STATE OF NEW YORK

11085

IN ASSEMBLY

October 7, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Stirpe) -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to enacting the "New York state nursing home virtual visitation act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "New York state nursing home virtual visitation act".

§ 2. The public health law is amended by adding a new article 28-F to read as follows:

ARTICLE 28-F

VIRTUAL VISITATION AND MONITORING OF NURSING HOME CARE

Section 2900. Definitions.

2900-a. Monitoring device; authorization and use.

2900-b. Monitoring device option; installation; consent of residents in shared rooms; accommodation by nursing home.

2900-c. Consent; waiver.

2900-d. Authorization form; content.

2900-e. Immunity; unauthorized use.

2900-f. Prohibited acts; civil and criminal penalties.

2900-g. Public notice; signage of electronic monitoring device.

2900-h. Reporting abuse and neglect.

2900-i. Administrative rulemaking.

§ 2900. Definitions. As used in this article, the term:

1. (a) "Monitoring device" means:

(i) a surveillance instrument that transmits and records activity and is not connected to the nursing home's computer network; and

(ii) a computer, tablet, phone, smart display or any other electronic device that can be used for video conferencing.

(b) The term "monitoring device" shall not include a camera that records still images exclusively.

2. "Video conferencing" means the use of a computer network, platform or app to provide a live, visual connection between two or more people residing in separate locations for the purpose of communication.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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3. "Nursing home" shall have the same meaning as set forth in subdivision two of section twenty-eight hundred one of this chapter.

4. "Ombudsman" means the state long-term care ombudsman established within the office for the aging pursuant to subdivision two of section two hundred eighteen on the elder law.

5. "Resident" means a person who is a resident of a nursing home.

6. "Legal representative" means a legal guardian or a legally appointed substitute decision-maker who is authorized to act on behalf of a nursing home resident.

§ 2900-a. Monitoring device; authorization and use. 1. A resident who has the capacity to consent, as determined by the department pursuant to this article, or his or her legal representative may authorize the installation and use of a monitoring device in a nursing home if all of the following conditions are met:

(a) The resident or his or her legal representative gives notice of the installation to the nursing home.

(b) If the monitoring device records activity visually, the recordings made by the device include a record of the date and time.

(c) The resident pays for the monitoring device and all installation, operation, maintenance, and removal costs associated with the device.

(d) Each resident occupying the same room who has the capacity to consent, as determined by the department pursuant to this article, or that resident's legal representative, gives written consent for the installation of the monitoring device.

2. If the structure of the resident's room must be altered in order to accommodate a monitoring device, then the renovation to the room may be done only by a licensed contractor, subject to approval by the nursing home.

3. Any monitoring device installed in accordance with the provisions of this article shall be in compliance with the National Fire Protection Association Life Safety regulations.

§ 2900-b. Monitoring device option; installation; consent of residents in shared rooms; accommodation by nursing home. 1. (a) At the time of a person's admission to a nursing home, the nursing home shall notify the person of his or her right to have a monitoring device installed in his or her room, and shall offer the person the option to have a monitoring device. The resident or his or her roommate may exercise the right to install or remove a monitoring device at any time during which he or she resides in the nursing home. The nursing home shall keep a record of the person's authorization or choice not to have a monitoring device.

(b) The nursing home shall make the record provided for in paragraph (a) of this subdivision accessible to the ombudsman.

2. (a) 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. 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 or her room, the nursing home offers to move either resident to another shared room that is available at the time of the request.

(b) 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. 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.

3. After authorization, consent, and notice in accordance with this article, a resident or his or her legal representative may install, operate, and maintain, at the expense of the resident, a monitoring device in the room of the resident.

4. The nursing home shall cooperate to accommodate the installation of the monitoring device unless doing so would place undue burden on the nursing home.

5. The monitoring device shall be in a fixed, stationary position and shall monitor only the resident who consents either personally or through his or her legal representative to be monitored.

§ 2900-c. Consent; waiver. 1. Consent to the authorization for installation and use of a monitoring device may be given only by the resident or his or her legal representative.

2. Consent to the authorization for installation and use of a monitoring device 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.

3. A resident or his or her legal representative may 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 ombudsman, upon a form prescribed by the department.

§ 2900-d. Authorization form; content. The form for the authorization of installation and use of a monitoring device shall provide for all of the following:

1. Consent of the resident or his or her legal representative 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 legal representative, 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.

§ 2900-e. Immunity; unauthorized use. 1. 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.

2. Compliance with the provisions of this article shall be a complete defense to any civil or criminal action brought against the resident, legal representative, or nursing home for the use or presence of a monitoring device.

§ 2900-f. Prohibited acts; civil and criminal penalties. 1. (a) No nursing home shall deny a person or resident admission to or discharge from a nursing home, or otherwise discriminate or retaliate against a person or resident, because the person or resident chooses to authorize installation and use of a monitoring device.

(b) Any person who knowingly or willfully violates the provisions of paragraph (a) of this subdivision shall be subject to appropriate action by the department as set forth in rules and regulations promulgated pursuant to this article.

2. (a) Except as provided in paragraph (b) of this subdivision, no person shall intentionally hamper, obstruct, tamper with, or destroy a monitoring device or a recording made by a monitoring device installed in a nursing home pursuant to this article.

(b) The prohibition and penalties provided in this subdivision shall not apply to the resident who owns the monitoring device or recording, or to his or her legal representative.

§ 2900-g. Public notice; signage of electronic monitoring device. 1. If a resident of a nursing home conducts electronic monitoring, a sign shall be clearly and conspicuously posted at the main entrance of the nursing home building to alert and inform visitors. The sign shall be in a large, clearly legible type and font and bear the words "Electronic Monitoring" and shall further state in equally legible type and font "The rooms of some residents may be equipped with electronic monitoring devices installed by or on behalf of the resident."

2. A sign shall be clearly and conspicuously posted at the entrance of a resident's room where authorized electronic monitoring is being conducted. The sign shall be in large, clearly legible type and font and bear the words "This room is electronically monitored."

3. The nursing home shall be responsible for reasonable costs of installation and maintenance of the sign required by subdivision one of this section. The resident or his or her legal representative shall be responsible for installing and maintaining the sign required pursuant to subdivision two of this section, which shall also be in accordance with the written policy of the nursing home.

§ 2900-h. Reporting abuse and neglect. Any person who views an incident which a reasonable person would consider abuse or neglect after viewing a recording made in a nursing home shall report the incident to the nursing home as soon as is practicable after the viewing. The nursing home shall be provided with a copy of the recording in which the suspected incident of abuse or neglect occurred. If the recording must be transferred to a different format to be viewed, the transfer shall be done at the expense of the nursing home by a qualified professional who can certify that the contents of the recording were not altered.

§ 2900-i. Administrative rulemaking. The department shall adopt rules and regulations necessary for the implementation of the provisions of this article.

§ 3. 1. On or before January 1, 2021, each nursing home licensed by the department of health shall provide to each resident of the nursing home 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 department of health explaining the provisions of section two this act, and give each resident or his or her legal representative or legally appointed substitute decision-maker authorized to act on behalf of the resident, a choice to have a monitoring device installed in the room of the resident.

2. Each nursing home shall retain a copy of each form completed in accordance with this section, and shall make all such forms accessible to the administrator of the office of the state long-term care ombudsman within the office for the aging.

§ 4. The public health law is amended by adding a new section 2808-e to read as follows:

§ 2808-e. Long-term care ombudsman program; notification to residents. Each nursing home and residential health care facility in this state shall provide notice to each resident of such nursing home or facility and to the immediate family members of such resident informing such

resident and family members of the long-term care ombudsman program set forth in section two hundred eighteen of the elder law. Such notice shall provide and prominently display the name of and contact information for the local ombudsman entity designated to operate the local long-term care ombudsman program for such nursing home or facility. In addition, each nursing home and residential health care facility shall provide such notice to such resident and family members: (a) at least once annually; (b) at any time that the contact information for the local ombudsman entity designated to operate the local long-term care ombudsman program for such nursing home or facility changes; and (c) at any time that there is a change in the local ombudsman entity designated to operate the local long-term care ombudsman program for such nursing home or facility.

§ 5. This act shall take effect immediately.