

2018 Regular Session

HOUSE BILL NO. 281

BY REPRESENTATIVES TALBOT, AMEDEE, ANDERS, BACALA, BAGLEY, BAGNERIS, BARRAS, BERTHELOT, BILLIOT, BOUIE, BRASS, CHAD BROWN, TERRY BROWN, CARMODY, CARPENTER, GARY CARTER, ROBBY CARTER, STEVE CARTER, CHANEY, COUSSAN, COX, DAVIS, EDMONDS, FOIL, GAROFALO, GISCLAIR, GLOVER, GUINN, HALL, JIMMY HARRIS, LANCE HARRIS, HILFERTY, HODGES, HOLLIS, HORTON, HUNTER, IVEY, JACKSON, JEFFERSON, JONES, NANCY LANDRY, LYONS, MIGUEZ, GREGORY MILLER, MORENO, JAY MORRIS, JIM MORRIS, NORTON, PIERRE, PYLANT, REYNOLDS, SCHEXNAYDER, SHADOIN, SMITH, STAGNI, STOKES, THIBAUT, THOMAS, WHITE, WRIGHT, AND ZERINGUE

1 AN ACT

2 To enact Part VII of Subchapter B of Chapter 5-D of Title 40 of the Louisiana Revised  
3 Statutes of 1950, to be comprised of R.S. 40:1193.1 through 1193.11, and R.S.  
4 40:2010.8(A)(24), relative to rights of nursing home residents; to authorize a nursing  
5 home resident or a legal representative to have a monitoring device installed in the  
6 room of the resident; to establish conditions for the installation and use of monitoring  
7 devices in nursing homes; to provide for consent relative to the installation and use  
8 of such devices; to provide limitations on the use of such devices; to require nursing  
9 homes to make certain accommodations relative to such devices; to limit liability in  
10 cases in which a monitoring device is installed without proper authorization or used  
11 improperly; to prohibit certain conduct by nursing homes; to establish penalties; to  
12 provide for administrative rulemaking; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Part VII of Subchapter B of Chapter 5-D of Title 40 of the Louisiana  
15 Revised Statutes of 1950, comprised of R.S. 40:1193.1 through 1193.11, and R.S.  
16 40:2010.8(A)(24) are hereby enacted to read as follows:

17 PART VII. MONITORING OF NURSING HOME CARE

18 §1193.1. Short title

19 This Part shall be known and may be cited as the "Nursing Home Virtual  
20 Visitation Act".

1           §1193.2. Definitions2                   As used in this Part, the following terms have the meaning ascribed in this3           Section:4                   (1) "Department" means the Louisiana Department of Health.5                   (2)(a) "Monitoring device" means a surveillance instrument that transmits  
6                   and records activity and is not connected to the facility's computer network.7                   (b) The term "monitoring device" shall not include a camera that records still  
8                   images exclusively.9                   (3) "Nursing home" means a nursing facility or nursing home as defined in  
10                  R.S. 40:2009.2.11                  (4) "Ombudsman" means the administrator of the office of the state  
12                  long-term care ombudsman established within the office of elderly affairs by the  
13                  provisions of R.S. 40:2010.2.14                  (5) "Resident" means a person who is a resident of a nursing home.15                  (6) "Legal representative" means a legal guardian or a legally appointed  
16                  substitute decision-maker who is authorized to act on behalf of a nursing home  
17                  resident.18           §1193.3. Monitoring device; authorization and use19                   A. A resident who has the capacity to consent as determined by emergency  
20                   rules promulgated by the department pursuant to this Part or his legal representative  
21                   may authorize the installation and use of a monitoring device in a nursing home if  
22                   all of the following conditions are met:23                   (1) The resident or his legal representative gives notice of the installation to  
24                   the nursing home.25                   (2) If the monitoring device records activity visually, the recordings made  
26                   by the device include a record of the date and time.27                   (3) The resident pays for the monitoring device and all installation,  
28                   operation, maintenance, and removal costs associated with the device.29                   (4) Each resident occupying the same room who has the capacity to consent  
30                   as determined by emergency rules promulgated by the department pursuant to this

1 Part, or that resident's legal representative, gives written consent for the installation  
2 of the monitoring device.

3 B. If the structure of the resident's room must be altered in order to  
4 accommodate a monitoring device, then the renovation to the room may be done  
5 only by a licensed contractor, subject to approval by the facility.

6 C. Any monitoring device installed in accordance with the provisions of this  
7 Chapter shall be in compliance with the National Fire Protection Association Life  
8 Safety regulations.

9 §1193.4. Monitoring device option; installation; consent of residents in shared  
10 rooms; accommodation by nursing home

11 A.(1) At the time of a person's admission to a nursing home, the nursing  
12 home shall notify the person of his right to have a monitoring device installed in his  
13 room, and shall offer the person the option to have a monitoring device. The resident  
14 or his roommate may exercise the right to install or remove a monitoring device at  
15 any time during which he resides in the nursing home. The nursing home shall keep  
16 a record of the person's authorization or choice not to have a monitoring device.

17 (2) The nursing home shall make the record provided for in Paragraph (1)  
18 of this Subsection accessible to the ombudsman.

19 B.(1) If a resident who is residing in a shared room wishes to have a  
20 monitoring device installed in the room and another resident living in or moving into  
21 the same shared room refuses to consent to the use of the monitoring device, then the  
22 nursing home shall make a reasonable attempt to accommodate the resident who  
23 wishes to have the monitoring device installed. A nursing home shall be deemed to  
24 have met this accommodation requirement when, upon notification that a roommate  
25 has not consented to the use of an electronic monitoring device in his room, the  
26 facility offers to move either resident to another shared room that is available at the  
27 time of the request.

28 (2) If a resident chooses to reside in a private room in order to accommodate  
29 the use of an electronic monitoring device, the resident shall pay the private room  
30 rate. If a nursing home is unable to accommodate a resident due to lack of space, the

1           nursing home shall reevaluate the request at least once every two weeks until the  
2           request is fulfilled.

3           C. After authorization, consent, and notice in accordance with this Part, a  
4           resident or his legal representative may install, operate, and maintain, at the expense  
5           of the resident, a monitoring device in the room of the resident.

6           D. The nursing home shall cooperate to accommodate the installation of the  
7           monitoring device unless doing so would place undue burden on the nursing home.

8           E. The monitoring device shall be in a fixed, stationary position and shall  
9           monitor only the resident who consents either personally or through his legal  
10          representative to be monitored.

11          §1193.5. Consent; waiver

12          A. Consent to the authorization for installation and use of a monitoring  
13          device may be given only by the resident or his legal representative.

14          B. Consent to the authorization for installation and use of a monitoring  
15          device shall include a release of liability for the nursing home for a violation of the  
16          resident's right to privacy insofar as the use of the monitoring device is concerned.

17          C. A resident or his legal representative may reverse a choice to have or not  
18          have a monitoring device installed and used at any time after notice of such reversal  
19          has been made to the nursing home, and to the ombudsman, upon a form prescribed  
20          by the department.

21          §1193.6. Authorization form; content

22          The form for the authorization of installation and use of a monitoring device  
23          shall provide for all of the following:

24          (1) Consent of the resident or his legal representative authorizing the  
25          installation and use of the monitoring device.

26          (2) Notice to the nursing home of the resident's installation of a monitoring  
27          device and specifics as to the type, function, and use of the device.

28          (3) Consent of any other resident sharing the same room, or that resident's  
29          legal representative, to the installation and use of a monitoring device.

1                   (4) Notice of release from liability for violation of privacy through the use  
2                   of the monitoring device.

3                   (5) Waiver of the resident's right to privacy in connection with the use of the  
4                   monitoring device.

5                   §1193.7. Immunity; unauthorized use

6                   A. In any civil action against a nursing home, material obtained through the  
7                   use of a monitoring device shall not be used if the device was installed or used  
8                   without the knowledge of the nursing home, or installed or used without the  
9                   prescribed form.

10                  B. Compliance with the provisions of this Part shall be a complete defense  
11                  to any civil or criminal action brought against the resident, legal representative, or  
12                  nursing home for the use or presence of a monitoring device.

13                  §1193.8. Prohibited acts; civil and criminal penalties

14                  A.(1) No nursing home shall deny a person or resident admission to or  
15                  discharge from a nursing home, or otherwise discriminate or retaliate against a  
16                  person or resident, because the person or resident chooses to authorize installation  
17                  and use of a monitoring device.

18                  (2) Any person who knowingly or willfully violates the provisions of  
19                  Paragraph (1) of this Subsection shall be subject to appropriate action by the  
20                  department as set forth in rules promulgated pursuant to this Part.

21                  B.(1) Except as provided in Paragraph (2) of this Subsection, no person shall  
22                  intentionally hamper, obstruct, tamper with, or destroy a monitoring device or a  
23                  recording made by a monitoring device installed in a nursing home pursuant to this  
24                  Part.

25                  (2) The prohibition and penalties provided in this Subsection shall not apply  
26                  to the resident who owns the monitoring device or recording, or to his legal  
27                  representative.

28                  §1193.9. Public notice; signage of electronic monitoring device

29                  A. If a resident of a nursing facility conducts electronic monitoring, a sign  
30                  shall be clearly and conspicuously posted at the main entrance of the nursing facility

1 building to alert and inform visitors. The sign shall be in a large, clearly legible type  
2 and font and bear the words "Electronic Monitoring" and shall further state in  
3 equally legible type and font "The rooms of some residents may be equipped with  
4 electronic monitoring devices installed by or on behalf of the resident."

5 B. A sign shall be clearly and conspicuously posted at the entrance of a  
6 resident's room where authorized electronic monitoring is being conducted. The sign  
7 shall be in large, clearly legible type and font and bear the words "This room is  
8 electronically monitored."

9 C. The nursing facility shall be responsible for reasonable costs of installation  
10 and maintenance of the sign required by Subsection A of this Section. The resident  
11 or his legal representative shall be responsible for installing and maintaining the sign  
12 required pursuant to Subsection B of this Section, which shall also be in accordance  
13 with the written policy of the nursing facility.

14 §1193.10. Reporting abuse and neglect

15 Any person who views an incident which a reasonable man would consider  
16 abuse or neglect after viewing a recording made in a nursing facility shall report the  
17 incident to the facility as soon as is practicable after the viewing. The facility shall  
18 be provided with a copy of the recording in which the suspected incident of abuse  
19 or neglect occurred. If the recording must be transferred to a different format to be  
20 viewed, the transfer shall be done at the expense of the facility by a qualified  
21 professional who can certify that the contents of the recording were not altered.

22 §1193.11. Administrative rulemaking

23 The department shall adopt all rules in accordance with the Administrative  
24 Procedure Act as are necessary for implementation of the provisions of this Part.

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26 §2010.8. Residents' bill of rights

27 A. All nursing homes shall adopt and make public a statement of the rights  
28 and responsibilities of the residents residing therein and shall treat such residents in

