

**Proposed Substitute
Bill No. 5208**

February Session, 2020

LCO No. 2613

**AN ACT DETERRING ABUSE IN NURSING HOMES AND
CONGREGATE HOUSING FOR ELDERLY PERSONS WITH ASSISTED
LIVING SERVICES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2020*) (a) For purposes of this
2 section: (1) "Ombudsman" means the Office of the Long-Term Care
3 Ombudsman established pursuant to section 17a-405 of the general
4 statutes; (2) "electronic monitoring" means the placement and use of an
5 electronic monitoring device by a resident in the resident's room or
6 private living unit in accordance with this section; (3) "electronic
7 monitoring device" means a camera or other device that captures,
8 records or broadcasts audio, video, or both, and may operate over the
9 Internet and offer two-way communication; (4) "facility" means a
10 nursing home facility as defined in section 19a-490 of the general
11 statutes or a congregate housing facility as defined in section 8-119e of
12 the general statutes with assisted living services; (5) "resident" means a
13 resident of a facility; and (6) "resident representative" means (A) a court-
14 appointed guardian, (B) a health care representative appointed
15 pursuant to section 19a-575a of the general statutes, or (C) a person who
16 is not an agent of the facility and who is designated in a written
17 document signed by the resident and included in the resident's records
18 on file with the facility.

19 (b) A resident may install an electronic monitoring device in the
20 resident's room or private living unit provided: (1) The purchase,
21 installation, maintenance, operation and removal of the device is at the
22 expense of the resident, (2) the resident and any roommate of the
23 resident sign a written consent form pursuant to subsection (c) of this
24 section, (3) the resident or resident representative places a clear and
25 conspicuous notice on the door of the room or private living unit that
26 electronic monitoring is or may be taking place, and (4) except as
27 provided in subsection (e) of this section, the consent form is filed with
28 the facility not less than seven days before installation of the electronic
29 monitoring device.

30 (c) No electronic monitoring device shall be installed in a resident's
31 room or private living unit unless the resident and any roommate of the
32 resident, or a resident representative, has signed a consent form that
33 includes, but is not limited to:

34 (1) (A) The signed consent of the resident and any roommate of the
35 resident; or (B) the signed consent of a resident representative if (i) the
36 resident or roommate lacks the physical capacity to sign the form but
37 has verbally consented, or (ii) a treating health care professional certifies
38 the resident or roommate lacks the mental capacity to sign the form. If a
39 resident representative signs the consent form, the form must document
40 the following:

41 (I) The date the resident or any roommate was asked if the resident
42 or roommate wants electronic monitoring to be conducted;

43 (II) Who was present when the resident or roommate was asked if he
44 or she consented to electronic monitoring;

45 (III) An acknowledgment that the resident or roommate did not
46 affirmatively object to electronic monitoring; and

47 (IV) The source of the authority allowing the resident representative

48 of the resident or roommate to sign the consent form on behalf of the
49 roommate or resident.

50 (2) A waiver of liability for the facility for any breach of privacy
51 involving the resident's use of an electronic monitoring device unless
52 such breach of privacy occurred because of unauthorized use of the
53 device or a recording made by the device by facility staff.

54 (3) The type of electronic monitoring device to be used.

55 (4) A list of conditions or restrictions that the resident or any
56 roommate of the resident may elect to place on the use of the electronic
57 monitoring device, including, but not limited to: (A) Prohibiting audio
58 recording, (B) prohibiting video recording, (C) prohibiting broadcasting
59 of audio or video, (D) turning off the electronic monitoring device or
60 blocking the visual recording component of the electronic monitoring
61 device for the duration of an exam or procedure by a health care
62 professional, (E) turning off the electronic monitoring device or blocking
63 the visual recording component of the electronic monitoring device
64 while the resident or any roommate of the resident is dressing or
65 bathing, and (F) turning off the electronic monitoring device for the
66 duration of a visit with a spiritual advisor, ombudsman, attorney,
67 financial planner, intimate partner or other visitor.

68 (5) An acknowledgment that the resident, roommate or their resident
69 representatives shall be responsible for operating the electronic
70 monitoring device in accordance with the conditions and restrictions
71 listed in subdivision (4) of this subsection unless the resident, roommate
72 or their resident representatives have signed a written agreement with
73 the facility under which facility staff operate the electronic monitoring
74 device for this purpose. Such agreement may contain a waiver of
75 liability for the facility related to such operation of the device by facility
76 staff.

77 (6) A statement of the circumstances under which a recording from

78 the electronic monitoring device may be disseminated.

79 (7) A signature box for documenting that the resident or roommate
80 has consented or withdrawn consent to electronic monitoring.

81 (d) The ombudsman, within available appropriations, shall make
82 available on the ombudsman's Internet web site a downloadable copy
83 of a standard form containing all of the provisions required in
84 subsection (c) of this section. Facilities shall (1) make the consent form
85 available to residents and inform residents of their option to conduct
86 electronic monitoring of their rooms or private living units at their own
87 expense, (2) maintain a copy of the consent form in the resident's
88 records, and (3) place a notice in a conspicuous place near the entry to
89 the facility stating that some rooms and living areas may be subject to
90 electronic monitoring.

91 (e) Notwithstanding subdivision (4) of subsection (b) of this section,
92 a resident or resident representative may install an electronic
93 monitoring device without submitting the consent form to a facility if:
94 (1) The resident or the resident representative reasonably fears
95 retaliation against the resident by the facility for recording or reporting
96 alleged abuse or neglect of the resident by facility staff, submits a
97 completed consent form to the ombudsman and submits a report to the
98 ombudsman, the Commissioner of Social Services, the Commissioner of
99 Public Health or the police, with evidence from an electronic monitoring
100 device that suspected abuse or neglect has occurred; (2) the facility has
101 failed to respond for more than two business days to a written
102 communication from the resident or resident representative about a
103 concern relating to the safety or well-being of the resident that prompted
104 the resident's desire for electronic monitoring and the resident or a
105 resident representative has submitted a consent form to the
106 ombudsman; or (3) the resident or resident representative has already
107 submitted a report to the ombudsman, the Commissioner of Social
108 Services, the Commissioner of Public Health or the police regarding a

109 concern relating to the resident's safety or well-being that prompted the
110 resident's desire for electronic monitoring and the resident or resident
111 representative has submitted a consent form to the ombudsman.

112 (f) If a resident is conducting electronic monitoring and a new
113 roommate moves into the room or private living unit, the resident shall
114 cease use of the electronic monitoring device unless and until the new
115 roommate signs the consent form and the resident or resident
116 representative files the completed form with the roommate's consent to
117 electronic monitoring with the facility. If any roommate of a resident
118 wishing to use electronic monitoring refuses to sign the consent form,
119 the resident may request to be moved to another room with a roommate
120 who has agreed to consent to such monitoring or a private room, if either
121 are available. A facility shall make a reasonable effort to accommodate
122 such request in not more than thirty days. **If Private pay** the resident
123 shall pay any difference in price if the new room is more costly than the
124 resident's previous room.

125 (g) If facility staff need to move or remove an electronic monitoring
126 device installed in accordance with the provisions of this section, the
127 staff shall immediately notify the resident or resident representative and
128 use caution to ensure that neither the device nor any recordings made
129 by the device are damaged.

130 (h) Subject to applicable rules of evidence and procedure, any video
131 or audio recording created through electronic monitoring under this
132 section may be admitted into evidence in a civil, criminal or
133 administrative proceeding. For purposes of section 1-210 of the general
134 statutes, a consent form signed by a resident or a resident's
135 representative requesting electronic monitoring shall not be considered
136 a public record.

<p>This act shall take effect as follows and shall amend the following sections:</p>
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Section 1	<i>October 1, 2020</i>	New section
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