

SECOND REGULAR SESSION

# HOUSE BILL NO. 1654

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MCDANIEL.

4517H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To amend chapter 198, RSMo, by adding thereto eleven new sections relating to the patient monitoring care act, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 198, RSMo, is amended by adding thereto eleven new sections, to  
2 be known as sections 198.575, 198.578, 198.581, 198.584, 198.587, 198.590, 198.593, 198.596,  
3 198.599, 198.602, and 198.605, to read as follows:

**198.575. 1. Sections 198.575 to 198.605 shall be known and may be cited as the**  
2 **"Patient Monitoring Care Act".**

3 **2. As used in sections 198.575 to 198.605, the following terms shall mean:**

4 **(1) "Department", the department of health and senior services;**

5 **(2) "Facility", any residential care facility, assisted living facility, intermediate care**  
6 **facility, or skilled nursing facility;**

7 **(3) "Monitoring device", a surveillance instrument that broadcasts or records**  
8 **activity, but does not include a still camera;**

9 **(4) "Patient", a person who is a resident of a facility;**

10 **(5) "State ombudsman", the office of state ombudsman for long-term care facility**  
11 **residents created under section 192.2305;**

12 **(6) "Surrogate", a legal guardian or legally appointed health care proxy who is**  
13 **authorized to act on behalf of a patient.**

**198.578. 1. A patient or a surrogate may authorize the installation and use of a**  
2 **monitoring device in a facility provided that:**

3 **(1) The facility is given notice of the installation;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

4           **(2) If the monitoring device records activity visually, such recording shall include**  
5 **a record of the date and time;**

6           **(3) The monitoring device and all installation and maintenance costs are paid for**  
7 **by the patient; and**

8           **(4) Written consent is given by each patient or surrogate of each patient occupying**  
9 **the same room.**

10           **2. The patient may establish and the facility shall accommodate limits on the use**  
11 **including the time of operation, direction, focus, or volume of a monitoring device.**

**198.581. 1. At the time of admission to a facility, a patient shall be offered the**  
2 **option to have a monitoring device, and a record of the patient's authorization or choice**  
3 **not to have a monitoring device shall be kept by the facility and shall be made accessible**  
4 **to the state ombudsman.**

5           **2. After authorization, consent, and notice, a patient or surrogate may install,**  
6 **operate, and maintain a monitoring device in the patient's room at the patient's expense.**

7           **3. The facility shall cooperate to accommodate the installation of the monitoring**  
8 **device, provided the installation does not place undue burden on the facility.**

9           **4. The patient or surrogate shall be responsible for removal of the monitoring**  
10 **device, at the patient's or surrogate's expense, upon discharge of the patient from the**  
11 **facility or upon the death of the patient.**

**198.584. 1. Consent to the authorization for the installation and use of a monitoring**  
2 **device may be given only by the patient or the surrogate.**

3           **2. Consent to the authorization for the installation and use of a monitoring device**  
4 **shall include a release of liability for the facility for a violation of the patient's right to**  
5 **privacy insofar as the use of the monitoring device is concerned.**

6           **3. A patient or the surrogate may reverse a choice to have or not have a monitoring**  
7 **device installed and used at any time, after notice to the facility and to the state**  
8 **ombudsman upon a form prescribed by the department.**

**198.587. The form for the authorization of installation and use of a monitoring**  
2 **device shall provide for:**

3           **(1) Consent of the patient or the surrogate authorizing the installation and use of**  
4 **the monitoring device;**

5           **(2) Notice to the facility of the patient's installation of a monitoring device and**  
6 **specifics as to its type, function, and use;**

7           **(3) Consent of any other patient or that patient's surrogate sharing the same room;**

8           **(4) Notice of release from liability for privacy violations through the use of the**  
9 **monitoring device; and**

10           **(5) Waiver of the patient's right to privacy in conjunction with the use of the**  
11 **monitoring device.**

**198.590. 1. In any civil action against the facility, material obtained through the**  
2 **use of a monitoring device shall not be used if the monitoring device was installed or used**  
3 **without the knowledge of the facility or without the prescribed form.**

4           **2. Compliance with the provisions of sections 198.575 to 198.605 shall be a complete**  
5 **defense against any civil or criminal action brought against the patient, surrogate, or**  
6 **facility for the use or presence of a monitoring device.**

**198.593. Within six months of the effective date of sections 198.575 to 198.605, all**  
2 **facilities shall provide to each patient or surrogate a form prescribed by the department**  
3 **explaining the provisions of sections 198.575 to 198.605 and giving each patient or**  
4 **surrogate a choice to have a monitoring device installed in the patient's room. Copies of**  
5 **the completed form shall be kept by the facility and shall be made accessible to the state**  
6 **ombudsman.**

**198.596. The facility shall post a notice in a conspicuous place at the entrance to a**  
2 **room with a monitoring device that a monitoring device is in use in that room of the**  
3 **facility.**

**198.599. The department shall promulgate rules to implement the provisions of**  
2 **sections 198.575 to 198.605. Any rule or portion of a rule, as that term is defined in section**  
3 **536.010, that is created under the authority delegated in sections 198.575 to 198.605 shall**  
4 **become effective only if it complies with and is subject to all of the provisions of chapter**  
5 **536 and, if applicable, section 536.028. Sections 198.575 to 198.605 and chapter 536 are**  
6 **nonseverable, and if any of the powers vested with the general assembly pursuant to**  
7 **chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are**  
8 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**  
9 **proposed or adopted after August 28, 2016, shall be invalid and void.**

**198.602. No person or patient shall be denied admission to or discharged from a**  
2 **facility or be otherwise discriminated against or retaliated against because of a choice to**  
3 **authorize installation and use of a monitoring device. Any person who violates this section**  
4 **shall be subject to a civil penalty of up to ten thousand dollars per occurrence.**

**198.605. Any person other than a patient or surrogate found guilty of intentionally**  
2 **hampering, obstructing, tampering with, or destroying a monitoring device or a recording**  
3 **made by a monitoring device installed in a facility under sections 198.575 to 198.605 is**  
4 **guilty of a class D felony until December 31, 2016, and a class E felony beginning January**  
5 **1, 2017.**

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