

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1762

By: Hamilton

AS INTRODUCED

An Act relating to public health and safety; authorizing the use of electronic monitoring devices in nursing facilities; requiring authorization; requiring posting of notice; requiring certain accommodations; prohibiting certain actions; requiring responsibility for maintenance and costs; providing for promulgation of rules; providing contents; providing for use of tape or recording by agencies and courts; prohibiting certain actions; making certain actions unlawful; defining terms; requiring certain physicians to view and examine certain bodies prior to signing a death certificate; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1919.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. A nursing facility shall permit a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

2. The nursing facility shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

3. A nursing facility shall not refuse to admit an individual to residency in the facility and shall not remove a resident from the facility because of the installation of an authorized electronic monitoring device.

4. A facility shall make reasonable physical accommodation for authorized electronic monitoring, including:

- a. providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device, and
- b. providing access to power sources for the video surveillance camera or other electronic monitoring device.

5. The resident or the resident's guardian or legal representative shall pay for all costs associated with conducting electronic monitoring. The resident or the resident's guardian or legal representative is responsible for:

- a. all costs associated with installation of equipment, and
- b. maintaining the equipment.

6. A facility shall require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room.

7. A facility may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

B. Each facility shall post a notice at the entrance to the facility stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious.

C. The State Board of Health shall promulgate rules regarding:

1. Privacy of the resident, other residents of the room or other residents of the facility;
2. The safe placement of an electronic monitoring device;
3. Covert electronic monitoring;
4. The format and precise content of any notice required pursuant to this section;

5. Method and procedures for submitting a tape or recording to the Department for purposes of investigation or prosecution;

6. Who may request that electronic monitoring be performed; and

7. Such other information or content deemed necessary by the Board.

D. 1. A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this section or a tape or recording made by the device commits a misdemeanor.

2. It is a defense to prosecution under this subsection that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the resident's guardian or legal representative.

E. 1. Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of electronic monitoring described by this section may be admitted into evidence in a civil or criminal court action or administrative proceeding.

2. A court or administrative agency shall not admit into evidence a tape or recording created pursuant to this section or take or authorize action based on the tape or recording unless:

- a. the tape or recording shows the time and date that the events acquired on the tape or recording occurred,
- b. the contents of the tape or recording have not been edited or artificially enhanced, and
- c. any transfer of the contents of the tape or recording which have been transferred from the original format to another technological format was done by a qualified professional and the contents of the tape or recording were not altered.

F. As used in this section:

1. "Authorized electronic monitoring" means the placement of an electronic monitoring device in the room of a resident of an institution and making tapes or recordings with the device;

2. "Electronic monitoring device":

a. shall include:

(1) video surveillance cameras installed in the room of a resident, and

(2) audio devices installed in the room of a resident designed to acquire communications or other sounds occurring in the room, and

b. shall not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1931.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any physician required to sign a death certificate pursuant to Section 1-317 of Title 63 of the Oklahoma Statutes for the death of a resident of a nursing facility shall personally view and examine the body of the resident prior to signing the death certificate.

SECTION 3. This act shall become effective November 1, 2003.

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