

2018 Regular Session

HOUSE BILL NO. 281

BY REPRESENTATIVES TALBOT, AMEDEE, ANDERS, BACALA, BAGLEY, BAGNERIS, BARRAS, BERTHELOT, BILLIOT, BOUIE, BRASS, CHAD BROWN, TERRY BROWN, CARMODY, CARPENTER, GARY CARTER, ROBBY CARTER, STEVE CARTER, CHANEY, COUSSAN, COX, DAVIS, EDMONDS, FOIL, GAROFALO, GISCLAIR, GLOVER, GUINN, HALL, JIMMY HARRIS, LANCE HARRIS, HILFERTY, HODGES, HOLLIS, HORTON, HUNTER, IVEY, JACKSON, JEFFERSON, JONES, NANCY LANDRY, LYONS, MIGUEZ, GREGORY MILLER, MORENO, JAY MORRIS, JIM MORRIS, NORTON, PIERRE, PYLANT, REYNOLDS, SCHEXNAYDER, SHADOIN, SMITH, STAGNI, STOKES, THIBAUT, THOMAS, WHITE, WRIGHT, AND ZERINGUE

NURSING HOMES: Authorizes nursing home residents or their qualified surrogates to have monitoring devices installed in those residents' rooms

1 AN ACT

2 To enact Part VII of Subchapter B of Chapter 5-D of the Louisiana Revised Statutes of

3 1950, to be comprised of R.S. 40:1193.1 through 1193.9, and R.S. 40:2010.8(A)(24),

4 relative to rights of nursing home residents; to authorize a nursing home resident or

5 a surrogate to have a monitoring device installed in the room of the resident; to

6 establish conditions for the installation and use of monitoring devices in nursing

7 homes; to provide for consent relative to the installation and use of such devices; to

8 provide limitations on the use of such devices; to require nursing homes to make

9 certain accommodations relative to such devices; to limit liability in cases in which

10 a monitoring device is installed without proper authorization or used improperly; to

11 prohibit certain conduct by nursing homes; to establish penalties; to provide for

12 administrative rulemaking; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Part VII of Subchapter B of Chapter 5-D of the Louisiana Revised

15 Statutes of 1950, comprised of R.S. 40:1193.1 through 1193.9, and R.S. 40:2010.8(A)(24)

16 are hereby enacted to read as follows:

1 PART VII. MONITORING OF NURSING HOME CARE2 §1193.1. Short title

3 This Part shall be known and may be cited as the "Nursing Home Virtual
4 Visitation Act".

5 §1193.2. Definitions

6 As used in this Part, the following terms have the meaning ascribed in this
7 Section:

8 (1) "Department" means the Louisiana Department of Health.

9 (2)(a) "Monitoring device" means a surveillance instrument that broadcasts
10 or records activity.

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

13 (3) "Nursing home" means a nursing facility or nursing home as defined in
14 R.S. 40:2009.2.

15 (4) "Ombudsman" means the administrator of the office of the state
16 long-term care ombudsman established within the office of elderly affairs by the
17 provisions of R.S. 40:2010.2.

18 (5) "Resident" means a person who is a resident of a nursing home.

19 (6) "Surrogate" means a legal guardian or a legally appointed substitute
20 decision-maker who is authorized to act on behalf of a nursing home resident.

21 §1193.3. Monitoring device; authorization and use

22 A. A resident or a surrogate may authorize the installation and use of a
23 monitoring device in a nursing home if all of the following conditions are met:

24 (1) The resident or surrogate gives notice of the installation to the nursing
25 home.

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

28 (3) The resident pays for the monitoring device and all installation and
29 maintenance costs associated with the device.

1 (4) Each resident occupying the same room, or that resident's surrogate,
2 gives written consent for the installation of the monitoring device.

3 B. The resident may establish and the nursing home shall accommodate
4 limits on the use of a monitoring device, including limits on the time of operation of
5 the device and its direction, focus, or volume.

6 §1193.4. Monitoring device option; installation; consent of residents in shared
7 rooms; accommodation by nursing home

8 A.(1) At the time of a person's admission to a nursing home, the nursing
9 home shall notify the person of his right to have a monitoring device installed in his
10 room, and shall offer the person the option to have a monitoring device. The person
11 may exercise this right at any time during which he resides in the nursing home. The
12 nursing home shall keep a record of the person's authorization or choice not to have
13 a monitoring device.

14 (2) The nursing home shall make the record provided for in Paragraph (1)
15 of this Subsection accessible to the ombudsman.

16 B.(1) If a resident who is residing in a shared room wishes to have a
17 monitoring device installed in the room and another resident living in or moving into
18 the same shared room refuses to consent to the use of the monitoring device, then the
19 nursing home shall make a reasonable attempt to accommodate the resident who
20 wishes to have the monitoring device installed. A nursing home shall be deemed to
21 have met this accommodation requirement when, upon notification that a roommate
22 has not consented to the use of an electronic monitoring device in his room, the
23 facility offers to move either resident to another shared room that is available at the
24 time of the request.

25 (2) If a resident chooses to reside in a private room in order to accommodate
26 the use of an electronic monitoring device, the resident shall pay the private room
27 rate. If a nursing home is unable to accommodate a resident due to lack of space, the
28 nursing home shall reevaluate the request at least once every two weeks until the
29 request is fulfilled.

1 C. After authorization, consent, and notice in accordance with this Part, a
2 resident or surrogate may install, operate, and maintain, at the expense of the
3 resident, a monitoring device in the room of the resident.

4 D. The nursing home shall cooperate to accommodate the installation of the
5 monitoring device unless doing so would place undue burden on the nursing home.

6 §1193.5. Consent; waiver

7 A. Consent to the authorization for installation and use of a monitoring
8 device may be given only by the resident or a surrogate.

9 B. Consent to the authorization for installation and use of a monitoring
10 device shall include a release of liability for the nursing home for a violation of the
11 resident's right to privacy insofar as the use of the monitoring device is concerned.

12 C. A resident or a surrogate may reverse a choice to have or not have a
13 monitoring device installed and used at any time after notice of such reversal has
14 been made to the nursing home, and to the ombudsman, upon a form prescribed by
15 the department.

16 §1193.6. Authorization form; content

17 The form for the authorization of installation and use of a monitoring device
18 shall provide for all of the following:

19 (1) Consent of the resident or surrogate authorizing the installation and use
20 of the monitoring device.

21 (2) Notice to the nursing home of the resident's installation of a monitoring
22 device and specifics as to the type, function, and use of the device.

23 (3) Consent of any other resident sharing the same room, or that resident's
24 surrogate, to the installation and use of a monitoring device.

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

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

1 §1193.7. Immunity; unauthorized use

2 A. In any civil action against a nursing home, material obtained through the
3 use of a monitoring device shall not be used if the device was installed or used
4 without the knowledge of the nursing home, or installed or used without the
5 prescribed form.

6 B. Compliance with the provisions of this Part shall be a complete defense
7 to any civil or criminal action brought against the resident, surrogate, or nursing
8 home for the use or presence of a monitoring device.

9 §1193.8. Prohibited acts; civil and criminal penalties

10 A.(1) No nursing home shall deny a person or resident admission to or
11 discharge from a nursing home, or otherwise discriminate or retaliate against a
12 person or resident, because of a choice to authorize installation and use of a
13 monitoring device.

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

18 B.(1) Except as provided in Paragraph (3) of this Subsection, no person shall
19 intentionally hamper, obstruct, tamper with, or destroy a monitoring device or a
20 recording made by a monitoring device installed in a nursing home pursuant to this
21 Part.

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

26 (3) The prohibition and penalties provided in this Subsection shall not apply
27 to the resident who owns the monitoring device or recording, or to his surrogate.

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 281 Reengrossed

2018 Regular Session

Talbot

Abstract: Authorizes nursing home residents or their qualified surrogates to have monitoring devices installed in those residents' rooms, subject to certain conditions and requirements.

Proposed law provides the following definitions:

- (1) "Monitoring device" means a surveillance instrument that broadcasts or records activity, but shall not include a camera that records still images exclusively.
- (1) "Surrogate" means a legal guardian or a legally appointed substitute decision-maker who is authorized to act on behalf of a nursing home resident.

Proposed law provides that a nursing home resident or a surrogate may authorize the installation and use of a monitoring device in a nursing home if all of the following conditions are met:

- (1) The resident or surrogate gives notice of the installation to the nursing home.
- (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 pays for the monitoring device and all installation and maintenance costs associated with the device.
- (4) Each resident occupying the same room, or that resident's surrogate, gives written consent for the installation of the monitoring device.

Proposed law provides that the nursing home resident may establish and the nursing home shall accommodate limits on the use of a monitoring device, including limits on the time of operation of the device and its direction, focus, or volume.

Proposed law requires nursing homes, at the time of a person's admission, to notify the person of his right to have a monitoring device installed in his room, and to offer the person the option to have a monitoring device. Provides that the person may exercise this right at any time during which he resides in the nursing home, and that the nursing home shall keep a record of the person's authorization or choice not to have a monitoring device.

Proposed law provides that if a resident who is residing in a shared room wishes to have a monitoring device installed in the room and another resident living in or moving into the same shared room refuses to consent to the use of the monitoring device, then the nursing home shall make a reasonable attempt to accommodate the resident who wishes to have the monitoring device installed. Stipulates that a nursing home shall be deemed to have met this accommodation requirement when, upon notification that a roommate has not consented to the use of an electronic monitoring device in his room, the facility offers to move either resident to another shared room that is available at the time of the request.

Proposed law provides that if a resident chooses to reside in a private room in order to accommodate the use of an electronic monitoring device, the resident shall pay the private room rate. Provides further that if a nursing home is unable to accommodate a resident due

to lack of space, the nursing home shall reevaluate the request at least once every two weeks until the request is fulfilled.

Proposed law provides that after authorization, consent, and notice in accordance with proposed law, a nursing home resident or surrogate may install, operate, and maintain, at the expense of the resident, a monitoring device in the room of the resident. Requires a nursing home to cooperate to accommodate the installation of the monitoring device unless doing so would place undue burden on the nursing home.

Proposed law stipulates that consent to the authorization for installation and use of a monitoring device may be given only by the nursing home resident or a surrogate, and that such consent shall include a release of liability for the nursing home for a violation of the resident's right to privacy insofar as the use of the monitoring device is concerned.

Proposed law authorizes nursing home residents or their surrogates to reverse a choice to have or not have a monitoring device installed and used at any time after notice of such reversal has been made to the nursing home, and to the state long-term care ombudsman.

Proposed law provides for a form for authorization of installation and use of a monitoring device, and requires that the form provide for all of the following:

- (1) Consent of the resident or surrogate authorizing the installation and use of the monitoring device.
- (2) Notice to the nursing home of the resident's installation of a monitoring device and specifics as to the type, function, and use of the device.
- (3) Consent of any other resident sharing the same room, or that resident's surrogate, to the installation and use of a monitoring device.
- (4) Notice of release from liability for violation of privacy through the use of the monitoring device.
- (5) Waiver of the resident's right to privacy in connection with the use of the monitoring device.

Proposed law provides that in any civil action against a nursing home, material obtained through the use of a monitoring device shall not be used if the device was installed or used without the knowledge of the nursing home, or installed or used without the prescribed form. Stipulates that compliance with the provisions of proposed law shall be a complete defense to any civil or criminal action brought against the resident, surrogate, or nursing home for the use or presence of a monitoring device.

Proposed law prohibits nursing homes from denying a person or resident admission to or discharge from a nursing home, or otherwise discriminating or retaliating 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.

Proposed law prohibits intentional hampering, obstructing, tampering with, or destroying a monitoring device or a recording made by a monitoring device installed in a nursing home 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. Stipulates, however, that this prohibition shall not apply to the resident who owns the monitoring device or recording, or to his surrogate.

Present law provides for a nursing home residents' bill of rights. Proposed law retains present law and adds thereto the right to have a monitoring device installed in his room in accordance with proposed law.

Proposed law requires that on or before Jan. 1, 2019, each licensed nursing home in La. shall provide to each nursing home resident 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 surrogate a choice to have a monitoring device installed in the room of the resident. Requires nursing homes to retain a copy of each such form and make the completed forms accessible to the state long-term care ombudsman.

(Adds R.S. 40:1193.1-1193.9 and 2010.8(A)(24))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Change the lead author of proposed law from Representative Moreno to Representative Talbot.

The House Floor Amendments to the engrossed bill:

1. Specify that a penalty of imprisonment for certain felony violations of proposed law may be with or without hard labor.