

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 281

2018 Regular Session

Talbot

NURSING HOMES: Authorizes nursing home residents or their qualified surrogates to have monitoring devices installed in those residents' rooms

Synopsis of Senate Amendments

1. Deletes the defined term "surrogate" from proposed law and replaces it with the defined term "legal representative" throughout proposed law. Retains the definition for "surrogate" provided in proposed law and applies the definition to "legal representative".
2. Revises the definition of "monitoring device" to provide that the term means an instrument that transmits and records activity and is not connected to a nursing facility's computer network.
3. Stipulates that the only nursing home residents who may authorize the installation and use of a monitoring device are those who have the capacity to consent as determined by emergency rules promulgated by the La. Department of Health (hereafter, "LDH").
4. Requires that each resident who has the capacity to consent, as determined by emergency rules promulgated by LDH, and occupies the same room as a resident who wishes to install a monitoring device must give written consent for the installation of the monitoring device.
5. Adds costs of operation and removal of a monitoring device as types of costs for which a nursing home resident shall be responsible pursuant to proposed law.
6. Deletes proposed law providing that the resident may establish and the nursing home shall accommodate limits on the use of a monitoring device, including limits on the time of operation of the device and its direction, focus, or volume.
7. Requires that if the structure of the resident's room must be altered in order to accommodate a monitoring device, then the renovation to the room may be done only by a licensed contractor, subject to approval by the facility.
8. Requires that any monitoring device installed pursuant to proposed law shall be in compliance with the National Fire Protection Association Life Safety regulations.
9. Provides that a resident or his roommate may exercise the right to install or remove a monitoring device at any time during which he resides in the nursing home.
10. Requires that the monitoring device be in a fixed, stationary position and monitor only the resident who consents either personally or through his legal representative to be monitored.
11. Deletes proposed law providing that the penalty for discrimination or retaliation by a nursing home against a person who chooses to have a monitoring device is a misdemeanor punishable by a fine of not less than \$1,000 nor more than \$2,500. Provides instead that such action subjects the nursing home to appropriate action by LDH as set forth in administrative rules of the department.

12. Deletes proposed law providing that any person who knowingly or willfully violates the prohibition provided in proposed law on obstructing, tampering with, or destroying a monitoring device, or a recording made by a monitoring device, shall be guilty of a felony and, upon conviction, punished by a fine of not more than \$5,000 and imprisoned with or without hard labor for not more than six months.
13. Provides that if a resident of a nursing facility conducts electronic monitoring, a sign shall be clearly and conspicuously posted at the main entrance of the nursing facility building to alert and inform visitors. Provides specifications for the sign's text, type, and font. Requires that the nursing facility be responsible for reasonable costs of installation and maintenance of the sign.
14. Requires that a sign be clearly and conspicuously posted at the entrance of a resident's room where authorized electronic monitoring is being conducted. Provides specifications for the sign's text, type, and font. Requires that the resident or his legal representative be responsible for reasonable costs of installation and maintenance of the sign.
15. Provides that any person who views an incident which a reasonable man would consider abuse or neglect after viewing a recording made in a nursing facility shall report the incident to the facility as soon as is practicable after the viewing. Requires that the facility be provided with a copy of the recording. Provides that if the recording must be transferred to a different format to be viewed, the transfer shall be done at the expense of the facility by a qualified professional who can certify that the contents of the recording were not altered.
16. Deletes proposed law requiring the office of the state long-term care ombudsman to promulgate administrative rules jointly with LDH to implement proposed law. Retains proposed law requiring LDH to promulgate administrative rules to implement proposed law.
17. Makes technical changes.

Digest of Bill as Finally Passed by Senate

Proposed law provides the following definitions:

- (1) "Monitoring device" means a surveillance instrument that transmits and records activity and is not connected to a nursing facility's computer network.
- (1) "Legal representative" means a legal guardian or a legally appointed substitute decision-maker who is authorized to act on behalf of a nursing home resident.

Proposed law provides that a nursing home resident who has the capacity to consent as determined by emergency rules promulgated by the La. Department of Health (LDH) or a legal representative may authorize the installation and use of a monitoring device in a nursing home if all of the following conditions are met:

- (1) The resident or legal representative gives notice of the installation to the nursing home.
- (2) If the monitoring device records activity visually, the recordings made by the device include a record of the date and time.
- (3) The resident pays for the monitoring device and all installation, operation,

maintenance, and removal costs associated with the device.

- (4) Each resident occupying the same room who has the capacity to consent as determined by emergency rules promulgated by LDH, or that resident's legal representative, gives written consent for the installation of the monitoring device.

Proposed law requires that if the structure of the resident's room must be altered in order to accommodate a monitoring device, then the renovation to the room may be done only by a licensed contractor, subject to approval by the facility. Requires further that any monitoring device installed pursuant to proposed law shall be in compliance with the National Fire Protection Association Life Safety regulations.

Proposed law requires nursing homes, at the time of a person's admission, to notify the person of his right to have a monitoring device installed in his room, and to offer the person the option to have a monitoring device. Provides that the person or his roommate may exercise the right to install or remove a monitoring device at any time during which he resides in the nursing home, and that the nursing home shall keep a record of the person's authorization or choice not to have a monitoring device.

Proposed law provides that if a resident who is residing in a shared room wishes to have a monitoring device installed in the room and another resident living in or moving into the same shared room refuses to consent to the use of the monitoring device, then the nursing home shall make a reasonable attempt to accommodate the resident who wishes to have the monitoring device installed. Stipulates that a nursing home shall be deemed to have met this accommodation requirement when, upon notification that a roommate has not consented to the use of an electronic monitoring device in his room, the facility offers to move either resident to another shared room that is available at the time of the request.

Proposed law provides that if a resident chooses to reside in a private room in order to accommodate the use of an electronic monitoring device, the resident shall pay the private room rate. Provides further that if a nursing home is unable to accommodate a resident due to lack of space, the nursing home shall reevaluate the request at least once every two weeks until the request is fulfilled.

Proposed law provides that after authorization, consent, and notice in accordance with proposed law, a nursing home resident or his legal representative may install, operate, and maintain, at the expense of the resident, a monitoring device in the room of the resident. Requires a nursing home to cooperate to accommodate the installation of the monitoring device unless doing so would place undue burden on the nursing home.

Proposed law requires that the monitoring device be in a fixed, stationary position and monitor only the resident who consents either personally or through his legal representative to be monitored.

Proposed law stipulates that consent to the authorization for installation and use of a monitoring device may be given only by the nursing home resident or a legal representative, and that such consent shall include a release of liability for the nursing home for a violation of the resident's right to privacy insofar as the use of the monitoring device is concerned.

Proposed law authorizes nursing home residents or their legal representatives to reverse a choice to have or not have a monitoring device installed and used at any time after notice of such reversal has been made to the nursing home, and to the state long-term care ombudsman.

Proposed law provides for a form for authorization of installation and use of a monitoring device, and requires that the form provide for all of the following:

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

- (2) Notice to the nursing home of the resident's installation of a monitoring device and specifics as to the type, function, and use of the device.
- (3) Consent of any other resident sharing the same room, or that resident's legal representative, to the installation and use of a monitoring device.
- (4) Notice of release from liability for violation of privacy through the use of the monitoring device.
- (5) Waiver of the resident's right to privacy in connection with the use of the monitoring device.

Proposed law provides that in any civil action against a nursing home, material obtained through the use of a monitoring device shall not be used if the device was installed or used without the knowledge of the nursing home, or installed or used without the prescribed form. Stipulates that compliance with the provisions of proposed law shall be a complete defense to any civil or criminal action brought against the resident, legal representative, or nursing home for the use or presence of a monitoring device.

Proposed law prohibits nursing homes from denying a person or resident admission to or discharge from a nursing home, or otherwise discriminating or retaliating against a person or resident, because the person or resident chooses to authorize installation and use of a monitoring device. Provides that any person who knowingly or willfully violates these provisions shall be subject to appropriate action by LDH as set forth in administrative rules of the department.

Proposed law prohibits intentional hampering, obstructing, tampering with, or destroying a monitoring device or a recording made by a monitoring device installed in a nursing home pursuant to proposed law. Stipulates, however, that this prohibition shall not apply to the resident who owns the monitoring device or recording, or to his legal representative.

Proposed law provides that if a resident of a nursing facility conducts electronic monitoring, a sign shall be clearly and conspicuously posted at the main entrance of the nursing facility building to alert and inform visitors. Provides specifications for the sign's text, type, and font. Requires that the nursing facility be responsible for reasonable costs of installation and maintenance of the sign.

Proposed law requires that a sign be clearly and conspicuously posted at the entrance of a resident's room where authorized electronic monitoring is being conducted. Provides specifications for the sign's text, type, and font. Requires that the resident or his legal representative be responsible for reasonable costs of installation and maintenance of the sign.

Proposed law provides that any person who views an incident which a reasonable man would consider abuse or neglect after viewing a recording made in a nursing facility shall report the incident to the facility as soon as is practicable after the viewing. Requires that the facility be provided with a copy of the recording. Provides that if the recording must be transferred to a different format to be viewed, the transfer shall be done at the expense of the facility by a qualified professional who can certify that the contents of the recording were not altered.

Present law provides for a nursing home residents' bill of rights. Proposed law retains present law and adds thereto the right to have a monitoring device installed in his room in accordance with proposed law.

Proposed law requires that on or before Jan. 1, 2019, each licensed nursing home in La. shall provide to each nursing home resident or, if applicable, the legal guardian or legally appointed substitute decision-maker authorized to act on behalf of the resident, a form prescribed by the La. Department of Health explaining the provisions of proposed law and giving each resident or legal representative a choice to have a monitoring device installed in the room of the resident. Requires nursing homes to retain a copy of each such form and

make the completed forms accessible to the state long-term care ombudsman.

(Adds R.S. 40:1193.1-1193.11 and 2010.8(A)(24))