

3.1 Sec. 4. [144.6502] ELECTRONIC MONITORING IN HEALTH CARE FACILITIES.

3.2 Subdivision 1. Definitions. (a) For the purposes of this section, the terms defined in this  
3.3 subdivision have the meanings given.

3.4 (b) "Commissioner" means the commissioner of health.

3.5 (c) "Electronic monitoring device" means a camera, including one that captures, records,  
3.6 or broadcasts audio, video, or both, or other technological device used to monitor or  
3.7 communicate with a resident or others that is installed in a resident's room or private living  
3.8 space.

3.9 (d) "Facility" means a facility that is licensed as a nursing home under chapter 144A or  
3.10 as a boarding care home under sections 144.50 to 144.56, or registered as a housing with  
3.11 services establishment under chapter 144D.

3.12 (e) "Legal representative" means a court-appointed guardian or other person with authority  
3.13 to make decisions about health care services for the resident, including an individual who  
3.14 is an interested person, as defined in section 626.5572, subdivision 12a.

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

3.16 Subd. 2. Electronic monitoring authorized. (a) A facility must allow a resident or a  
3.17 resident's legal representative to conduct electronic monitoring of the resident's room or  
3.18 private living space as provided in this section.

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

3.21 (c) Nothing in this section precludes the use of electronic monitoring of health care  
3.22 allowed under other law.

3.23 Subd. 3. Consent to electronic monitoring. (a) Except as otherwise provided in this  
3.24 subdivision, a resident must consent in writing on a notification and consent form prescribed  
3.25 by the commissioner to electronic monitoring in the resident's room or private living space.  
3.26 If the resident has not affirmatively objected to electronic monitoring and the resident's  
3.27 physician determines that the resident lacks the ability to understand and appreciate the  
3.28 nature and consequences of electronic monitoring, the resident's legal representative may  
3.29 consent on behalf of the resident. For purposes of this subdivision, a resident affirmatively  
3.30 objects when the resident orally, visually, or through the use of auxiliary aids or services  
3.31 declines electronic monitoring. The resident's response must be documented on the  
3.32 notification and consent form.

4.1 (b) Prior to a resident's legal representative consenting on behalf of a resident, the resident  
4.2 must be asked by the resident's legal representative if the resident wants electronic monitoring  
4.3 to be conducted. The resident's legal representative must explain to the resident:

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

4.5 (2) the standard conditions that may be placed on the electronic monitoring device's use,  
4.6 including those listed in subdivision 5;

4.7 (3) with whom the recording may be shared under this section; and

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

4.9 (c) A resident or roommate may consent to electronic monitoring with any conditions  
4.10 of the resident's or roommate's choosing, including the list of standard conditions provided  
4.11 in subdivision 5. A resident or roommate may request that the electronic monitoring device  
4.12 be turned off or the visual or audio recording component of the electronic monitoring device  
4.13 be blocked at any time.

4.14 (d) Prior to implementing electronic monitoring, a resident must obtain the written  
4.15 consent of any other resident residing in the room or private living space on the notification  
4.16 and consent form prescribed by the commissioner. Except as otherwise provided in this  
4.17 subdivision, a roommate must consent in writing to electronic monitoring in the resident's  
4.18 room or private living space. If the roommate has not affirmatively objected to the electronic  
4.19 monitoring in accordance with this subdivision and the roommate's physician determines  
4.20 that the roommate lacks the ability to understand and appreciate the nature and consequences  
4.21 of electronic monitoring, the roommate's legal representative may consent on behalf of the  
4.22 roommate.

4.23 (e) Any resident conducting electronic monitoring must obtain consent from any new  
4.24 roommate before the resident may resume authorized electronic monitoring. If a new  
4.25 roommate does not consent to electronic monitoring and the resident conducting the electronic  
4.26 monitoring does not remove the electronic monitoring device, the facility must remove the  
4.27 electronic monitoring device.

4.28 (f) Copies of all completed notification and consent forms must be submitted to the  
4.29 facility, and the facility must keep the notification and consent forms on file in a location  
4.30 separate from the resident's clinical record.

4.31 Subd. 4. **Withdrawal of consent; refusal of roommate to consent.** (a) Consent may  
4.32 be withdrawn by the resident or roommate at any time and the withdrawal of consent must  
4.33 be documented on the facility's copy of the initial notification and consent form submitted

5.1 to it according to subdivision 5. If a roommate withdraws consent and the resident conducting  
5.2 the electronic monitoring does not remove or disable the electronic monitoring device, the  
5.3 facility must remove the electronic monitoring device.

5.4 (b) If a resident of a facility who is residing in a shared room wants to conduct electronic  
5.5 monitoring and another resident living in or moving into the same shared room refuses to  
5.6 consent to the use of an electronic monitoring device, the facility shall make a reasonable  
5.7 attempt to accommodate the resident who wants to conduct electronic monitoring. A facility  
5.8 has met the requirement to make a reasonable attempt to accommodate a resident who wants  
5.9 to conduct electronic monitoring when upon notification that a roommate has not consented  
5.10 to the use of an electronic monitoring device in the resident's room, the facility offers to  
5.11 move either resident to another shared room that is available at the time of the request. If a  
5.12 resident chooses to reside in a private room in a facility in order to accommodate the use  
5.13 of an electronic monitoring device, the resident must pay the private room rate. If a facility  
5.14 is unable to accommodate a resident due to lack of space, the facility must reevaluate the  
5.15 request every two weeks until the request is fulfilled. A facility is not required to provide  
5.16 a private room or a single-bed room to a resident who is not a private-pay resident.

5.17 Subd. 5. **Notice; form requirements.** (a) Electronic monitoring may begin only after  
5.18 the resident who intends to install an electronic monitoring device completes a notification  
5.19 and consent form prescribed by the commissioner and submits the form to the facility and  
5.20 the ombudsperson for long-term care.

5.21 (b) The notification and consent form must include, at a minimum, the following  
5.22 information:

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

5.26 (i) the date the resident was asked if the resident wants electronic monitoring to be  
5.27 conducted;

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

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

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

5.33 (i) the date the roommate was asked if the roommate consents to electronic monitoring;

- 6.1 (ii) who was present when the roommate was asked; and
- 6.2 (iii) an acknowledgment that the roommate did not affirmatively object;
- 6.3 (3) the type of electronic monitoring device to be used;
- 6.4 (4) any installation needs, such as mounting of a device to a wall or ceiling;
- 6.5 (5) the proposed date of installation for scheduling purposes;
- 6.6 (6) a list of standard conditions or restrictions that the resident or a roommate may elect
- 6.7 to place on the use of the electronic monitoring device, including, but not limited to:
- 6.8 (i) prohibiting audio recording;
- 6.9 (ii) prohibiting video recording;
- 6.10 (iii) prohibiting broadcasting of audio or video;
- 6.11 (iv) turning off the electronic monitoring device or blocking the visual recording
- 6.12 component of the electronic monitoring device for the duration of an exam or procedure by
- 6.13 a health care professional;
- 6.14 (v) turning off the electronic monitoring device or blocking the visual recording
- 6.15 component of the electronic monitoring device while dressing or bathing is performed; and
- 6.16 (vi) turning off the electronic monitoring device for the duration of a visit with a spiritual
- 6.17 advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor;
- 6.18 (7) any other condition or restriction elected by the resident or roommate on the use of
- 6.19 an electronic monitoring device;
- 6.20 (8) a signature box for documenting that the resident or roommate has withdrawn consent;
- 6.21 and
- 6.22 (9) a statement of the circumstances under which a recording may be disseminated under
- 6.23 subdivision 9.
- 6.24 (c) A copy of the completed notification and consent form must be provided to the
- 6.25 resident and the resident's roommate, if applicable. The facility must retain the form as
- 6.26 described in subdivision 3, paragraph (f).
- 6.27 (d) The commissioner shall prescribe the notification and consent form required in this
- 6.28 section no later than January 1, 2019, and shall make the form available on the department's
- 6.29 Web site.

7.1 (e) Beginning January 1, 2019, facilities must make the notification and consent form  
7.2 available to the residents and inform residents of their option to conduct electronic monitoring  
7.3 of their rooms or private living spaces.

7.4 (f) Any resident, legal representative of a resident, or other person conducting electronic  
7.5 monitoring of a resident's room prior to enactment of this section must comply with the  
7.6 requirements of this section by January 1, 2019.

7.7 Subd. 6. **Cost and installation.** (a) A resident choosing to conduct electronic monitoring  
7.8 must do so at the resident's own expense, including paying purchase, installation,  
7.9 maintenance, and removal costs.

7.10 (b) If a resident chooses to install an electronic monitoring device that uses Internet  
7.11 technology for visual or audio monitoring, that resident may be responsible for contracting  
7.12 with an Internet service provider.

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

7.16 (d) All electronic monitoring device installations and supporting services must be  
7.17 UL-listed.

7.18 Subd. 7. **Notice to visitors.** (a) A facility shall post a sign at each facility entrance  
7.19 accessible to visitors that states "Security cameras and audio devices may be present to  
7.20 record persons and activities."

7.21 (b) The facility is responsible for installing and maintaining the signage required in this  
7.22 subdivision.

7.23 Subd. 8. **Obstruction of electronic monitoring devices.** (a) A person must not knowingly  
7.24 hamper, obstruct, tamper with, or destroy an electronic monitoring device installed in a  
7.25 resident's room or private living space without the permission of the resident or the resident's  
7.26 legal representative.

7.27 (b) It is not a violation of this subdivision if a person turns off the electronic monitoring  
7.28 device or blocks the visual recording component of the electronic monitoring device at the  
7.29 direction of the resident or the resident's legal representative, or if consent has been  
7.30 withdrawn.

7.31 Subd. 9. **Dissemination of recordings.** (a) A facility may not access any video or audio  
7.32 recording created through electronic monitoring without the written consent of the resident  
7.33 or the resident's legal representative. If a resident consents to access to a recording by the

8.1 facility, the resident is deemed to have consented to access to an employee under paragraph  
8.2 (c).

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

8.6 (c) An employee of a facility who is the subject of proposed corrective or disciplinary  
8.7 action based upon evidence obtained by electronic monitoring must be given access to that  
8.8 evidence for purposes of defending against the proposed action. The recording or a copy  
8.9 of the recording must be treated confidentially by the employee and must not be further  
8.10 disseminated to any other person except as required under other law. Any copy of the  
8.11 recording must be returned to the facility or resident who provided the copy when it is no  
8.12 longer needed for purposes of defending against a proposed action.

8.13 Subd. 10. **Liability.** (a) A facility is not civilly or criminally liable for the inadvertent  
8.14 or intentional disclosure of a recording by a resident or a resident's legal representative for  
8.15 any purpose not authorized by this section.

8.16 (b) A facility is not civilly or criminally liable for a violation of a resident's right to  
8.17 privacy based solely on the use of electronic monitoring conducted as provided in this  
8.18 section.

8.19 Subd. 11. **Resident protections.** (a) A facility must not:

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

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

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

8.26 (b) The commissioner of health must issue a correction order upon a finding that the  
8.27 facility has failed to comply with this subdivision. The commissioner of health may impose  
8.28 a fine between \$50 and \$500 upon a finding of noncompliance with a correction order issued  
8.29 according to this paragraph.

8.30 **EFFECTIVE DATE.** This section is effective January 1, 2019.