

612.1 Sec. 3. Minnesota Statutes 2016, section 144.6501, is amended by adding a subdivision
612.2 to read:

612.3 Subd. 3a. **Changes to contracts of admission.** Within 30 days of a change in ownership,
612.4 management, or license holder, the facility must provide prompt written notice to the resident
612.5 or resident's legal representative of a new owner, manager, and if different from the owner,
612.6 license holder of the facility, and the name and physical mailing address of any new or
612.7 additional natural person not identified in the admission contract who is newly authorized
612.8 to accept service of process.

612.9 Sec. 4. [144.6502] **AUTHORIZED ELECTRONIC MONITORING IN CERTAIN**
612.10 **HEALTH CARE FACILITIES.**

612.11 Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms defined in this
612.12 subdivision have the meanings given.

612.13 (b) "Authorized electronic monitoring" means the placement and use of an electronic
612.14 monitoring device by a resident in the resident's room or private living space in accordance
612.15 with this section.

612.16 (c) "Commissioner" means the commissioner of health.

612.17 (d) "Department" means the Department of Health.

612.18 (e) "Electronic monitoring device" means a surveillance instrument with a fixed position
612.19 video camera or an audio recording device, or both, that is installed in a resident's room or
612.20 private living space and broadcasts or records activity or sounds occurring in the room or
612.21 private living space.

612.22 (f) "Facility" means a facility that is licensed as a nursing home under chapter 144A or
612.23 as a boarding care home under sections 144.50 to 144.56, or registered as a housing with
612.24 services establishment under chapter 144D that is also subject to chapter 144G.

612.25 (g) "Legal representative" means a court-appointed guardian or other representative with
612.26 legal authority to make decisions about health care services for the resident, including a
612.27 health care agent or an attorney-in-fact authorized through a health care directive or a power
612.28 of attorney.

612.29 (h) "Resident" means a person 18 years of age or older residing in a facility.

612.30 Subd. 2. **Authorized electronic monitoring.** (a) A resident or a resident's legal
612.31 representative may conduct authorized electronic monitoring of the resident's room or private

613.1 living space through the use of electronic monitoring devices placed in the room or private
 613.2 living space as provided in this section.

613.3 (b) Nothing in this section allows the use of an electronic monitoring device to take still
 613.4 photographs or for the nonconsensual interception of private communications.

613.5 (c) Nothing in this section precludes the use of electronic monitoring of health care
 613.6 allowed under other law.

613.7 (d) Electronic monitoring authorized under this section, for the purpose of monitoring
 613.8 the actions of individuals other than the resident or to verify the delivery of services, is not
 613.9 a covered service under home and community-based waivers under sections 256B.0913,
 613.10 256B.0915, 256B.092, and 256B.49.

613.11 Subd. 3. **Consent to electronic monitoring.** (a) Except as otherwise provided in this
 613.12 subdivision, a resident must consent to electronic monitoring in the resident's room or private
 613.13 living space in writing on a notification and consent form prescribed by the ombudsman
 613.14 for long-term care, in consultation with the department and representatives of facilities. If
 613.15 the resident has not affirmatively objected to electronic monitoring and the resident's
 613.16 physician determines that the resident lacks the ability to understand and appreciate the
 613.17 nature and consequences of electronic monitoring, the resident's legal representative may
 613.18 consent on behalf of the resident. For purposes of this subdivision, a resident affirmatively
 613.19 objects when the resident orally, visually, or through the use of auxiliary aids or services
 613.20 declines electronic monitoring. The resident's response must be documented on the
 613.21 notification and consent form.

613.22 (b) Prior to a resident's legal representative consenting on behalf of a resident, the resident
 613.23 must be asked by the resident's legal guardian in the presence of a facility employee if the
 613.24 resident wants electronic monitoring to be conducted. The resident's legal representative
 613.25 must explain to the resident:

613.26 (1) the type of electronic monitoring device to be used;

613.27 (2) the standard conditions that may be placed on the electronic monitoring device's use,
 613.28 including those listed in subdivision 5;

613.29 (3) with whom the recording may be shared under subdivision 9 or 10; and

613.30 (4) the resident's ability to decline all recording.

613.31 (c) A resident or roommate may consent to electronic monitoring with any conditions
 613.32 of the resident's or roommate's choosing, including the list of standard conditions provided
 613.33 in subdivision 5. A resident or roommate may request that the electronic monitoring device

614.1 be turned off or the visual or audio recording component of the electronic monitoring device
614.2 be blocked at any time.

614.3 (d) Prior to implementing electronic monitoring, a resident must obtain the written
614.4 consent of any other resident residing in the room or private living space on the notification
614.5 and consent form prescribed by the ombudsman for long-term care. Except as otherwise
614.6 provided in this subdivision, a roommate must consent in writing to electronic monitoring
614.7 in the resident's room or private living space. If the roommate has not affirmatively objected
614.8 to electronic monitoring in accordance with this subdivision and the roommate's physician
614.9 determines that the roommate lacks the ability to understand and appreciate the nature and
614.10 consequences of electronic monitoring, the roommate's legal representative may consent
614.11 on behalf of the roommate. Consent by a roommate under this paragraph authorizes the
614.12 resident's use of any recording obtained under this section, as provided under subdivision
614.13 9 or 10.

614.14 (e) Any resident conducting authorized electronic monitoring must obtain consent from
614.15 any new roommate before the resident may resume authorized electronic monitoring. If a
614.16 new roommate does not consent to electronic monitoring and the resident conducting the
614.17 electronic monitoring does not remove or disable the electronic monitoring device, the
614.18 facility must remove the electronic monitoring device.

614.19 Subd. 4. **Withdrawal of consent; refusal of roommate to consent.** (a) Consent may
614.20 be withdrawn by the resident or roommate at any time and the withdrawal of consent must
614.21 be documented in the resident's clinical record. If a roommate withdraws consent and the
614.22 resident conducting the electronic monitoring does not remove or disable the electronic
614.23 monitoring device, the facility must remove the electronic monitoring device.

614.24 (b) If a resident of a nursing home or boarding care home who is residing in a shared
614.25 room wants to conduct electronic monitoring and another resident living in or moving into
614.26 the same shared room refuses to consent to the use of an electronic monitoring device, the
614.27 facility shall make a reasonable attempt to accommodate the resident who wants to conduct
614.28 electronic monitoring. A nursing home or boarding care home has met the requirement to
614.29 make a reasonable attempt to accommodate a resident who wants to conduct electronic
614.30 monitoring when, upon notification that a roommate has not consented to the use of an
614.31 electronic monitoring device in the resident's room, the nursing home or boarding care home
614.32 offers to move either resident to another shared room that is available at the time of the
614.33 request. If a resident chooses to reside in a private room in a nursing home or boarding care
614.34 home in order to accommodate the use of an electronic monitoring device, the resident must
614.35 pay the private room rate. If a nursing home or boarding care home is unable to accommodate

615.1 a resident due to lack of space, the nursing home or boarding care home must reevaluate
615.2 the request every two weeks until the request is fulfilled. A nursing home or boarding care
615.3 home is not required to provide a private room or a single-bed room to a resident who is
615.4 not a private-pay resident.

615.5 Subd. 5. **Notice to facility; form requirements.** (a) Authorized electronic monitoring
615.6 may begin only after the resident who intends to install an electronic monitoring device
615.7 completes the notification and consent form prescribed by the ombudsman for long-term
615.8 care and submits the form to the facility and the facility places the form in the resident's
615.9 and any roommate's clinical records.

615.10 (b) The notification and consent form completed by the resident must include, at a
615.11 minimum, the following information:

615.12 (1) the resident's signed consent to electronic monitoring or the signature of the resident's
615.13 legal representative, if applicable. If a person other than the resident signs the consent form,
615.14 the form must document the following:

615.15 (i) the date the resident was asked if the resident wants electronic monitoring to be
615.16 conducted;

615.17 (ii) who was present when the resident was asked; and

615.18 (iii) an acknowledgment that the resident did not affirmatively object;

615.19 (2) the resident's roommate's signed consent or the signature of the roommate's legal
615.20 representative, if applicable. If a roommate's legal representative signs the consent form,
615.21 the form must document the following:

615.22 (i) the date the roommate was asked if the roommate wants electronic monitoring to be
615.23 conducted;

615.24 (ii) who was present when the roommate was asked; and

615.25 (iii) an acknowledgment that the roommate did not affirmatively object;

615.26 (3) the type of electronic monitoring device to be used;

615.27 (4) any installation needs, such as mounting of a device to a wall or ceiling;

615.28 (5) the proposed date of installation for scheduling purposes;

615.29 (6) a list of standard conditions or restrictions that the resident or a roommate may elect
615.30 to place on the use of the electronic monitoring device, including, but not limited to:

615.31 (i) prohibiting audio recording;

- 616.1 (ii) prohibiting video recording;
- 616.2 (iii) prohibiting broadcasting of audio or video;
- 616.3 (iv) turning off the electronic monitoring device or blocking the visual recording
- 616.4 component of the electronic monitoring device for the duration of an exam or procedure by
- 616.5 a health care professional;
- 616.6 (v) turning off the electronic monitoring device or blocking the visual recording
- 616.7 component of the electronic monitoring device while dressing or bathing is performed; and
- 616.8 (vi) turning off the electronic monitoring device for the duration of a visit with a spiritual
- 616.9 advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor;
- 616.10 (7) any other condition or restriction elected by the resident or roommate on the use of
- 616.11 an electronic monitoring device; and
- 616.12 (8) a signature box for documenting that the resident or roommate has withdrawn consent.
- 616.13 (c) A copy of the completed notification and consent form must be placed in the resident's
- 616.14 and any roommate's clinical records and a copy must be provided to the resident and the
- 616.15 resident's roommate, if applicable.
- 616.16 (d) The ombudsman for long-term care shall prescribe the notification and consent form
- 616.17 required in this section no later than January 1, 2019. The commissioner shall make the
- 616.18 form available on the department's Web site.
- 616.19 (e) Beginning January 1, 2019, facilities must make the notification and consent form
- 616.20 available to the residents and inform residents of their option to conduct electronic monitoring
- 616.21 of their rooms or private living spaces.
- 616.22 (f) Any resident, legal representative of a resident, or other person conducting electronic
- 616.23 monitoring of a resident's room prior to enactment of this section must comply with the
- 616.24 requirements of this section by January 1, 2019.
- 616.25 **Subd. 6. Cost and installation.** (a) A resident choosing to conduct authorized electronic
- 616.26 monitoring must do so at the resident's own expense, including paying purchase, installation,
- 616.27 maintenance, and removal costs.
- 616.28 (b) If a resident chooses to install an electronic monitoring device that uses Internet
- 616.29 technology for visual or audio monitoring, the resident may be responsible for contracting
- 616.30 with an Internet service provider.

617.1 (c) The facility shall make a reasonable attempt to accommodate the resident's installation
617.2 needs, including allowing access to the facility's telecommunications or equipment room.
617.3 A facility has the burden of proving that a requested accommodation is not reasonable.

617.4 (d) All electronic monitoring device installations and supporting services must be
617.5 UL-listed.

617.6 Subd. 7. **Notice to visitors.** (a) A facility shall post a sign at each facility entrance
617.7 accessible to visitors that states "Security cameras and audio devices may be present to
617.8 record persons and activities."

617.9 (b) The facility is responsible for installing and maintaining the signage required in this
617.10 subdivision.

617.11 Subd. 8. **Obstruction of electronic monitoring devices.** (a) A person must not knowingly
617.12 hamper, obstruct, tamper with, or destroy an electronic monitoring device installed in a
617.13 resident's room or private living space without the permission of the resident or the resident's
617.14 legal representative.

617.15 (b) It is not a violation of paragraph (a) if a person turns off the electronic monitoring
617.16 device or blocks the visual recording component of the electronic monitoring device at the
617.17 direction of the resident or the resident's legal representative, or if consent has been
617.18 withdrawn.

617.19 Subd. 9. **Dissemination of recordings.** (a) A facility may not access any video or audio
617.20 recording created through authorized electronic monitoring without the written consent of
617.21 the resident or the resident's legal representative.

617.22 (b) Except as required under other law, a recording or copy of a recording made as
617.23 provided in this section may only be disseminated for the purpose of addressing health,
617.24 safety, or welfare concerns of a resident or residents.

617.25 (c) The resident or the resident's legal representative must provide a copy of any video
617.26 or audio recording to parties involved in a civil, criminal, or administrative proceeding,
617.27 upon a party's request, if the video or audio recording was made during the time period that
617.28 the conduct at issue in the proceeding allegedly occurred.

617.29 Subd. 10. **Admissibility of evidence.** Subject to applicable rules of evidence and
617.30 procedure, any video or audio recording created through authorized electronic monitoring
617.31 under this section may be admitted into evidence in a civil, criminal, or administrative
617.32 proceeding if the contents of the recording have not been edited or artificially enhanced and
617.33 the video recording includes the date and time the events occurred.

618.1 Subd. 11. **Liability.** (a) A facility is not civilly or criminally liable for the inadvertent
 618.2 or intentional disclosure of a recording by a resident or a resident's legal representative for
 618.3 any purpose not authorized by this section.

618.4 (b) A facility is not civilly or criminally liable for a violation of a resident's right to
 618.5 privacy arising out of any electronic monitoring conducted as provided in this section.

618.6 Subd. 12. **Resident protections.** A facility must not:

618.7 (1) refuse to admit a potential resident or remove a resident because the facility disagrees
 618.8 with the potential resident's or the resident's decisions regarding electronic monitoring;

618.9 (2) intentionally retaliate or discriminate against any resident for consenting or refusing
 618.10 to consent to electronic monitoring under this section; or

618.11 (3) prevent the installation or use of an electronic monitoring device by a resident who
 618.12 has provided the facility with notice and consent as required under this section.

618.13 **EFFECTIVE DATE.** This section is effective January 1, 2019.

618.14 Sec. 5. Minnesota Statutes 2016, section 144.651, subdivision 1, is amended to read:

618.15 Subdivision 1. **Legislative intent.** It is the intent of the legislature and the purpose of
 618.16 this section to promote the interests and well being of the patients and residents of health
 618.17 care facilities. It is the intent of this section that every patient's and resident's civil and
 618.18 religious liberties, including the right to independent personal decisions and knowledge of
 618.19 available choices, must not be infringed and that the facility must encourage and assist in
 618.20 the fullest possible exercise of these rights. The rights provided under this section are
 618.21 established for the benefit of patients and residents. No health care facility may require or
 618.22 request a patient or resident to waive any of these rights at any time or for any reason
 618.23 including as a condition of admission to the facility. Any guardian or conservator of a patient
 618.24 or resident or, in the absence of a guardian or conservator, an interested person, may seek
 618.25 enforcement of these rights on behalf of a patient or resident. An interested person may also
 618.26 seek enforcement of these rights on behalf of a patient or resident who has a guardian or
 618.27 conservator through administrative agencies or in district court having jurisdiction over
 618.28 guardianships and conservatorships. Pending the outcome of an enforcement proceeding
 618.29 the health care facility may, in good faith, comply with the instructions of a guardian or
 618.30 conservator. ~~It is the intent of this section that every patient's civil and religious liberties,~~
 618.31 ~~including the right to independent personal decisions and knowledge of available choices,~~
 618.32 ~~shall not be infringed and that the facility shall encourage and assist in the fullest possible~~
 618.33 ~~exercise of these rights.~~