

2019 Regular Session

HOUSE BILL NO. 334

BY REPRESENTATIVE FOIL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

HEALTH CARE/FACILITIES: Authorizes the use of monitoring devices in the rooms of residents of intermediate care facilities for people with developmental disabilities

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

AN ACT

To amend and reenact the heading of Part VI-E of Chapter 11 of Title 40 of the Louisiana Revised Statutes of 1950, R.S. 40:2180.1, 2180.2(introductory paragraph), (8), (9), and (10)(introductory paragraph) and (c), 2180.3, 2180.4, and 2180.5(A) and to enact R.S. 40:2180(3) through (5) and R.S. 40:2180.6 through 2180.10, relative to intermediate care facilities for people with developmental disabilities; to authorize residents of such facilities or their legal representatives to have monitoring devices installed in residents' rooms; to establish conditions for the installation and use of such monitoring devices; to provide for consent relative to the installation and use of such devices; to provide for procedures and forms for authorizing the installation and use of such devices; to limit liability relative to installation and use of such devices in certain cases; to provide for prohibited conduct and penalties therefor; to provide for definitions; to make technical changes and corrections; to provide for the designation and organization of certain laws by the Louisiana State Law Institute; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The heading of Part VI-E of Chapter 11 of Title 40 of the Louisiana Revised Statutes of 1950, R.S. 40:2180.1, 2180.2(introductory paragraph), (8), (9), and (10)(introductory paragraph) and (c), 2180.3, 2180.4, and 2180.5(A) are hereby amended

1 and reenacted and R.S. 40:2180(3) through (5) and R.S. 40:2180.6 through 2180.10 are
2 hereby enacted to read as follows:

3 PART VI-E. ~~LICENSING OF~~ INTERMEDIATE CARE FACILITIES FOR
4 PERSONS WITH DEVELOPMENTAL DISABILITIES (ICF/DD)

5 §2180. Definitions

6 As used in this Part, the following terms shall have the following meanings,
7 except when the context clearly indicates otherwise:

8 * * *

9 (3) "Legal representative" means a legal guardian or a legally appointed
10 substitute decision-maker who is authorized to act on behalf of a resident of an
11 intermediate care facility for people with developmental disabilities.

12 (4)(a) "Monitoring device" means a surveillance instrument that broadcasts
13 or records activity.

14 (b) The term "monitoring device" shall not include a camera that records still
15 images exclusively.

16 (5) "Resident" means a person who is a resident of an intermediate care
17 facility for people with developmental disabilities.

18 §2180.1. Licensure of intermediate care facilities for people with developmental
19 disabilities (ICF/DD)

20 A. Any public or private ~~(ICF/DD)~~ now ICF/DD engaged in the provision
21 of services or ~~hereafter~~ desiring to be engaged in the same shall apply to the
22 department for a license authorizing them to engage in such services.

23 ~~(1) B.~~ B. The license shall indicate the types of developmental disabilities
24 services that a public or private ~~provider~~ ICF/DD is authorized to provide.

25 ~~(2) Providers who are already licensed~~ C. Licensed providers are not
26 required by this Section to reapply for licensure until ~~the current license expires~~ their
27 license expires, except when applying for new developmental disabilities services.

1 §2180.2. Promulgation of rules

2 The department shall promulgate, in accordance with the Administrative
3 Procedure Act, licensing standards, rules, and regulations; regarding, but not limited
4 to, all of the following:

5 * * *

6 (8) Planning, construction, and design to ensure the health, safety, and
7 comfort of persons receiving services.

8 (9) Such other regulations ~~of~~ and standards as will ensure proper care and
9 treatment as may be deemed necessary for ~~an~~ effective administration of this Part.

10 (10) The establishment of new or replacement facilities or reestablishment
11 of facilities that have sustained substantial structural damage from a hurricane or
12 ~~substantial structural damage from~~ flooding which are located in areas subject to
13 hurricanes, tidal surges, or flooding. An architect or civil engineer registered in the
14 state shall determine whether a facility has sustained substantial structural damage
15 from a hurricane or ~~substantial structural damage from~~ flooding in accordance with
16 the Louisiana State Uniform Construction Code. The regulations adopted by the
17 department pursuant to this Paragraph shall include but not be limited to all of the
18 following:

19 * * *

20 (c) Provisions for the fair allocation of the Medicaid share of ~~facility specific~~
21 facility-specific costs directly incurred by a facility as a result of compliance.

22 * * *

23 §2180.3. Input from the office for citizens with developmental disabilities

24 Any office, bureau, or agency that licenses ~~ICF/DD's~~ ICF/DD facilities shall
25 prepare proposed rules, regulations, and standards in consultation with the office for
26 citizens with developmental disabilities. Such consultation ~~with~~ shall include
27 assurance that all federal and state laws and regulations, including the provisions of
28 this Chapter regarding program requirements, are included in the licensing
29 requirements.

1 (2) If the monitoring device records activity visually, the recordings made
2 by the device include a record of the date and time.

3 (3) The resident or his legal representative pays for the monitoring device
4 and all installation and maintenance costs associated with the device.

5 (4) Each resident occupying the same room, or a legal representative of any
6 such resident, gives written consent for the installation of the monitoring device.

7 §2180.7. Monitoring device option; installation; consent of residents in shared
8 rooms; accommodation by ICF/DD

9 A. At the time of a person's admission to an ICF/DD, the ICF/DD shall
10 notify the person and his legal representative, if any, of the person's right to have a
11 monitoring device installed in his room, and shall offer the person and his legal
12 representative, if any, the option to have a monitoring device installed in the person's
13 room. The person or his legal representative may exercise this right at any time
14 during which the person resides in the ICF/DD. The ICF/DD shall keep a record of
15 the person's authorization or choice not to have a monitoring device.

16 B. If a resident who is residing in a shared room wishes to have a monitoring
17 device installed in the room and another resident living in or moving into the same
18 shared room refuses to consent to the use of the monitoring device, then the ICF/DD
19 shall make a reasonable attempt to accommodate the resident who wishes to have the
20 monitoring device installed. An ICF/DD shall be deemed to have met this
21 accommodation requirement when, upon notification that a roommate has not
22 consented to the use of an electronic monitoring device in his room, the facility
23 offers to move either resident to another shared room that is available at the time of
24 the request.

25 C. After authorization, consent, and notice have occurred in accordance with
26 the provisions of this Part, a resident or his legal representative may install, operate,
27 and maintain, at the expense of the resident or his legal representative, a monitoring
28 device in the room of the resident.

1 D. The ICF/DD shall cooperate to accommodate the installation of the
2 monitoring device unless doing so would place an undue burden on the facility.

3 §2180.8. Consent for monitoring device installation and use; authorization form

4 A. Consent for installation and use of a monitoring device may be given only
5 by the resident or his legal representative.

6 B. Consent for installation and use of a monitoring device shall include a
7 release of liability for the ICF/DD for a violation of the resident's right to privacy
8 insofar as the use of the monitoring device is concerned.

9 C. A resident or his legal representative may reverse a choice to have or not
10 have a monitoring device installed and used at any time after notice of such reversal
11 has been made to the ICF/DD upon a form prescribed by the department.

12 D. The form for the authorization of installation and use of a monitoring
13 device shall provide for all of the following:

14 (1) Consent of the resident or his legal representative authorizing the
15 installation and use of the monitoring device.

16 (2) Notice to the ICF/DD of the resident's installation of a monitoring device
17 and specifics as to the type, function, and use of the device.

18 (3) Consent of any other resident sharing the same room, or that resident's
19 legal representative, to the installation and use of a monitoring device.

20 (4) Notice of release from liability for violation of privacy through the use
21 of the monitoring device.

22 (5) Waiver of the resident's right to privacy in connection with the use of the
23 monitoring device.

24 §2180.9. Unauthorized use; immunity from liability

25 A. In any civil action against an ICF/DD, material obtained through the use
26 of a monitoring device shall not be used if the device was installed or operated
27 without the knowledge of the facility, or installed or used without the authorization
28 form required by R.S. 40:2180.8.

1 B. Compliance with the provisions of this Part shall be a complete defense
2 to any civil or criminal action brought against the resident, his legal representative,
3 or an ICF/DD for the presence or use of a monitoring device.

4 §2180.10. Prohibited acts; civil and criminal penalties

5 A.(1) No ICF/DD shall deny a person or resident admission to or discharge
6 from the facility, or otherwise discriminate or retaliate against a person or resident,
7 because of a choice to authorize installation and use of a monitoring device.

8 (2) Any person who knowingly or willfully violates the provisions of
9 Paragraph (1) of this Subsection shall be guilty of a misdemeanor and, upon
10 conviction, punished by a fine of not less than one thousand dollars nor more than
11 two thousand five hundred dollars.

12 B.(1) Except as provided in Paragraph (3) of this Subsection, no person shall
13 intentionally hamper, obstruct, tamper with, or destroy a monitoring device or a
14 recording made by a monitoring device installed in an ICF/DD pursuant to this Part.

15 (2) Any person who knowingly or willfully violates the provisions of
16 Paragraph (1) of this Subsection shall be guilty of a felony and, upon conviction,
17 punished by a fine of not more than five thousand dollars and shall be imprisoned
18 with or without hard labor for not more than six months.

19 (3) The prohibition and penalties provided in this Subsection shall not apply
20 to the resident who owns the monitoring device or recording, or to his legal
21 representative.

22 Section 2.(A) On or before January 1, 2020, each intermediate care facility for
23 people with developmental disabilities licensed by the Louisiana Department of Health shall
24 provide to each resident of the facility or, if applicable, the legal guardian or legally
25 appointed substitute decision-maker authorized to act on behalf of the resident, a form
26 prescribed by the department explaining the provisions of R.S. 40:2180.6 through 2180.10,
27 as enacted by Section 1 of this Act, and giving each resident or his legal representative a
28 choice to have a monitoring device installed in the room of the resident.

1 (B) Each intermediate care facility for people with developmental disabilities shall
2 retain a copy of each form completed in accordance with this Section, and shall make all
3 such forms accessible to the Louisiana Department of Health.

4 Section 3.(A) The Louisiana State Law Institute is hereby directed to designate R.S.
5 40:2180 as Subpart A of Part VI-E of Chapter 11 of Title 40 of the Louisiana Revised
6 Statutes of 1950, and is further directed to apply to the Subpart the heading "General
7 Provisions".

8 (B) The Louisiana State Law Institute is hereby directed to designate R.S. 40:2180.1
9 through 2180.5 as Subpart B of Part VI-E of Chapter 11 of Title 40 of the Louisiana Revised
10 Statutes of 1950, and is further directed to apply to the Subpart the heading "Licensing and
11 Regulation".

12 (C) The Louisiana State Law Institute is hereby directed to designate R.S. 40:2180.6
13 through 2180.10, as enacted by Section 1 of this Act, as Subpart C of Part VI-E of Chapter
14 11 of Title 40 of the Louisiana Revised Statutes of 1950, and is further directed to apply to
15 the Subpart the heading "Monitoring Devices: Authorization and Use in ICF/DD".

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 334 Original

2019 Regular Session

Foil

Abstract: Authorizes the installation and use of monitoring devices in the rooms of residents of intermediate care facilities for people with developmental disabilities, also known as "ICF/DD" facilities.

Present law provides for licensure and regulation by the state of intermediate care facilities for people with developmental disabilities, also known as "ICF/DD" facilities. Provides for duties and responsibilities of the La. Department of Health with respect to licensure and regulation of these facilities.

Proposed law amends present law to authorize the use of monitoring devices in the rooms of residents of ICF/DD facilities.

Proposed law provides the following definitions:

- (1) "Legal representative" means a legal guardian or a legally appointed substitute decision-maker who is authorized to act on behalf of a resident of an ICF/DD.

- (2) "Monitoring device" means a surveillance instrument that broadcasts or records activity. Provides that the term "monitoring device" shall not include a camera that records still images exclusively.

Proposed law provides for procedures by which an ICF/DD resident or his legal representative may authorize the installation and use of a monitoring device in an ICF/DD room. Provides that the monitoring device may be installed and used only if the following conditions are met:

- (1) The resident or his legal representative gives notice of the installation to the ICF/DD.
- (2) If the monitoring device records activity visually, the recordings made by the device include a record of the date and time.
- (3) The resident or his legal representative pays for the monitoring device and all installation and maintenance costs associated with the device.
- (4) Each resident occupying the same room, or a legal representative of any such resident, gives written consent for the installation of the monitoring device.

Proposed law stipulates that in any civil action against an ICF/DD, material obtained through the use of a monitoring device shall not be used if the device was installed or operated without the knowledge of the facility, or installed or used without the authorization form required by proposed law.

Proposed law establishes the following prohibitions and penalties:

- (1) No ICF/DD shall deny a person or resident admission to or discharge from the facility, or otherwise discriminate or retaliate against a person or resident, because of a choice to authorize installation and use of a monitoring device. Provides that any person who knowingly or willfully violates these provisions shall be guilty of a misdemeanor and, upon conviction, punished by a fine of not less than \$1,000 nor more than \$2,500.
- (2) No person shall intentionally hamper, obstruct, tamper with, or destroy a monitoring device or a recording made by a monitoring device installed in an ICF/DD pursuant to proposed law. Provides that any person who knowingly or willfully violates these provisions shall be guilty of a felony and, upon conviction, punished by a fine of not more than \$5,000 and shall be imprisoned with or without hard labor for not more than six months. Provides, however, that this prohibition and the penalties therefor shall not apply to the resident who owns the monitoring device or recording, or to his legal representative.

Proposed law provides that on or before January 1, 2020, each licensed ICF/DD shall provide to each resident of the facility or, if applicable, the legal guardian or legally appointed substitute decision-maker authorized to act on behalf of the resident, a form prescribed by the La. Department of Health explaining the provisions of proposed law, and giving each resident or his legal representative a choice to have a monitoring device installed.

Proposed law makes technical changes and corrections in present law.

(Amends the heading of Part VI-E of Chapter 11 of Title 40 of the La. Revised Statutes of 1950, R.S. 40:2180.1, 2180.2(intro. para.), (8), (9), and (10)(intro. para.) and (c), 2180.3, 2180.4, and 2180.5(A); Adds R.S. 40:2180(3)-(5) and R.S. 40:2180.6-2180.10)