

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1176**  
**100TH GENERAL ASSEMBLY**

2385H.03C

DANA RADEMAN MILLER, Chief Clerk

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**AN ACT**

To amend chapter 198, RSMo, by adding thereto thirteen new sections relating to the protection of residents living in long-term care facilities, 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 thirteen new sections, to  
2 be known as sections 198.008, 198.610, 198.612, 198.614, 198.616, 198.618, 198.620, 198.622,  
3 198.624, 198.626, 198.628, 198.630, and 198.632 to read as follows:

- 198.008. 1. Residents of long-term care facilities in this state shall have the**  
2 **following rights:**
- 3 **(1) To be free of abuse and exploitation;**
  - 4 **(2) To safe, decent, and clean conditions;**
  - 5 **(3) To be treated with courtesy, consideration, and respect;**
  - 6 **(4) To not be subjected to discrimination based on age, race, religion, sex,**  
7 **nationality, or disability and to practice the resident's own religious beliefs;**
  - 8 **(5) To place in the resident's room an electronic monitoring device that is owned**  
9 **and operated by the resident or provided by the resident's guardian or legal**  
10 **representative;**
  - 11 **(6) To privacy, including privacy during visits and telephone calls;**
  - 12 **(7) To complain about the institution and to organize or participate in any program**  
13 **that presents residents' concerns to the administrator of the long-term care facility;**
  - 14 **(8) To have information about the resident in the possession of the long-term care**  
15 **facility maintained as confidential;**
  - 16 **(9) To retain the services of a physician the resident chooses, at the resident's own**  
17 **expense or through a health care plan, and to have a physician explain to the resident, in**

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.

18 language that the resident understands, the resident's complete medical condition, the  
19 recommended treatment, and the expected results of the treatment, including reasonably  
20 expected effects, side effects, and risks associated with psychoactive medications;

21 (10) To participate in developing a plan of care, to refuse treatment, and to refuse  
22 to participate in experimental research;

23 (11) To a written statement or admission agreement describing the services  
24 provided by the long-term care facility and the related charges;

25 (12) To manage the resident's own finances or to delegate that responsibility to  
26 another person;

27 (13) To access moneys and property that the resident has deposited with the long-  
28 term care facility and to an accounting of the resident's moneys and property that are  
29 deposited with the long-term care facility and all of the financial transactions made with  
30 or on behalf of the resident;

31 (14) To keep and use personal property, secure from theft or loss;

32 (15) To not be relocated within the long-term care facility;

33 (16) To receive visitors;

34 (17) To receive unopened mail and to receive assistance in reading or writing  
35 correspondence;

36 (18) To participate in activities inside and outside the long-term care facility;

37 (19) To wear the resident's own clothes;

38 (20) To discharge himself or herself from the long-term care facility unless the  
39 resident is an adjudicated mental incompetent;

40 (21) To not be discharged from the long-term care facility except as provided in the  
41 standards adopted under section 198.088;

42 (22) To be free from any physical or chemical restraints imposed for the purposes  
43 of discipline or convenience, and not required to treat the resident's medical symptoms;  
44 and

45 (23) To receive information about prescribed psychoactive medication from the  
46 person prescribing the medication or that person's designee, to have any psychoactive  
47 medications prescribed and administered in a responsible manner, and to refuse to consent  
48 to the prescription of psychoactive medications.

49 2. A right of a resident may be restricted only to the extent necessary to protect:

50 (1) A right of another resident, particularly a right of the other resident relating  
51 to privacy and confidentiality; or

52 (2) The resident or another person from danger or harm.

53           **3. The department of health and senior services may adopt rights of residents in**  
54 **addition to those required by this section and may consider additional rights applicable to**  
55 **residents in other jurisdictions.**

**198.610. 1. The provisions of sections 198.610 to 198.632 shall be known and may**  
2 **be cited as the "Authorized Electronic Monitoring in Long-Term Care Facilities Act".**

3           **2. For purposes of sections 198.610 to 198.632, the following terms shall mean:**

4           **(1) "Authorized electronic monitoring", the placement and use of an electronic**  
5 **monitoring device by a resident in his or her room in accordance with the provisions of**  
6 **sections 198.610 to 198.632;**

7           **(2) "Department", the department of health and senior services;**

8           **(3) "Electronic monitoring device", a surveillance instrument with a fixed-position**  
9 **video camera or an audio recording device, or a combination thereof, that is installed in**  
10 **a resident's room under the provisions of sections 198.610 to 198.632 and broadcasts or**  
11 **records activity or sounds occurring in the room;**

12           **(4) "Facility" or "Long-term care facility", any residential care facility, assisted**  
13 **living facility, intermediate care facility, or skilled nursing facility, as defined in section**  
14 **198.006;**

15           **(5) "Guardian", the same meaning as defined under section 475.010;**

16           **(6) "Resident", a person residing in a facility.**

**198.612. 1. No facility shall be civilly or criminally liable for the inadvertent or**  
2 **intentional disclosure of a recording by a resident or a person who consents on behalf of**  
3 **the resident for any purpose not authorized by sections 198.610 to 198.632.**

4           **2. No facility shall be civilly or criminally liable for a violation of a resident's right**  
5 **to privacy arising out of any electronic monitoring conducted under sections 198.610 to**  
6 **198.632.**

7           **3. The department shall promulgate rules to implement the provisions of sections**  
8 **198.610 to 198.632. Any rule or portion of a rule, as that term is defined in section 536.010,**  
9 **that is created under the authority delegated in this section shall become effective only if**  
10 **it complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
11 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**  
12 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**  
13 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**  
14 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2019,**  
15 **shall be invalid and void.**

**198.614. 1. For purposes of this chapter, the placement and use of an electronic**  
2 **monitoring device in the room of a resident is considered to be covert if:**

3           **(1) The placement and use of the device is not open and obvious; and**

4           **(2) The facility and the department are not informed about the device by the**  
5 **resident, by a person who placed the device in the room, or by a person who is using the**  
6 **device.**

7           **2. The department and the facility shall not be held to be civilly liable in connection**  
8 **with the covert placement or use of an electronic monitoring device in the room of a**  
9 **resident.**

**198.616. The department shall promulgate rules that prescribe the form that shall**  
2 **be completed and signed on a resident's admission to a facility by or on behalf of the**  
3 **resident. The form shall state:**

4           **(1) That a person who places an electronic monitoring device in the room of a**  
5 **resident or who uses or discloses a tape or other recording made by the device may be**  
6 **civilly liable for any unlawful violation of the privacy rights of another;**

7           **(2) That a person who covertly places an electronic monitoring device in the room**  
8 **of a resident or who consents to or acquiesces in the covert placement of the device in the**  
9 **room of a resident has waived any privacy right the person may have had in connection**  
10 **with images or sounds that may be acquired by the device;**

11           **(3) That a resident or the resident's guardian or legal representative is entitled to**  
12 **conduct authorized electronic monitoring, and that if the facility refuses to permit the**  
13 **electronic monitoring or fails to make reasonable physical accommodations for the**  
14 **authorized electronic monitoring that the person should contact the department;**

15           **(4) The basic procedures that shall be followed to request authorized electronic**  
16 **monitoring;**

17           **(5) The manner in which this chapter affects the legal requirement to report abuse**  
18 **or neglect when electronic monitoring is being conducted; and**

19           **(6) Any other information regarding covert or authorized electronic monitoring**  
20 **that the department considers advisable to include on the form.**

**198.618. 1. If a resident has capacity to request electronic monitoring and has not**  
2 **been judicially declared to lack the required capacity, only the resident may request**  
3 **authorized electronic monitoring under this chapter, notwithstanding the terms of any**  
4 **durable power of attorney or similar instrument.**

5           **2. If a resident has been judicially declared to lack the capacity required for taking**  
6 **an action such as requesting electronic monitoring, only the guardian of the resident may**  
7 **request electronic monitoring under this chapter.**

8           **3. If a resident does not have capacity to request electronic monitoring but has not**  
9 **been judicially declared to lack the required capacity, only the legal representative of the**

10 resident may request electronic monitoring under this chapter. The department by rule  
11 shall prescribe:

12 (1) Guidelines that will assist facilities, family members of residents, advocates for  
13 residents, and other interested persons to determine if a resident lacks the required  
14 capacity; and

15 (2) Who shall be considered to be a resident's legal representative for purposes of  
16 this chapter, including:

17 (a) Persons who shall be considered the legal representative under the terms of an  
18 instrument executed by the resident when the resident had capacity; and

19 (b) Persons who shall become the legal representative for the limited purpose of this  
20 chapter under a procedure prescribed by the department.

198.620. 1. A resident or the guardian or legal representative of a resident who  
2 wishes to conduct authorized electronic monitoring shall make the request to the facility  
3 on a form prescribed by the department.

4 2. The form prescribed by the department shall require the resident or the  
5 resident's guardian or legal representative to:

6 (1) Release the facility from any civil liability for a violation of the resident's  
7 privacy rights in connection with the use of the electronic monitoring device;

8 (2) Choose, if the electronic monitoring device is a video surveillance camera,  
9 whether the camera will always be unobstructed, or whether the camera should be  
10 obstructed in specified circumstances to protect the dignity of the resident; and

11 (3) Obtain the consent of other residents in the room, using a form prescribed for  
12 the purpose by department, if the resident resides in a multiperson room.

13 3. Consent under subdivision (3) of subsection 2 of this section shall be given only:

14 (1) By the other resident or residents in the room;

15 (2) By the guardian of a person described by subdivision (1) of subsection 3 of this  
16 section, if the person has been judicially declared to lack the required capacity; or

17 (3) By the legal representative who, under section 198.618, shall request electronic  
18 monitoring on behalf of a person described by subdivision (1) of subsection 3 of this  
19 section, if the person does not have capacity to sign the form but has not been judicially  
20 declared to lack the required capacity.

21 4. The form prescribed by the department under subdivision (3) of subsection 2 of  
22 this section shall require any other resident in the room to consent to release the facility  
23 from any civil liability for a violation of the resident's privacy rights in connection with the  
24 use of the electronic monitoring device.

25 5. Another resident in the room may:

26           **(1) If the proposed electronic monitoring device is a video surveillance camera,**  
27 **condition consent on the camera being pointed away from the consenting resident; and**

28           **(2) Condition consent on the use of an audio electronic monitoring device being**  
29 **limited or prohibited.**

30           **6. If authorized electronic monitoring is being conducted in the room of a resident**  
31 **and another resident is moved into the room who has not yet consented to the electronic**  
32 **monitoring, authorized electronic monitoring shall cease until the new resident has**  
33 **consented in accordance with this section.**

34           **7. The department shall include other information that the department considers**  
35 **to be appropriate on either of the forms that the department is required to prescribe under**  
36 **this section.**

37           **8. The department shall adopt rules prescribing the place or places that a form**  
38 **signed under this section shall be maintained and the period for which it shall be**  
39 **maintained.**

40           **9. Authorized electronic monitoring:**

41           **(1) Shall not commence until all request and consent forms required by this section**  
42 **have been completed and returned to the facility; and**

43           **(2) Shall be conducted in accordance with any limitation placed on the monitoring**  
44 **as a condition of the consent given by or on behalf of another resident in the room.**

**198.622. 1. A facility shall permit a resident or the resident's guardian or legal**  
2 **representative to monitor the room of the resident through the use of electronic monitoring**  
3 **devices.**

4           **2. The facility shall require a resident who conducts authorized electronic**  
5 **monitoring, or the resident's guardian or legal representative, to post and maintain a**  
6 **conspicuous notice at the entrance to the resident's room. The notice shall state that the**  
7 **room is being monitored by an electronic monitoring device.**

8           **3. Authorized electronic monitoring conducted under sections 198.610 to 198.632**  
9 **shall not be compulsory and shall be conducted only at the request of the resident or the**  
10 **resident's guardian or legal representative.**

11           **4. A facility shall not refuse to admit an individual to residency in the facility and**  
12 **shall not remove a resident from the facility because of a request to conduct authorized**  
13 **electronic monitoring. A facility shall not remove a resident from the facility because**  
14 **covert electronic monitoring is being conducted by or on behalf of a resident.**

15           **5. A facility shall make reasonable physical accommodation for authorized**  
16 **electronic monitoring, including:**

17           **(1) Providing a reasonably secure place to mount the video surveillance camera or**  
18 **other electronic monitoring device; and**

19           **(2) Providing access to power sources for the video surveillance camera or other**  
20 **electronic monitoring device.**

21           **6. The resident or the resident's guardian or legal representative shall pay for all**  
22 **costs associated with conducting electronic monitoring, other than the costs of electricity.**

23 **The resident or the resident's guardian or legal representative shall be responsible for:**

24           **(1) All costs associated with installation of equipment; and**

25           **(2) Maintaining the equipment.**

26           **7. A facility shall require an electronic monitoring device to be installed in a**  
27 **manner that is safe for residents, employees, or visitors who may be moving about the**  
28 **room. The department shall adopt rules regarding the safe placement of an electronic**  
29 **monitoring device.**

30           **8. If authorized electronic monitoring is conducted, the facility shall require the**  
31 **resident or the resident's guardian or legal representative to conduct the electronic**  
32 **monitoring in plain view.**

33           **9. A facility may, but is not required to, place a resident in a different room to**  
34 **accommodate a request to conduct authorized electronic monitoring.**

**198.624. 1. For purposes of reporting abuse and neglect, a person who is**  
2 **conducting electronic monitoring on behalf of a resident under this chapter is considered**  
3 **to have viewed or listened to a tape or recording made by the electronic monitoring device**  
4 **on or before the fourteenth day after the date the tape or recording is made.**

5           **2. If a resident who has capacity to determine that the resident has been abused or**  
6 **neglected and who is conducting electronic monitoring under sections 198.610 to 198.632**  
7 **gives a tape or recording made by the electronic monitoring device to a person and directs**  
8 **the person to view or listen to the tape or recording to determine whether abuse or neglect**  
9 **has occurred, the person to whom the resident gives the tape or recording is considered to**  
10 **have viewed or listened to the tape or recording on or before the seventh day after the date**  
11 **the person receives the tape or recording for the purposes of reporting abuse or neglect.**

12           **3. A person is required to report abuse based on the person's viewing of, or**  
13 **listening to, a tape or recording only if the incident of abuse is acquired on the tape or**  
14 **recording. A person is required to report neglect based on the person's viewing of, or**  
15 **listening to, a tape or recording only if it is clear from viewing or listening to the tape or**  
16 **recording that neglect has occurred.**

17           **4. If abuse or neglect of the resident is reported to the facility and the facility**  
18 **requests a copy of any relevant tape or recording made by an electronic monitoring device,**

19 the person who possesses the tape or recording shall provide the facility with a copy at the  
20 facility's expense.

198.626. 1. Subject to applicable rules of evidence and procedure and the  
2 requirements of this section, a tape or recording created through the use of covert or  
3 authorized electronic monitoring described by sections 198.610 to 198.632 may be admitted  
4 into evidence in a civil or criminal court action or administrative proceeding.

5 2. A court or administrative agency shall not admit into evidence a tape or  
6 recording created through the use of covert or authorized electronic monitoring or take or  
7 authorize action based on the tape or recording unless:

8 (1) If the tape or recording is a videotape or recording, the tape or recording shows  
9 the time and date that the events acquired on the tape or recording occurred;

10 (2) The contents of the tape or recording have not been edited or artificially  
11 enhanced; and

12 (3) If the contents of the tape or recording have been transferred from the original  
13 format to another technological format, the transfer was done by a qualified professional  
14 and the contents of the tape or recording were not altered.

15 3. A person who sends more than one tape or recording to the department shall  
16 identify for the department each tape or recording on which the person believes that an  
17 incident of abuse or evidence of neglect may be found. The department may adopt rules  
18 encouraging persons who send a tape or recording to the department to identify the place  
19 on the tape or recording that an incident of abuse or evidence of neglect may be found.

198.628. Each facility shall post a notice at the entrance to the facility stating that  
2 the rooms of some residents may be being monitored electronically by, or on behalf of, the  
3 residents and that the monitoring is not necessarily open and obvious. The department by  
4 rule shall prescribe the format and the precise content of the notice.

198.630. 1. The department may impose appropriate sanctions under this chapter  
2 on an administrator of a facility who knowingly:

3 (1) Refuses to permit a resident or the resident's guardian or legal representative  
4 to conduct authorized electronic monitoring;

5 (2) Refuses to admit an individual to residency or allows the removal of a resident  
6 from the institution because of a request to conduct authorized electronic monitoring;

7 (3) Allows the removal of a resident from the facility because covert electronic  
8 monitoring is being conducted by or on behalf of the resident; or

9 (4) Violates another provision of sections 198.610 to 198.632.

10 2. The department may assess an administrative penalty against a facility that:



11           **(1) Refuses to permit a resident or the resident's guardian or legal representative**  
12 **to conduct authorized electronic monitoring;**

13           **(2) Refuses to admit an individual to residency or allows the removal of a resident**  
14 **from the institution because of a request to conduct authorized electronic monitoring;**

15           **(3) Allows the removal of a resident from the facility because covert electronic**  
16 **monitoring is being conducted by, or on behalf of, the resident; or**

17           **(4) Violates another provision of sections 198.610 to 198.632.**

**198.632. 1. A person who intentionally hampers, obstructs, tampers with, or**  
2 **destroys an electronic monitoring device installed in a resident's room in accordance with**  
3 **sections 198.610 to 198.632 or a tape or recording made by the device commits an offense.**  
4 **An offense under this section is a class B misdemeanor.**

5           **2. It is a defense to prosecution under subsection 1 of this section that the person**  
6 **who took the action with the effective consent of the resident on whose behalf the electronic**  
7 **monitoring device was installed, or the resident's guardian or legal representative.**

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