

House Bill 605

By: Representative Cooper of the 43rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to care
2 and protection of indigent and elderly patients, so as to provide for authorized electronic
3 monitoring in long-term care facilities; to provide for definitions; to provide consent
4 requirements; to provide for notice to the facility; to provide for relocation of a resident to
5 another room; to provide for installation and costs; to provide for notice to visitors; to
6 prohibit obstruction or destruction of electronic monitoring devices; to provide for protection
7 of privacy rights; to provide for limited liability; to provide for a notification and consent
8 form; to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to care and
12 protection of indigent and elderly patients, is amended by adding a new article to read as
13 follows:

14 "ARTICLE 5B

15 31-8-140.

16 As used in this article, the term:

17 (1) 'Authorized electronic monitoring' means the placement and use of an electronic
18 monitoring device by a resident in his or her room in accordance with this article.

19 (2) 'Electronic monitoring device' means an open and obvious, nonclandestine
20 surveillance instrument with a fixed, nonrotatable position video camera or an audio
21 recording device, or a combination thereof, that broadcasts, records, or both activity or
22 sounds.

23 (3) 'Facility' means any skilled nursing facility, intermediate care home, assisted living
24 community, or personal care home subject to regulation and licensure by the department
25 under Chapter 7 of this title.

26 (4) 'Notification and consent form' means a document substantially similar to the form
27 set forth in Code Section 31-8-148.

28 (5) 'Physician' means an individual licensed to practice medicine in this state.

29 (6) 'Representative' means an individual listed in paragraphs (1) through (5) of
30 subsection (a) of Code Section 31-9-2 or an adult child of the resident who has obtained
31 the written consent of a majority of his or her siblings.

32 (7) 'Resident' means a person who receives care and treatment and resides in a facility.

33 31-8-141.

34 (a) Before initiating the use of an electronic monitoring device inside a facility, a resident
35 shall complete and submit to the facility a written notification and consent form that
36 substantially meets the requirements of this article. If the resident lacks decision-making
37 capacity, the form may be completed and submitted by a representative of the resident.

38 The notification and consent form shall either be on a form substantially similar to the form
39 set forth in Code Section 31-8-148 or include at least:

40 (1) A statement affirming that the resident or resident's representative, subject to any
41 noted restrictions, consents to the use of the electronic monitoring device;

42 (2) If the resident has a roommate, a statement affirming that the roommate or
43 roommate's representative, subject to any noted restrictions, consents to the use of the
44 electronic monitoring device;

45 (3) A description of the electronic monitoring device, including the brand name and
46 model number, and the installation and operating requirements; and

47 (4) Restrictions that the resident, the resident's representative, the resident's roommate,
48 or the resident's roommate's representative may impose on the placement and use of the
49 electronic monitoring device, including, but not limited to, any of the following:

50 (A) Prohibitions on video recording;

51 (B) Prohibitions on broadcasting video recordings;

52 (C) Requiring that the electronic monitoring device be turned off or blocked during an
53 examination or procedure by a health care provider;

54 (D) Requiring that the electronic monitoring device be turned off or blocked while
55 dressing, bathing, or personal care is being performed;

56 (E) Requiring that the electronic monitoring device be turned off or blocked during a
57 visit with an attorney, financial planner, intimate partner, ombudsman, spiritual advisor,
58 family member, or other visitor;

59 (F) The signature of the resident or his or her representative and the date of signing;
60 and

61 (G) If the resident has a roommate, the signature of the roommate or his or her
62 representative, and the date of signing.

63 (b) Consent by a roommate or roommate's representative to use an electronic monitoring
64 device constitutes authorization to the resident's use of any video or audio recording
65 obtained in accordance with this Code section and pursuant to subsection (c) of 31-8-146.

66 (c) Any amendments to the information contained in the notification and consent form
67 shall be in writing, signed, and dated, and submitted to the facility. The notification and
68 consent form, or an amendment to it, shall not be effective until 24 hours after it has been
69 received by the facility.

70 (d) If a notification and consent form or an amendment to the form is signed by a
71 representative, it shall also include either a statement from a physician who has evaluated
72 the resident that the resident, on whose behalf the representative is acting, lacks
73 decision-making capacity, or a copy of the guardianship order, power of attorney, or
74 similar authority.

75 (e) Upon receiving a completed notification and consent form, or any amendment to the
76 form, the facility shall place the form in the resident's file and provide a copy to the
77 resident or his or her representative and to the resident's roommate or his or her
78 representative, if applicable.

79 (f) The placement of any electronic monitoring device shall be in an open and obvious
80 location and shall not be hidden in another device or item.

81 (g) Nothing in this article shall be construed to allow the use of an electronic monitoring
82 device to operate in a manner inconsistent with this article.

83 31-8-142.

84 (a) If the resident's roommate refuses to consent to the use of an electronic monitoring
85 device, the facility shall, upon the written request of the resident, relocate the resident to
86 another room as soon as the circumstances permit; provided, however, that the facility is
87 not required to provide the resident with a single room, unless the resident agrees to pay
88 the increased charges.

89 (b) During the period of any delay in a requested relocation as provided in subsection (a)
90 of this Code section, the resident shall be permitted to install a video-only electronic
91 monitoring device, provided that such device is installed to monitor only the resident.

92 31-8-143.

93 (a) A resident may not use a facility's local area network to connect the electronic
94 monitoring device to the internet, unless the facility provides written consent to the
95 resident. Subject to subsection (d) of this Code section, a facility that consents to a
96 resident's use of a local area network may impose reasonable conditions on the use of such
97 network to prevent a data breach and to limit the consumption of available bandwidth.

98 (b) If a facility does not consent to a resident's use of its local area network, the resident
99 may, at the resident's cost, arrange for access to the internet through an internet service
100 provider. The facility may impose reasonable conditions on the installation of any wire,
101 cable, or other technologies, required for internet access only to:

102 (1) Prevent permanent damage to the facility; provided, however, that the resident or
103 resident's representative shall be responsible for the cost of repair of any physical damage
104 to the facility that occurs as a result of the use of the electronic monitoring device;

105 (2) Avoid the creation of a safety hazard; or

106 (3) Avoid the violation of any applicable building or electrical code.

107 (c) All electronic monitoring device installations and supporting services shall comply
108 with the requirements of the National Fire Protection Association (NFPA) 101 Life Safety
109 Code (2000 edition).

110 (d) A facility may not charge a resident a fee for the cost of electricity or data used by an
111 electronic monitoring device.

112 31-8-144.

113 (a) If a resident conducts authorized electronic monitoring, a sign shall be clearly and
114 conspicuously posted by the facility at the entrance to a resident's room where authorized
115 electronic monitoring is being conducted. The sign shall state in large, easy-to-read type,
116 'This room is electronically monitored.'

117 (b) The facility shall be responsible for installing and maintaining the signage required by
118 this Code section.

119 31-8-145.

120 (a) A person is prohibited from knowingly hampering, obstructing, tampering with, or
121 destroying an electronic monitoring device installed in a resident's room without the
122 permission of the resident or the resident's representative.

123 (b) Except as otherwise provided in this article, a person may not access or disseminate
124 a recording produced by an electronic monitoring device without the written consent of the
125 resident or his or her representative.

126 (c) A facility may remove, without notice and at the resident's expense, any electronic
127 monitoring device installed or placed in the facility in violation of this article.

128 31-8-146.

129 (a) A person who possesses material captured by an electronic monitoring device shall,
130 upon the facility's written request, provide a copy of the recording to the facility if an
131 allegation of neglect, abuse, negligence, or other misconduct has been filed or if a demand
132 letter threatening litigation has been sent to the facility in a civil, criminal, or administrative
133 action, and the recording, or any portion thereof, contains alleged evidence related to the
134 allegation or threatened allegation. The facility shall reimburse the person with the
135 recording for any reasonable costs incurred by providing the recording.

136 (b) Subject to the applicable rules of evidence and procedure, requests for discovery of
137 such video or audio recording shall be directed to the resident or the representative who
138 consented on behalf of the resident to the authorized electronic monitoring, and such
139 requests shall not be directed to the facility.

140 (c) Subject to the applicable rules of evidence and procedure, video and audio recordings
141 created in a facility may be admitted into evidence in a civil, criminal, or administrative
142 proceeding if such video or audio recordings were obtained through authorized electronic
143 monitoring in accordance with the conditions and provisions of this article.

144 31-8-147.

145 (a) A facility shall not be civilly or criminally liable for any violation of a person's right
146 to privacy arising out of the use of an electronic monitoring device, including by third
147 parties, except to the extent the violation was caused by the facility's intentional violation
148 of this article.

149 (b) A facility may not discriminate against a resident or roommate for consenting to or
150 refusing to consent to the use of an electronic monitoring device.

151 (c) A facility may not discriminate against any potential resident or potential roommate
152 for consenting to or refusing to consent to the use of an electronic monitoring device.

153 31-8-148.

154 This document or a document substantially similar to the following form may be used to
155 create a notification and consent form that has the meaning and effect prescribed by this
156 article.

157 NOTICE OF AUTHORIZED ELECTRONIC MONITORING

158 _____

159 Resident's Name Date

160 I, _____, elect at my own expense to install an

161 Resident

162 electronic monitoring device in my room _____.

163 Room Number

164 _____

165 Resident or Representative Signature Date Resident Consented to Authorized

166 Electronic Monitoring

167 _____

168 Resident or Representative Printed Name

169 Type of electronic monitoring device to be used: audio/video (circle one or both)

170 Make/Model/Type: _____

171 Installation needs (if any): _____

172 Proposed date of installation: _____

173 Resident's restrictions (check all that apply):

174 Prohibit Audio Recording

175 Prohibit Broadcasting of Audio or Video

176 Turn Off Device for Duration of an Examination or Procedure by a Physician or Other

177 Health Care Professional

178 Block Visual Recording for Duration of an Examination or Procedure by a Physician
179 or Other Health Care Professional

180 Turn Off Device while Dressing, Bathing, or other Personal Care is Performed

181 Block Visual Recording while Dressing, Bathing, or other Personal Care is Performed

182 Turn Off Device for the Duration of a Visit with:

183 A Spiritual Adviser

184 Ombudsman, Attorney, or Financial Planner

185 Intimate Partner

186 Other Visitor (please specify) _____

187 Other Conditions/Restrictions (please specify) _____

188 _____

189 ROOMMATE CONSENT

190 _____

191 Roommate Name Date

192 I, _____, consent to my roommate's use of an electronic
193 Roommate

194 monitoring device in our room _____.

195 Room Number

196 _____

197 Roommate or Representative Signature Date Roommate Consented to Authorized
198 Electronic Monitoring

199 _____

200 Roommate or Representative Printed Name

201 Roommate's restrictions (check all that apply):

202 Prohibit Audio Recording

203 Prohibit Broadcasting of Audio or Video

204 Turn Off Device for Duration of an Examination or Procedure by a Physician or Other
205 Health Care Professional

206 Block Visual Recording for Duration of an Examination or Procedure by a Physician
207 or Other Health Care Professional

208 Turn Off Device while Dressing, Bathing, or other Personal Care is Performed

209 Block Visual Recording while Dressing, Bathing, or other Personal Care is Performed

210 Turn Off Device for the Duration of a Visit with:

211 A Spiritual Adviser

212 Ombudsman, Attorney, or Financial Planner

213 Intimate Partner

214 Other Visitor (please specify) _____

215 Other Conditions/Restrictions (please specify) _____

216 _____

217 For Internal Use Only

218 Date Received _____ Received By _____"

219 **SECTION 2.**

220 All laws and parts of laws in conflict with this Act are repealed.