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SENATE BILL NO. 821  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Health and Human Services  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Senator Craig)

*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.*

**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:*

*"Electronic monitoring" means the use of a surveillance device with a fixed position video camera or audio recording device, or a combination thereof, that is installed in a resident's room and broadcasts or records activities or sounds occurring within the confines of the room. Electronic monitoring shall not include use of a device that enables audio communication into the resident's room from another source.*

*"Family member" means the resident's spouse, 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 legally deemed incompetent, 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 the installation or use of any electronic monitoring device. Consent for electronic monitoring shall*

31 *be kept in the resident's medical record;*

32 *2. When the resident resides:*

33 *a. In a room with no roommates; or*

34 *b. In a room with any roommates and obtains written consent to visual recording from such roommates*  
35 *or, if any roommate has been legally deemed incompetent, such roommate's legal representative. When a*  
36 *resident resides with any roommates, only video electronic monitoring shall be permitted pursuant to this*  
37 *subsection;*

38 *3. Upon execution of an agreement for the sharing and release of medical data and information protected*  
39 *by the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) signed*  
40 *by the resident or resident's legal representative or, if applicable, any such agreement signed by any*  
41 *roommate or roommate's legal representative shall be kept in all consenting individuals' medical records;*  
42 *and*

43 *4. When the nursing facility has secured and password-protected wireless Internet access or other means*  
44 *available to operate the electronic monitoring device without modification to the nursing facility or a change*  
45 *in level or capacity of Internet access.*

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

50 *D. Family members shall not implement or activate electronic monitoring over the objections of or*  
51 *contrary to the instructions of the resident or the resident's legal representative. No electronic monitoring*  
52 *equipment may be installed over the objections of or contrary to the instructions of the resident or resident's*  
53 *legal representative.*

54 *E. Nursing facilities shall designate one or more staff persons to be the point of contact for electronic*  
55 *monitoring requests and for providing information and policies upon request during normal business hours.*

56 *F. Except as provided in subsection O, nursing facilities may assume custodial ownership of any*  
57 *recordings from electronic monitoring devices from the resident or resident's legal representative.*  
58 *Recordings from electronic monitoring devices shall not be considered part of the resident's medical record.*

59 *G. If a nursing facility chooses to assume ownership of recordings from electronic monitoring devices*

60 *pursuant to subsection F, the nursing facility shall not permit viewings of recordings without consent of the*  
61 *resident or resident's legal representative except to the extent that disclosure is required by law or for quality*  
62 *assurance purposes.*

63 *H. A nursing facility shall not be held liable for any breach of data or privacy related to the presence of*  
64 *the electronic monitoring device.*

65 *I. A nursing facility shall require its staff to immediately report any incidents regarding safety or quality*  
66 *of care discovered or reported to staff as a result of viewing a recording from an electronic monitoring*  
67 *device to the administrator of the nursing facility.*

68 *J. A nursing facility shall have no obligation to seek access to a recording for which it has not assumed*  
69 *custodial ownership or to have knowledge of a recording's content unless (i) the nursing facility is aware of a*  
70 *recorded incident of suspected abuse or neglect or of an accident or injury based upon a report received by*  
71 *the facility of such incident, accident, or injury or (ii) the resident, the resident's legal representative, or a*  
72 *government agency seeks to use a recording.*

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

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

80 *M. A nursing facility shall make reasonable physical accommodations for electronic monitoring devices,*  
81 *including:*

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

83 *2. Providing reasonable access to power sources if already in proximity to the device.*

84 *N. A nursing facility shall require a resident or resident's legal representative to pay for all costs, other*  
85 *than the cost of electricity, associated with the purchase and installation of the electronic monitoring device.*

86 *In addition, a nursing facility may charge a one-time fee not to exceed \$150 when the electronic monitoring*  
87 *device is installed along with a security deposit not to exceed \$250. A nursing facility may charge a monthly*  
88 *fee not to exceed \$10 to cover costs associated with the electronic monitoring device. Such costs may include*

89 *equipment, secured and password-protected wireless Internet and server capabilities, compliance with life*  
90 *safety and building and electrical codes, maintenance or removal of the equipment, posting and removal of*  
91 *any public notices, or structural repairs to the building resulting from the removal of the equipment. Nursing*  
92 *facilities shall give 45 days' notice of an increase in monthly fees.*

93 *O. The resident or resident's legal representative of a room with an electronic monitoring device may*  
94 *verbally or in writing condition consent to the installation or use of the electronic monitoring device. Such*  
95 *conditions on consent may include: (i) the ability of the resident, any roommate, or staff at the request of the*  
96 *resident or any roommate, to turn off or disable the audio or video electronic monitoring device during*  
97 *certain periods of time and (ii) a prohibition on the ability of the nursing facility to, pursuant to subsection F,*  
98 *choose to assume custodial ownership of any recordings from the electronic monitoring device after the*  
99 *electronic monitoring device has been installed and is operational. If the resident or resident's legal*  
100 *representative or any roommate or roommate's legal representative places any such conditions on consent,*  
101 *the nursing facility and staff shall ensure that the installation, use, and operation of the electronic monitoring*  
102 *device and any electronic monitoring or other activities conducted in connection therewith are conducted in*  
103 *compliance with such conditions.*

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

106 *Q. Nursing facilities shall notify assigned staff for the resident when electronic monitoring is in use in a*  
107 *resident's room pursuant to this section.*

108 *R. Each nursing facility shall adopt policies and procedures for electronic monitoring consistent with this*  
109 *section.*

110 *S. Each nursing facility shall adopt a policy prohibiting staff from willfully tampering with electronic*  
111 *monitoring devices in violation of this section. Adjusting or disabling an electronic monitoring device during*  
112 *the provision of patient care shall not constitute willful tampering if such adjusting or disabling is done in*  
113 *order to protect the dignity of a resident or at the direction of the resident or resident's legal representative.*

114 *T. If the placement or position of the electronic monitoring device creates risk to a nursing facility*  
115 *employee, resident, or any roommate, or if the resident or resident's legal representative or family member*  
116 *violates the nursing facilities policies and procedures for electronic monitoring, the equipment may be*  
117 *disabled and removed and the resident, resident's legal representative, or family member responsible for the*

118 *camera shall be notified of the removal.*

119 **2. That the Virginia Department of Health shall promulgate regulations consistent with this act and the**

120 **provisions of this act shall become effective when such regulations become effective.**