

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:

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

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

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

(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

(b) Other than the cost of electricity for the device, the resident or the resident's guardian or attorney-in-fact pays for the device and the cost of installing, maintaining, and removing the device, including the payment for an 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

privacy in connection with using the device.

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

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

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

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

(a) Providing a reasonably secure and safe place to mount the electronic monitoring device:

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

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

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

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

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

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

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

(18) A long-term care facility shall post a notice in a conspicuous place at the 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.**