

1 AN ACT
2 RELATING TO LONG-TERM CARE; ENACTING THE PATIENT CARE
3 MONITORING ACT; ESTABLISHING AUTHORIZATION AND USE OF
4 MONITORING DEVICES; PROVIDING FOR WAIVERS; PROVIDING FOR
5 ENFORCEMENT AND PENALTIES.
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7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:
8 Section 1. SHORT TITLE.--This act may be cited as the "Patient Care
9 Monitoring Act".
10 Section 2. DEFINITIONS.--As used in the Patient Care Monitoring Act:
11 A. "agency" means the state agency on aging;
12 B. "facility" means a long-term care facility licensed pursuant to the
13 provisions of Section 24-1-5 NMSA 1978, other than an intermediate care facility for
14 the mentally retarded, and may also include:
15 (1) a skilled nursing facility;
16 (2) an intermediate care nursing facility;
17 (3) a nursing facility;
18 (4) an adult residential shelter care home;
19 (5) a boarding home;
20 (6) any adult care home or adult residential care facility; and
21 (7) any swing bed in an acute care facility or extended care
22 facility;
23 C. "monitoring device" means a surveillance instrument that
24 broadcasts or records activity, but does not include a still camera;
25 D. "patient" means a person who is a resident of a facility;
E. "program" means the New Mexico long-term care ombudsman
program; and

1 F. "surrogate" means a legal guardian or a legally appointed SB
2 substitute decision-maker who is authorized to act on behalf of a patient.

3 Section 3. MONITORING DEVICE--AUTHORIZATION AND USE.-- 4
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4 A. A patient or a surrogate may authorize installation and use of a 1
5 monitoring device in a facility provided that: P
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6 (1) the facility is given notice of the installation; g
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7 (2) if the monitoring device records activity visually, such 2
8 recording shall include a record of the date and time;

9 (3) the monitoring device and all installation and
10 maintenance costs are paid for by the patient; and

11 (4) written consent is given by each patient or surrogate of
12 each patient occupying the same room.

13 B. The patient may establish and the facility shall accommodate
14 limits on the use, including the time of operation, direction, focus or volume, of a
15 monitoring device.

16 Section 4. MONITORING DEVICE OPTION--INSTALLATION--
17 ACCOMMODATION BY FACILITY.--

18 A. At the time of admission to a facility, a patient shall be offered the
19 option to have a monitoring device, and a record of the patient's authorization or
20 choice not to have a monitoring device shall be kept by the facility and shall be
21 made accessible to the program.

22 B. After authorization, consent and notice, a patient or surrogate
23 may install, operate and maintain a monitoring device in the patient's room at the
24 patient's expense.

25 C. The facility shall cooperate to accommodate the installation of the
monitoring device, provided the installation does not place undue burden on the
facility.

1 Section 5. CONSENT--WAIVER.--

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

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

8 C. A patient or the surrogate may reverse a choice to have or not
9 have a monitoring device installed and used at any time, after notice to the facility
10 and to the program upon a form prescribed by the agency.

11 Section 6. AUTHORIZATION FORM--CONTENTS.--The form for the
12 authorization of installation and use of a monitoring device shall provide for:

13 A. consent of the patient or the surrogate authorizing the installation
14 and use of the monitoring device;

15 B. notice to the facility of the patient's installation of a monitoring
16 device and specifics as to its type, function and use;

17 C. consent of any other patient or that patient's surrogate sharing
18 the same room;

19 D. notice of release from liability for privacy violation through the use
20 of the monitoring device; and

21 E. waiver of the patient's right to privacy in conjunction with the use
22 of the monitoring device.

23 Section 7. IMMUNITY--UNAUTHORIZED USE.--

24 A. In any civil action against the facility, material obtained through
25 the use of a monitoring device may not be used if the monitoring device was
installed or used without the knowledge of the facility or without the prescribed form.

B. Compliance with the provisions of the Patient Care Monitoring Act

1 shall be a complete defense against any civil or criminal action brought against the
2 patient, surrogate or facility for the use or presence of a monitoring device.

3 Section 8. NOTICE TO CURRENT PATIENTS.--Within six months of the
4 effective date of the Patient Care Monitoring Act, all facilities shall provide to each
5 patient or surrogate a form prescribed by the agency explaining the provisions of
6 the Patient Care Monitoring Act and giving each patient or surrogate a choice to
7 have a monitoring device installed in the patient's room. Copies of the completed
8 form shall be kept by the facility and shall be made accessible to the program.

9 Section 9. NOTICE.--The facility shall post a notice in a conspicuous place
10 at the entrance to a room with a monitoring device that a monitoring device is in use
11 in that room of the facility.

12 Section 10. RULES.--The agency shall adopt rules necessary to implement
13 the provisions of the Patient Care Monitoring Act.

14 Section 11. PROHIBITED ACTS.--No person or patient shall be denied
15 admission to or discharged from a facility or be otherwise discriminated against or
16 retaliated against because of a choice to authorize installation and use of a
17 monitoring device. Any person who violates this section shall be subject to the
18 provisions of Section 28-17-19 NMSA 1978.

19 Section 12. CRIMINAL ACTS.--Any person other than a patient or surrogate
20 found guilty of intentionally hampering, obstructing, tampering with or destroying a
21 monitoring device or a recording made by a monitoring device installed in a facility
22 pursuant to the Patient Care Monitoring Act is guilty of a fourth degree felony and
23 shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

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