

Missouri Law for the use of Electronic Monitoring Devices in Long-Term Care Facilities Goes into Effect September 3, 2020

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On July 14, 2020, Missouri Governor Michael Parson signed into law the Authorized Electronic Monitoring in Long-Term Care Facilities Act. The new law adds twelve new sections to Chapter 198 of the Revised Statutes of Missouri related to the use of authorized and covert electronic monitoring devices in long-term care facilities in Missouri. The law goes into effect on Thursday, September 3, 2020.

The new law provides residents of long-term care facilities in Missouri the right to place in their rooms authorized devices owned and operated by the resident once a request is made. An “electronic monitoring device” is defined as “a surveillance instrument capable of recording or transmitting audio or video footage of any activity occurring in a resident’s room.” To be considered “authorized,” such a device must be placed in an open and obvious place, and the facility and the Department of Health and Senior Services must be informed about the device. The Department and the facility are immune from civil liability from unauthorized placement or use of a device.

The Department prepared an “Electronic Monitoring Device Acknowledgement and Request Form” to be completed and signed by each resident. The form in detail outlines the liabilities, rights, and procedures for use of the devices. It must be completed and signed by or on behalf of a resident prior to the installation of, or any use of, an electronic monitoring device in the facility.

Should another resident reside in the same room as the device, before any use of the device the additional resident will be required to provide consent and execute additional forms to release the facility from civil liability for violations of privacy rights connected to use of the device. A visible sign is required to be posted indicating that the facility, and specifically which rooms, are being monitored by such devices. A facility cannot refuse to admit an individual to the facility, nor shall it remove a resident, because of a request to conduct authorized electronic monitoring. A facility also cannot remove a resident from the facility if unauthorized electronic monitoring is being conducted by or on behalf of a resident.

Though residents are not responsible for the related electricity costs of the device, residents will be responsible for paying all costs associated with conducting electronic monitoring including installation, maintenance, and use of internet if necessary. With the current restrictions on entering facilities as a result of the pandemic, it is questionable how and when residents will be able to set up these devices and go through the consent process.

The law offers protection to facilities and the Department of Health and Senior Services from being civilly or criminally liable for unauthorized monitoring. Further, no facility will be civilly or criminally liable for a violation of the Health Insurance Portability and Accountability Act (HIPAA) or any resident's rights to privacy arising out of any electronic monitoring conducted pursuant to this new law. With the exception of cases of abuse and neglect, no recording can be released without the written permission of the facility and the resident, or the resident's guardian or legal representative.

The new law is fairly detailed and addresses the obvious issues (privacy, HIPAA, misuse, etc.) that could occur as a result of the use of electronic monitoring devices in long-term care facilities. While providing residents with new ways to record and ensure quality of care, the new law also provides facilities and the Department with ample protections from civil and criminal liability should the device not be used under the specific parameters established.

The attorneys at Sandberg Phoenix continually track bills as they move through the Missouri legislature and new laws as they go into effect. If you have any questions about this Act or any other legislation, please do not hesitate to contact us.