

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

SENATE BILL 587

By: Justice

AS INTRODUCED

An Act relating to public health and safety; defining terms; requiring nursing facilities to place electronic monitoring devices in certain areas in specified circumstances; providing procedures to opt out of electronic monitoring; requiring certain forms to be signed; authorizing the State Department of Health to include certain information on specified forms; providing standards for electronic monitoring; requiring certain notice; prohibiting authorized electronic monitoring in certain circumstances; prohibiting certain refusal or removal; requiring certain information to be on specified recording; prohibiting certain obstruction; prohibiting certain interception in specified circumstances; requiring certain recordings to be made available to specified persons; directing the State Board of Health to promulgate certain rules; authorizing certain recordings to be admitted into evidence; prohibiting court or administrative agency to admit certain recordings in specified circumstances; clarifying liability; prohibiting the Department from being held liable in certain circumstances; authorizing the Department to impose certain sanctions; providing for certain construction; providing for temporary waivers for electronic monitoring devices under certain circumstances; providing for reimbursement of certain expenses; 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 1-1953.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Authorized electronic monitoring" means the placement of electronic monitoring devices in the common areas and rooms of residents of a nursing facility and recordings with the devices pursuant to the provisions of this act; and

2. "Electronic monitoring device" means video surveillance cameras installed in the common areas and residents' rooms and audio devices installed in the residents' bathrooms and shower/bathing areas, designed to acquire communication or other sounds occurring in the rooms.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1953.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A licensed nursing facility shall place electronic monitoring devices throughout the nursing facility in areas including, but not limited to:

1. Entrances and exits;
2. Hallways;
3. Dining areas;
4. Nurses' stations; and
5. Residents' rooms.

1 The resident and/or the resident's legal representative shall
2 have the choice to opt out of electronic monitoring in the
3 resident's room by executing a waiver prescribed by the State
4 Department of Health. Should the resident or the resident's legal
5 representative opt out by executing the waiver, electronic
6 monitoring in that resident's room shall be turned off. In the event
7 that a resident or a resident's legal representative chooses to opt
8 out, execution of the waiver must be witnessed and signed by a
9 representative of the state's long-term care ombudsman's office.

10 B. Upon a resident's admission to a nursing facility, a form
11 prescribed by the State Department of Health shall be signed by the
12 resident or the resident's legal representative which provides
13 notice that the facility is required by state law to place
14 electronic monitoring devices throughout the facility; this form
15 shall provide language to allow the resident and resident's legal
16 representative to opt out of electronic monitoring in the resident's
17 room, if the resident or resident's legal representative chooses
18 privacy over increased safety provided by electronic monitoring. The
19 executed form shall be attached as a permanent record in the
20 resident's file. The form shall also release the facility from any
21 civil liability for a violation of the resident's privacy rights in
22 connection with the use of the electronic monitoring device. The
23 nursing facility will be required to provide rooms to those
24 residents who opt out of electronic monitoring. Under no

1 circumstances will a resident be provided a room without video
2 monitoring unless that resident or resident's legal representative
3 opts out of electronic monitoring.

4 C. Electronic monitoring in residents' rooms, bathrooms, and
5 bathing areas shall be constant.

6 D. Recordings shall be motion activated and activated whenever
7 the nurse-call or call-for-assistance button is pressed for video
8 recordings in residents' rooms and sound activated for bathrooms and
9 bathing areas.

10 E. Recordings shall capture a minimum of thirty (30) seconds
11 prior to the activation and shall continue until no motion is
12 detected for three (3) minutes.

13 F. Recordings shall be maintained at the nursing facility for a
14 minimum of thirty (30) days. Recordings shall be transferred to the
15 State Department of Health, where recordings will be stored for a
16 minimum of five (5) years.

17 G. Electronic monitoring systems for video monitoring shall be
18 color, motion activated, with a minimum of fifteen (15) seconds per
19 frame, minimum 550 resolution, with infrared illuminator or greater
20 for night or low lighting monitoring.

21 H. Nursing facilities shall post and maintain a conspicuous
22 notice at the entrance of the facility stating that the facility is
23 being monitored by electronic monitoring devices.

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1 I. A nursing facility which conducts authorized electronic
2 monitoring in a resident's room pursuant to this act shall post and
3 maintain a conspicuous notice at the entrance to the resident's room
4 stating that the room is being monitored by one or more electronic
5 monitoring devices.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-1953.3 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 A. Authorized electronic monitoring of a resident's room
10 conducted under this act is not compulsory and shall only be
11 conducted with the consent of the resident, residents, or legal
12 representatives thereof.

13 B. A nursing facility shall not refuse to admit an individual
14 to residency in the facility and shall not remove a resident from a
15 facility because of consent or refusal to consent to authorized
16 electronic monitoring of a resident's room.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1-1953.4 of Title 63, unless
19 there is created a duplication in numbering, reads as follows:

20 All video tapes or recordings made pursuant to this act shall
21 show the time and date that events acquired on the tape or recording
22 occurred.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-1953.5 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. No person or entity shall intentionally hamper, obstruct,
5 tamper with, or destroy an electronic monitoring device installed in
6 a nursing facility.

7 B. Any person or entity that intentionally hampers, obstructs,
8 tampers with, or destroys a recording or an electronic monitoring
9 device installed in a nursing facility shall be subject to the
10 penalties prescribed in Section 1993 of Title 21 of the Oklahoma
11 Statutes.

12 C. No person or entity shall intercept a communication or
13 disclosure or use an intercepted communication of an electronic
14 monitoring device placed or installed in a nursing facility without
15 the express consent of the facility, or, for an electronic
16 monitoring device installed in a resident's room, the express
17 consent of the resident or legal representatives thereof.

18 SECTION 6. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1-1953.6 of Title 63, unless
20 there is created a duplication in numbering, reads as follows:

21 A. A nursing facility shall make available to any resident or
22 resident's legal representative real-time and recorded files. The
23 nursing facility shall provide the resident or resident's legal
24 representative with a secured Internet address, login, and password

1 specifically for that respective resident to view real-time and
2 recorded activity. The nursing facility shall provide a computer
3 station at the facility for residents and their legal
4 representatives to access real-time or recorded files. Recordings
5 may be provided by the nursing facility upon request by residents
6 and residents' legal representatives. Such recordings shall be
7 provided by the nursing facility within forty-eight (48) hours.
8 Residents and legal representatives may provide the nursing facility
9 with DVDs or flash drives for the transfer of such recorded files,
10 otherwise the nursing facility may charge a fee of no more than
11 Twenty-five Dollars (\$25.00) to recover the cost of storage media
12 for such file transfers.

13 B. A nursing facility shall make access to real time video,
14 tapes or other recordings permitted by this act available to the
15 State Department of Health. The State Board of Health shall
16 promulgate rules as necessary to ensure that the provisions of this
17 subsection do not violate the privacy rights of the residents
18 protected by state or federal law.

19 C. Residents, residents' legal representatives, authorized
20 nursing home staff, and authorized State Department of Health staff
21 shall have real time access and access to recorded files.

22 D. Law enforcement, prosecutors, and legal counsel representing
23 a resident or residents' legal representative shall have access to
24 recorded files.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-1953.7 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Subject to the provisions of law, a tape or recording
5 created through the use of authorized electronic monitoring pursuant
6 to this act may be admitted into evidence in a civil or criminal
7 court action or administrative proceeding.

8 B. A court or administrative agency may not admit into evidence
9 a tape or recording created through the use of authorized electronic
10 monitoring or take or authorize action based on the tape or
11 recording, unless:

12 1. If the tape or recording is a video tape or recording, the
13 tape or recording shows the time and date that the events acquired
14 on the tape or recording occurred;

15 2. The contents of the tape or recording have not been edited
16 or artificially enhanced; and

17 3. If the contents of the tape or recording have been
18 transferred from the original format to another technological
19 format, the transfer was done by a qualified professional, and the
20 contents of the tape or recording were not altered.

21 SECTION 8. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-1953.8 of Title 63, unless
23 there is created a duplication in numbering, reads as follows:

1 A. This act shall not affect whether a person may be held
2 civilly liable under other provisions of law in connection with
3 placing an electronic monitoring device in the room of a resident of
4 a nursing facility or in connection with using or disclosing a tape
5 or recording made by the device except:

6 1. As specifically provided in this act; or

7 2. To the extent that liability is affected by a consent form
8 or waiver signed pursuant to the provisions of this act or the fact
9 that authorized electronic monitoring is required to be conducted
10 with notice to persons who enter the facility or a resident's room.

11 B. The State Department of Health shall not be held civilly
12 liable in connection with the placement or use of an electronic
13 monitoring device in a nursing facility.

14 SECTION 9. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1-1953.9 of Title 63, unless
16 there is created a duplication in numbering, reads as follows:

17 A. The State Board of Health is authorized to impose
18 administrative fines or deny, suspend, or refuse to renew the
19 license of a nursing facility which violates the provisions of this
20 act.

21 B. The State Board of Health shall promulgate rules as
22 necessary to implement the provisions of this act.

1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-1953.10 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 Nothing in this act shall be construed to prevent a resident or
5 resident's legal representative from placing an electronic
6 monitoring device in the resident's room at the expense of such
7 person and with the consent of all other residents, or legal
8 representatives thereof, living in the room.

9 SECTION 11. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-1953.11 of Title 63, unless
11 there is created a duplication in numbering, reads as follows:

12 Residents who have electronic monitoring in their rooms and who
13 desire privacy for intimacy shall have the right to request a
14 temporary waiver from monitoring during such personal periods under
15 the following conditions:

16 1. Temporary waivers must be executed by a resident who is of
17 sound mind or does not have a diagnosis of Alzheimer's disease,
18 dementia, or has not been deemed incompetent; or

19 2. If the resident is not of sound mind, has a diagnosis of
20 Alzheimer's disease, dementia, or has been deemed to be incompetent,
21 the resident's legal representative may request the temporary
22 waiver.

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1 SECTION 12. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-1953.12 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 Nursing facilities shall be reimbursed for expenses incurred in
5 the acquisition and installation of electronic monitoring systems
6 pursuant to provisions of Section 1011.5 of Title 56 of the Oklahoma
7 Statutes.

8 SECTION 13. This act shall become effective November 1, 2013.

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