

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3283

By Delegates Fluharty, Hornbuckle, Lewis, and

Hamilton

[Introduced March 10, 2025; referred to the
Committee on Health and Human Resources then the
Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-67-1, §16-67-2, §16-67-3, §16-67-4, §16-67-5, §16-67-6, §16-67-7 and §16-67-8, relating to authorizing the installation of monitors in long-term care facilities; providing a short title; defining terms; establishing conditions for installation of monitors; requiring consent of other residents in non-private rooms; long-term care facility may provide forms; providing duties of long-term care facilities; prohibiting certain conduct; granting the Department of Health rulemaking authority; allowing violations of this article to be treated as a license violation of the long-term care facility; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 67. AUTHORIZING MONITORING DEVICES IN LONG-TERM CARE FACILITIES

§16-67-1. Short title.

The article shall be known as the Granting Relatives Access to Monitor Act (the GRAM'S Act).

§16-67-2. Definitions.

"Attorney in fact" means a person designated as such by a durable medical power of attorney for health care executed pursuant to §16-30-4.

"Electronic monitoring device" means 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 and broadcasts or records activities or sounds occurring in the room pursuant to the provisions of this article.

"Guardian" means a person lawfully invested with the power and charged with the duty of taking care of another person and managing the property and rights of another person who for some peculiarity of status or defect of age, understanding or self-control is considered incapable of

administering his or her own affairs, to include committees or other references under the code.

"Long-term care facility" means any nursing home, personal care home, or residential board and care home as defined in section two, article five-c of this chapter; nursing homes operated by the federal government or the state government; extended care facilities operated in connection with hospitals; and any similar institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management for consideration, for the express and implied purpose of providing accommodations and care or personal assistance to one or more persons who are ill or otherwise incapacitated or are dependent upon the services of others by reasons of physical or mental impairment and who are not related within the degree of consanguinity of second cousin to the owner or manager of the institution, residence or place;

"Resident" means an individual who resides in a long-term care facility.

§16-67-3. Use of electronic monitoring devices authorized; requiring consent of other residents.

Subject to the provisions of this article, a resident or a resident's guardian or attorney in fact may authorize the installation and use of an electronic monitoring device in the resident's room in a long-term care facility. The installation and use of an electronic monitoring device may be authorized only if both of the following conditions are met:

(1) If a long-term care facility has prescribed a form described in this article, the resident or resident's guardian or attorney in fact completes the form and submits it to the facility.

(2) The cost of the device and the cost of installing, maintaining, and removing the device, other than the cost of electricity for the device, is paid for by the resident or the resident's guardian or attorney in fact.

(b) A resident who has authorized the installation and use of an electronic monitoring device may withdraw that authorization at any time.

§16-67-4. Monitoring conditions.

1 (a) If a resident wishing to conduct authorized electronic monitoring of the resident's room
2 lives with another resident in a long-term care facility, the consent of the other resident or the other
3 resident's guardian or attorney in fact to the installation and use of an electronic monitoring device
4 in the room is required before any installation or use of such a device may occur. If the long-term
5 care facility has prescribed a form provided pursuant to this article, the other resident or other
6 resident's guardian or attorney in fact shall consent by completing the relevant part of the form.

7 (b)(1) If a resident living in a room with another resident wishes to conduct authorized
8 electronic monitoring of the resident's room, but the other resident or other resident's guardian or
9 attorney in fact refuses to consent to the installation and use of an electronic monitoring device,
10 the facility shall make a reasonable attempt to accommodate the resident wishing to conduct
11 authorized electronic monitoring by moving either resident to another available room with the
12 consent of the resident being moved or resident's guardian or attorney in fact.

13 (2) In the case of a resident living in a room with another resident, the other resident or
14 other resident's guardian or attorney in fact may place conditions on any consent to the installation
15 and use of an electronic monitoring device, including conditions such as pointing the device away
16 from the other resident or limiting or prohibiting the use of certain devices. If conditions are placed
17 on consent, the device shall be installed and used according to those conditions.

18 (c) A resident whose consent is required under this section may withdraw that consent at
19 any time.

§16-67-5. Authorization to install electronic monitoring devices; duties of facilities.

1 (a) A long-term care facility may prescribe a form for use by a resident or resident's
2 guardian or attorney in fact seeking to authorize the installation and use of an electronic monitoring
3 device in the resident's room in a long-term care facility. If a long-term care facility prescribes a
4 form, it shall, at a minimum, include all of the following:

5 (1) An explanation of the provisions of this article;

6 (2) An acknowledgment that the resident or resident's guardian or attorney in fact has

7 consented to the installation and use of the device in the resident's room;

8 (3) In the case of a resident who lives in a room with another resident, an acknowledgment
9 that the other resident or other resident's guardian or attorney in fact has consented to the
10 installation and use of the device and a description of any conditions placed on that consent.

11 (4) Language providing the facility with information regarding the type, function, and use of
12 the device to be installed and used; and

13 (5) Language stating that the facility is released from liability in any civil or criminal action or
14 administrative proceeding for a violation of the resident's right to privacy in connection with using
15 the device.

16 (d) A long-term care facility may post a notice in a conspicuous place at the entrance to a
17 resident's room with an electronic monitoring device stating that an electronic monitoring device is
18 in use in that room. No person or resident may be denied admission to or discharged from a long-
19 term care facility or otherwise discriminated or retaliated against because of the decision to
20 authorize the installation and use of an electronic monitoring device in a resident's room in the
21 facility.

§16-67-6. Monitoring and use of recordings.

1 (a) No person other than the resident or resident's guardian or attorney in fact who
2 authorized the installation and use of an electronic monitoring device in the resident's room in a
3 long-term care facility may intentionally obstruct, tamper with, or destroy the device or a recording
4 made by the device.

5 (b) Except as provided in subsection (c) of this section, no person other than the following
6 may intentionally view or listen to the images displayed or sounds recorded by an electronic
7 monitoring device installed in a resident's room:

8 (1) The resident;

9 (2) The resident's guardian or attorney in fact; and

10 (3) Law enforcement personnel.

11 (c) A resident or resident's guardian or attorney in fact may authorize a person to view or
12 listen to the images displayed or sounds recorded by an electronic monitoring device installed in a
13 resident's room.

§16-67-7. Department of Health rulemaking.

1 The Commissioner shall promulgate legislative rules, pursuant to §29-3-1 et seq.
2 necessary to effectuate the provisions of this article. All long-term care facilities subject to the
3 rules promulgated by the Department of Health and a violation of this article or any rules
4 promulgated thereunder may be considered a violation of any state held permit or license.

§16-67-8. Penalties.

1 (a) Licensed facility compliance- Every long-term care facility shall allow patient monitoring
2 as provided in this article. Any long-term care facility which refuses or fails to comply with the
3 provisions of this article is a violation of the license or permit issued to the facility to operate as a
4 long-care resident facility.

5 (b) Criminal penalties-

6 (1) Any unauthorized person tampering with the camera, recording device or recording is
7 guilty of a misdemeanor and shall be fined not more than \$1,000 for each offense.

8 (2) Any person filing a false complaint against the facility is guilty of a misdemeanor and
9 shall be fined not more than \$1,000 for the first offense and not more than \$5,000 for each
10 subsequent offense.

11 (3) Any person or facility that denies admission to or discharges a resident from a long-
12 term care facility or otherwise retaliated against because of the intent to use or the use of a monitor
13 is guilty of a misdemeanor and be fined up to \$1,000 for the first offense and up to \$5,000 for each
14 subsequent offense.

NOTE: The purpose of this bill is to authorize family members to install monitors at long-term care facilities to check on elderly or disabled family members who in many cases cannot speak for themselves; establishes requirements to assure privacy of other residents; establishes conditions for use of the monitors; and establishes misdemeanor penalties for interfering with the monitoring.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.