term care ombudsman program" means the long-term care ombudsman program established pursuant to section 6(aa) of the older Michiganians act, 1981 PA 180, MCL 400.586.

Enacting section 1. This amendatory act takes effect June 1, 2021.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor