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## DIGEST

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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.