

HB 843 -- THE PATIENT MONITORING CARE ACT

SPONSOR: McDaniel

This bill permits a patient or a surrogate to authorize installation and use of a monitoring device in a facility provided that certain requirements are met. The patient may establish and the facility must accommodate limits on the use, including the time of operation, direction, focus or volume, of a monitoring device. At the time of admission to a facility, a patient must be offered the option to have a monitoring device, and a record of the patient's authorization or choice not to have a monitoring device must be kept by the facility and must be made accessible to the state ombudsman. After authorization, consent, and notice, a patient or surrogate may install, operate, and maintain a monitoring device in the patient's room at the patient's expense. The bill requires the facility to cooperate to accommodate the installation of the monitoring device, provided the installation does not place undue burden on the facility. The patient or surrogate must be responsible for removal of the monitoring device, at the patient's or surrogate's expense, upon discharge of the patient from the facility or upon the death of the patient.

Consent to the authorization for the installation and use of a monitoring device may be given only by the patient or the surrogate. Consent to the authorization for the installation and use of a monitoring device must include a release of liability for the facility for a violation of the patient's right to privacy insofar as the use of the monitoring device is concerned. A patient or the surrogate may reverse a choice to have or not have a monitoring device installed and used at any time, after notice to the facility and to the state ombudsman upon a form prescribed by the department. The form for the authorization of installation and use of a monitoring device must include certain elements as specified in the bill.

In any civil action against the facility, material obtained through the use of a monitoring device must not be used if the monitoring device was installed or used without the knowledge of the facility or without the prescribed form. Compliance with these provisions must be a complete defense against any civil or criminal action brought against the patient, surrogate, or facility for the use or presence of a monitoring device.

Within six months of the effective date of the bill, all facilities must provide to each patient or surrogate a form prescribed by the department explaining the provisions of the bill and giving each patient or surrogate a choice to have a monitoring device installed in the patient's room. Copies of the completed form must be kept

by the facility and must be made accessible to the state ombudsman. The facility must post a notice in a conspicuous place at the entrance to a room with a monitoring device that a monitoring device is in use in that room of the facility.

The bill prohibits a person or patient from being denied admission to or discharged from a facility or from otherwise being discriminated against or retaliated against because of a choice to authorize installation and use of a monitoring device. Any person who violates the prohibition must be subject to a civil penalty of up to \$10,000 per occurrence. Any person other than a patient or surrogate found guilty of intentionally hampering, obstructing, tampering with, or destroying a monitoring device or a recording made by a monitoring device installed in a facility, under the provisions of the bill, is guilty of a class D felony until December 31, 2016, and a class E felony beginning January 1, 2017.