

# Illinois Authorized Electronic Monitoring in Long-Term Care Facilities Act

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As many of you are aware, on January 1, 2016, the Illinois Authorized Electronic Monitoring in Long-Term Care Facilities Act (the “Act”) became effective. This Act imposes various responsibilities on long-term care facilities in Illinois to allow residents to engage in electronic monitoring. The Department of Public Health (“IDPH”) also has certain responsibilities under the Act. The following Summary provides highlights of the background and requirements of the Act, IDPH and facilities’ respective responsibilities, and challenges presented for the facilities subject to the Act along with a few recommended actions in response to the Act. There’s also a link to the Consent and Notification Form promulgated by IDPH for use when a resident desires to use an authorized electronic monitoring device in a facility. If you have clients subject to this Act, you may want to pass this information along to them. I would be happy to answer any questions or provide additional information, if needed.

## I. Background

The Illinois Authorized Electronic Monitoring in Long-Term Care Facilities Act (“Act”) allows for electronic monitoring by a resident of a nursing home. The Act was passed and the Governor approved the Act on August 21, 2015, with an Effective Date of January 1, 2016. The Act requires the Department of Public Health (“IDPH”) to adopt rules necessary to implement the Act, including prescribing the notification and consent form on its website no later than 60 days after the January 1, 2016 effective date.

Since the Act became effective until January, Facilities subject to the Act need to prepare staff to ensure they understand the requirements of the Act. Each Facility need to implement policies and procedures related to duties imposed by the Act to ensure compliance. Staff training is necessary to ensure the staff understands what they must do and how electronic monitoring may be conducted in Resident rooms under this Act. It will be important for Facilities to draft Policies and Procedures on the duties required by the Act. The Act contains the potential for criminal penalties for obstruction of electronic monitoring devices, which makes it very important that the staff understand their roles and responsibilities.

The Act serves to amend the Illinois Nursing Home Care Act to permit a resident to conduct authorized electronic monitoring of the resident's room by using electronic monitoring devices; and no one may prevent the installation or use of an electronic monitoring device where facility received the required notice and consent, or intentionally retaliate or discriminate against any resident who consented to authorized monitoring pursuant to the Act.

The Act protects the privacy of nursing home residents and visitors, by requiring written notification and consent from residents in rooms where electronic monitoring takes place, as well as requiring posted notice to visitors and other Facility residents alerting them to the use of an electronic monitoring device in resident rooms. The IDPH is responsible to issue additional guidance concerning implementation of the Act.

## **II. Facilities, Electronic Monitoring, and Equipment covered by the Act.**

Facilities covered by the Act include intermediate care facilities for the developmentally disabled with 30 beds or more, long-term care for under age 22 facility, and facilities licensed under the Nursing Home Care Act.

“Authorized electronic monitoring” means placement and use of an electronic monitoring device by a resident in his or her room. Authorized “Electronic monitoring device” is a surveillance instrument with a fixed position video camera or an audio recording device, or a combination thereof, that is installed in a resident's room. While a resident may conduct authorized electronic monitoring of the resident's room through the use of electronic monitoring devices placed in the room, still photographs or nonconsensual interception of private communications are not allowed.

## **III. Respective Responsibilities**

The Act places many new responsibilities on the Facility in regard to the residents and Facility visitors, as well as reporting requirements to the State. Any resident seeking to use an “electronic monitoring device” in their room is subject to the following, including consents and notices necessary before “electronic monitoring devices” may be used in the Facility.

**A. FACILITY RESPONSIBILITIES** - The Facility must ensure resident and visitor privacy rights are not impacted or breached. Facility Responsibilities include ensuring necessary consents are obtained, notices are given to residents and visitors before a Resident is authorized to use an electronic monitoring device in the Resident's room.

**B. RESIDENT RESPONSIBILITIES** – The Resident who desires to begin authorized electronic monitoring must fulfill notice and consent obligations and provide written notice of his/her intent to install an electronic monitoring device before such electronic monitoring will be authorized. After electronic monitoring begins, there are additional responsibilities.

**C. DEPARTMENT RESPONSIBILITIES** – The Department has duties to establish assistance programs for residents receiving Public Aid, as well as reporting obligations and promulgation of certain forms for notification and consent related to electronic monitoring.

## **IV. Other Issues**

The Act prohibits certain activities, as well as limits how recordings from the electronic monitoring device may be used.

#### V. Conclusion

The Act became effective on January 1, 2016. Facilities need to draft policies and procedures, as well as train staff to be ready to handle any requests that may be brought now that the Act is effective. Due to the many requirements placed on the Facility to ensure proper notification and consent, it will be important to have responsibilities delegated to appropriate staff. While the staff should always act in an ethical and medically appropriate manner, because the recordings may become admissible evidence, the staff should be alert and know that their actions are under scrutiny. Mandated posting of signs as well as the fact devices must be “conspicuously visible” should serve as a reminder whenever staff care for residents in rooms being actively monitored.

The Act also includes various prohibitions on the monitoring, the dissemination of the recordings, obstruction of the devices, as well as handling monitoring if consent is refused or withdrawn by a resident. There are also prohibitions on discrimination or retaliation against residents who provide the necessary notification and consent. In addition, no one may prevent the installation or use of an electronic monitoring device by a resident who provided the required notice and consent to the facility.

As the Department of Public Health issues guidance and forms concerning implementation of the Act, we will provide updates. A copy of the Notification and Consent Form required by Section of the Act has been published by IDPH.

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