

1 AN ACT relating to long-term care facilities.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO  
4 READ AS FOLLOWS:

5 (1) As used in this section:

6 (a) "Attorney-in-fact" means a person designated as such by a durable power  
7 of attorney pursuant to KRS Chapter 457;

8 (b) "Cabinet" means the Cabinet for Health and Family Services;

9 (c) "Electronic monitoring device" means a surveillance instrument with a  
10 fixed position video camera or an audio recording device, or a combination  
11 thereof, that is installed in a resident's room and broadcasts or records  
12 activities or sounds occurring in the room;

13 (d) "Guardian" has the same meaning as in KRS 387.510;

14 (e) "Long-term care facility" has the same meaning as in KRS 216.510; and

15 (f) "Resident" means a person who resides in a long-term care facility.

16 (2) Subject to the provisions of subsections (6) to (9) of this section, a resident or a  
17 resident's guardian or attorney-in-fact may authorize the installation and use of  
18 an electronic monitoring device in the resident's room in a long-term care  
19 facility.

20 (3) The installation and use of an electronic monitoring device may be authorized if:

21 (a) The resident or resident's guardian or attorney-in-fact completes the form  
22 created under subsection (10) of this section and submits it to the long-term  
23 care facility; and

24 (b) Other than the cost of electricity for the device, the resident or the resident's  
25 guardian or attorney-in-fact pays for the device and the cost of installing,  
26 maintaining, and removing the device, including the payment for an  
27 internet service provider for the device unless the long-term care facility

1                   provides public-use internet or other publicly available Wi-Fi systems.

2   (4) A resident who has authorized the installation and use of an electronic  
3       monitoring device may withdraw that authorization at any time. Documentation  
4       of this withdrawal shall be included in the resident's clinical record.

5   (5) A resident's express refusal of an electronic monitoring device supersedes a  
6       guardian's or attorney-in-fact's consent unless otherwise authorized by a court.

7   (6) (a) If a resident wishing to conduct authorized electronic monitoring of the  
8       resident's room lives with another resident in a long-term care facility, the  
9       consent of the other resident or the other resident's guardian or attorney-in-  
10      fact to the installation and use of an electronic monitoring device in the  
11      room shall be obtained before any installation or use of such device may  
12      occur.

13      (b) The other resident or resident's guardian or attorney-in-fact shall give  
14      consent by completing the relevant part of the form created under  
15      subsection (10) of this section.

16   (7) If a resident living in a room with another resident wishes to conduct authorized  
17      electronic monitoring of the resident's room, but the other resident or other  
18      resident's guardian or attorney-in-fact refuses to consent to the installation and  
19      use of an electronic monitoring device, the facility shall make a reasonable  
20      attempt to accommodate the resident wishing to conduct authorized electronic  
21      monitoring by moving one (1) of the residents to another available room with the  
22      consent of the resident being moved or the resident's guardian or attorney-in-  
23      fact.

24   (8) In the case of a resident living in a room with another resident, the other resident  
25      or other resident's guardian or attorney-in-fact may place conditions on any  
26      consent to the installation and use of an electronic monitoring device, including  
27      conditions such as pointing the device away from the other resident or limiting or

1       prohibiting the use of certain devices. If conditions are placed on consent, the  
2       device shall be installed and used in accordance with those conditions.

3       (9) A resident whose consent is required under this section may withdraw that  
4       consent at any time. Documentation of this withdrawal shall be included in the  
5       resident's clinical record.

6       (10) Any resident who has previously authorized the installation of an electronic  
7       monitoring device must obtain consent from any new resident that moves into the  
8       monitored room before the existing resident may continue authorized electronic  
9       monitoring.

10       (11) The cabinet shall create a form for use by a resident or resident's guardian or  
11       attorney-in-fact seeking to authorize the installation and use of an electronic  
12       monitoring device in the resident's room in a long-term care facility. The form  
13       shall contain, at a minimum:

14       (a) The date;

15       (b) An explanation of this section;

16       (c) An acknowledgement that the resident or resident's guardian or attorney-in-  
17       fact has consented to the installation and use of the device in the resident's  
18       room;

19       (d) In the case of a resident who lives in a room with another resident, an  
20       acknowledgement that the other resident or other resident's guardian or  
21       attorney-in-fact has consented to the installation and use of the device and a  
22       description of any conditions placed on that consent;

23       (e) A section for the resident or resident's guardian or attorney-in-fact to  
24       provide the facility with information regarding the type of device to be  
25       installed and how it will function and be monitored; and

26       (f) A statement that the facility is released from liability in a civil or criminal  
27       action or administrative proceeding for a violation of the resident's right to

1 privacy in connection with using the device.

2 (12) The form created under subsection (11) of this section shall be made available by  
3 long-term care facilities upon request of a resident or resident's guardian or  
4 attorney-in-fact.

5 (13) The completed form shall be stored in the resident's clinical record.

6 (14) An electronic monitoring device shall be installed in a clearly visible location.

7 (15) A long-term care facility shall make reasonable accommodations for the  
8 installation of the authorized electronic monitoring device, including but not  
9 limited to:

10 (a) Providing a reasonably secure and safe place to mount the electronic  
11 monitoring device;

12 (b) Providing access to a power source for the electronic monitoring device;  
13 and

14 (c) Permitting a reasonable time schedule as to the proper day and time for  
15 installation of the electronic monitoring device.

16 (16) Recordings made by an electronic monitoring device:

17 (a) May only be used to promote safety or investigate a reported incident;

18 (b) Shall not be used for routine staff evaluation or discipline unrelated to a  
19 documented incident involving the resident; and

20 (c) Shall be retained for at least three (3) months or until final resolution of  
21 any investigation, criminal proceeding, or civil proceeding, whichever is  
22 longer.

23 (17) A resident or resident's guardian or attorney-in-fact shall report any recordings  
24 demonstrating unsafe or abusive actions to the long-term care facility  
25 administrator and the long-term care ombudsman.

26 (18) A long-term care facility shall post a notice in a conspicuous place at the  
27 entrance to a resident's room that contains an electronic monitoring device

1       stating that an electronic monitoring device is in use in that room.

2       (19) A person or resident shall not be denied admission to or discharged from a long-  
3       term care facility or otherwise discriminated or retaliated against because of the  
4       decision to authorize the installation and use of an electronic monitoring device  
5       in the resident's room in the facility.

6       (20) A person other than the resident or resident's guardian or attorney-in-fact who  
7       authorized the installation and use of an electronic monitoring device in the  
8       resident's room in a long-term care facility shall not intentionally obstruct,  
9       tamper with, or destroy the device or a recording made by the device.

10      (21) Except as provided in subsection (22) of this section, the images displayed or  
11      sounds recorded by an electronic monitoring device installed in a resident's room  
12      may be intentionally viewed or listened to by only:

13      (a) The resident;

14      (b) The resident's guardian or attorney-in-fact; or

15      (c) Law enforcement personnel.

16      (22) A resident or resident's guardian or attorney-in-fact may authorize a person to  
17      view or listen to the images displayed or sounds recorded by an electronic  
18      monitoring device installed in a resident's room.

19      (23) Long-term care facilities acting in good faith and in compliance with this section  
20      shall not be civilly or criminally liable for:

21      (a) Disclosure of recordings by a resident or guardian; or

22      (b) Alleged invasions of privacy resulting from resident-directed monitoring,  
23      including liability for a violation of the Health Insurance Portability and  
24      Accountability Act.

25      (24) This section shall not:

26      (a) Be construed to provide immunity for abuse, neglect, exploitation, or failure  
27      to meet the required standard of care;

- 1        (b) Limit resident's right to pursue claims of negligence or misconduct; or  
2        (c) Limit long-term care facility or its employees or agents from utilizing  
3                disclosed recordings as evidence in a criminal or civil proceeding.  
4        (25) The cabinet shall promulgate administrative regulations in accordance with KRS  
5                Chapter 13A to implement this section.  
6        (26) This section shall not apply if an electronic monitoring device is installed by a  
7                law enforcement agency and is used solely for a bona fide law enforcement  
8                purpose.  
9        (27) A person that intentionally violates subsection (20), (21), or (22) of this section by  
10                tampering with an electronic monitoring device is guilty of a Class B  
11                misdemeanor.