

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend the Code of Virginia by adding in Article 1 of Chapter 18 of Title 63.2 a section numbered  
3 63.2-1808.2, relating to assisted living facilities; electronic monitoring in resident rooms.

4 [S 409]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That the Code of Virginia is amended by adding in Article 1 of Chapter 18 of Title 63.2 a section**  
8 **numbered 63.2-1808.2 as follows:**

9 **§ 63.2-1808.2. *Electronic monitoring in resident rooms.***

10 *A. As used in this section:*

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

15 *"Family member" means the resident's spouse, parent, stepparent, child, stepchild, sibling, half-sibling,*  
16 *grandparent, or grandchild.*

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

23 *B. All requests for electronic monitoring shall be made in writing and signed by the resident or, if the*  
24 *resident has been legally deemed incompetent, the resident's legal representative. Only electronic monitoring*  
25 *in accordance with this section is permitted.*

26 *Electronic monitoring shall be permitted only:*

27 *1. Upon the informed consent of the resident or resident's legal representative, which shall be obtained*  
28 *prior to the installation or use of any electronic monitoring device. Consent for electronic monitoring shall*  
29 *be kept in the resident's record;*

30 *2. When the resident resides:*

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

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

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

40 *4. When the assisted living facility has secured and password-protected wireless internet access or other*  
41 *means available to operate the electronic monitoring device without modification to the assisted living*  
42 *facility or a change in level or capacity of internet access.*

43 *C. An assisted living facility shall allow electronic monitoring of a resident of an assisted living facility if*  
44 *the electronic monitoring is conducted in accordance with this section. An assisted living facility shall not*  
45 *refuse to admit an individual and shall not discharge or transfer a resident due to a request to conduct*  
46 *authorized electronic monitoring.*

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

51 *E. Assisted living facilities shall designate one or more staff persons to be the point of contact for*  
52 *electronic monitoring requests and for providing information and policies upon request during normal*  
53 *business hours.*

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

57 G. If an assisted living facility chooses to assume ownership of recordings from electronic monitoring  
58 devices pursuant to subsection F, the assisted living facility shall not permit viewings of recordings without  
59 consent of the resident or resident's legal representative except to the extent that disclosure is required by  
60 law or for quality assurance purposes.

61 H. An assisted living facility shall not be held liable for any breach of data or privacy related to the  
62 presence of the electronic monitoring device.

63 I. An assisted living facility shall require its staff to immediately report any incidents regarding safety or  
64 quality of care discovered or reported to staff as a result of viewing a recording from an electronic  
65 monitoring device to the administrator of the assisted living facility.

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

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

76 L. An assisted living facility shall prohibit assigned staff from refusing to enter a resident's room solely  
77 because of electronic monitoring.

78 M. An assisted living facility shall make reasonable physical accommodations for electronic monitoring  
79 devices, including:

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

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

82 N. An assisted living facility shall require a resident or resident's legal representative to pay for all costs,  
83 other than the cost of electricity, associated with the purchase and installation of the electronic monitoring  
84 device. In addition, an assisted living facility offering facility-managed electronic monitoring may charge a  
85 one-time fee not to exceed \$150 when the electronic monitoring device is installed along with a security  
86 deposit not to exceed \$250. An assisted living facility may charge a monthly fee not to exceed \$10 to cover  
87 costs associated with the electronic monitoring device. Such costs may include equipment, secured and  
88 password-protected wireless internet and server capabilities, compliance with life safety and building and  
89 electrical codes, maintenance or removal of the equipment, posting and removal of any public notices, or  
90 structural repairs to the building resulting from the removal of the equipment. Assisted living facilities shall  
91 give 45 days' notice of an increase in monthly fees.

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

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

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

107 R. Each assisted living facility shall adopt policies and procedures for electronic monitoring consistent  
108 with this section.

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

114 T. If the placement or position of the electronic monitoring device creates risk to an assisted living facility  
115 employee, resident, or any roommate, or if the resident or resident's legal representative or family member  
116 violates the assisted living facility's 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 electronic monitoring device shall be notified of the removal.

119 **2. That the Virginia Department of Social Services shall promulgate regulations consistent with this act**  
120 **and that the provisions of this act shall become effective when such regulations become effective.**

**ENROLLED**

**SB409ER**