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SENATE BILL NO. 661

Offered January 15, 2024

A BILL to amend the Code of Virginia by adding in Article 2 of Chapter 5 of Title 32.1 a section numbered 32.1-138.5:1, relating to nursing facilities; electronic monitoring in resident rooms.

Patron—Craig

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 2 of Chapter 5 of Title 32.1 a section numbered 32.1-138.5:1 as follows:

§ 32.1-138.5:1. Electronic monitoring in resident rooms.

A. As used in this section, unless the context requires a different meaning:

"Electronic monitoring" means video or audio monitoring or recording of a resident of a nursing facility as a means of monitoring the resident's wellbeing.

"Family member" means (i) the resident's spouse, or (ii) the resident's parent, stepparent, child, stepchild, brother, sister, half-brother, half-sister, grandparent, or grandchild.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the resident as his agency in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function for which he has legal authority to act.

B. All requests for electronic monitoring shall be made in writing and signed by the resident or, if the resident has been properly assessed incapable of requesting and authorizing the monitoring, the resident's legal representative. Only electronic monitoring in accordance with this section is permitted.

Electronic monitoring shall be permitted only:

1. Upon the informed consent of the resident or resident's legal representative, which shall be obtained prior to any electronic monitoring device being installed or used. Consent for electronic monitoring shall be kept in the resident's medical record as well as on file with the nursing facility's designated electronic monitoring coordinator;

2. When the resident resides in a room with no roommates;

3. Upon a waiver of medical privacy signed by the resident or resident's legal representative that shall be kept in the resident's medical record; and

4. When the nursing facility has wireless Internet access or other means available to operate the electronic monitoring device without permanent modification to the nursing facility.

C. A nursing facility shall allow electronic monitoring of a resident of a nursing facility if the electronic monitoring is conducted in accordance with this section. A nursing facility shall not refuse to admit an individual and shall not discharge or transfer a resident due to a request to conduct authorized electronic monitoring.

D. Family members cannot obtain electronic monitoring over the objections of the resident or the resident's legal representative. No equipment may be installed over the objections of the resident or resident's legal representative. Nursing facilities shall not use monitoring equipment in violation of the law based solely on a family member's request or approval.

E. Nursing facilities shall designate one staff person to be responsible for managing the electronic monitoring program.

F. Nursing facilities may designate custodial ownership of any recordings from monitoring devices to the resident or resident's legal representative. Recordings retained by a nursing facility shall be considered part of the resident's medical record and shall be retained for no less than two years or as required by state and federal law.

G. If a nursing facility chooses to retain ownership of recordings from electronic monitoring devices, the nursing facility shall not permit viewings of recordings without consent of the resident or resident's legal representative except to the extent that disclosure is required by law through a court order or pursuant to a lawful subpoena duces tecum. Should the resident or resident's legal representative approve viewing, the nursing facility shall accommodate viewing of any recordings in a timely manner, including providing:

1. Appropriate playing or viewing equipment;

2. Privacy during viewing; and

3. Viewing times convenient to the resident or resident's legal representative.

59 *If unauthorized viewing is discovered, the nursing facility shall report any such violation to the Office of*
60 *Licensure and Certification (the OLC) of the Department of Health.*

61 *H. A nursing facility shall not be held liable for any breach of data directly related to the presence of the*
62 *electronic monitoring device.*

63 *I. A nursing facility shall require its staff to report any incidents regarding safety or quality of care*
64 *discovered as a result of viewing a recording from an electronic monitoring device immediately to the*
65 *administrator of the nursing facility and to the OLC. Nursing facilities shall instruct the resident or resident's*
66 *legal representative of this reporting requirement and shall provide the resident or resident's legal*
67 *representative with the OLC's complaint hotline telephone number.*

68 *J. A nursing facility shall have no obligation to seek access to a recording in its possession or to have*
69 *knowledge of a recording's content unless (i) the nursing facility is aware of a recorded incident of suspected*
70 *abuse or neglect, or an accident or injury or (ii) the resident, the resident's legal representative, or a*
71 *government agency seeks to use a recording. Nursing facilities shall immediately report suspected abuse or*
72 *neglect discovered as a result of using electronic monitoring devices, as required by law.*

73 *K. A nursing facility may require the resident or resident's legal representative to be responsible for all*
74 *aspects of the operation of the electronic monitoring device, including the removal and replacement of*
75 *recordings; adherence to local, state, and federal privacy laws; and use of firewall protections to prevent*
76 *images that would violate obscenity laws from being inadvertently shown on the Internet.*

77 *L. A nursing facility shall prohibit assigned staff from refusing to enter a resident's room solely because of*
78 *electronic monitoring.*

79 *M. Any electronic monitoring device shall be installed in a manner that is safe for residents, employees,*
80 *and visitors who may be moving about the resident's room.*

81 *N. A nursing facility shall make reasonable physical accommodation for electronic monitoring devices,*
82 *including:*

83 *1. Providing a reasonably secure place to mount the device; and*

84 *2. Providing access to power sources for the device.*

85 *O. A nursing facility shall require a resident or resident's legal representative to pay for all costs, other*
86 *than the cost of electricity, associated with the purchase and installation of the electronic monitoring device.*
87 *A nursing facility may charge a one-time fee not to exceed \$25 when the electronic monitoring device is*
88 *installed. A nursing facility may charge a monthly fee not to exceed \$10 to cover costs associated with*
89 *hosting the electronic monitoring device. Such costs may include equipment, recording media and*
90 *installation, compliance with life safety and building and electrical codes, maintenance or removal of the*
91 *equipment, posting and removal of any public notices, or structural repairs to the building resulting from the*
92 *removal of the equipment. Nursing facilities shall give 45 days' notice of an increase in monthly monitoring*
93 *fees.*

94 *P. Any equipment installed for the purpose of monitoring a resident's room shall be fixed and unable to be*
95 *manipulated.*

96 *Q. The resident or resident's legal representative of a room with an electronic monitoring device may*
97 *condition consent for use of monitoring devices. Such conditions may include pointing the camera away or*
98 *limiting or prohibiting the use of certain devices. If conditions are placed on consent, then electronic*
99 *monitoring shall be conducted according to those conditions.*

100 *R. The nursing facility shall conspicuously post and maintain a notice at the entrance to the resident's*
101 *room stating that an electronic monitoring device is in operation.*

102 *S. Nursing facilities shall notify all staff and the long-term care division of the OLC when electronic*
103 *monitoring is in use in a resident's room pursuant to this section.*

104 *T. A nursing facility shall prohibit staff from covert monitoring in violation of this section. Nursing*
105 *facilities shall instruct the resident or resident's legal representative of this prohibition and shall provide the*
106 *resident or resident's legal representative with the OLC's complaint hotline telephone number.*

107 *U. If covert monitoring is discovered, the nursing facility shall report any such violation to the OLC, and*
108 *the nursing facility may require a resident or resident's legal representative to meet all the requirements for*
109 *authorized monitoring.*

110 *V. Each nursing facility shall adopt policies and procedures for electronic monitoring. These policies and*
111 *procedures shall address all the elements of this section.*

112 *W. A nursing facility shall prohibit staff from tampering with electronic monitoring devices in violation of*
113 *this section, except when the tampering is temporarily necessary to provide care to a resident. Nursing*
114 *facilities shall instruct the resident or resident's legal representative of this prohibition and shall provide the*
115 *resident or resident's legal representative with the OLC's complaint hotline telephone number.*

116 *X. If the placement or position of the electronic monitoring device creates risk to a nursing facility*
117 *employee or resident, the equipment may be removed and the resident, resident's legal representative, or*
118 *family member responsible for the camera shall be notified of the removal.*