

PROPOSED
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1041
(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Title 36, chapter 4, Arizona Revised Statutes, is
3 amended by adding article 7.1, to read:

4 ARTICLE 7.1. ELECTRONIC MONITORING

5 36-447.51. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "AUTHORIZED REPRESENTATIVE" MEANS A RESIDENT REPRESENTATIVE AS
8 DEFINED IN 42 CODE OF FEDERAL REGULATIONS SECTION 483.5 WHO HAS BEEN
9 EXPRESSLY GRANTED AUTHORITY BY THE RESIDENT OR A COURT OF LAW TO MAKE
10 DECISIONS ABOUT THE RESIDENT'S CARE, HEALTH AND SAFETY ON THE RESIDENT'S
11 BEHALF.

12 2. "ELECTRONIC MONITORING":

13 (a) MEANS THE USE OF AN ELECTRONIC MONITORING DEVICE IN THE ROOM OF
14 A RESIDENT OF A NURSING CARE INSTITUTION OR ASSISTED LIVING FACILITY TO
15 RECORD OR TRANSMIT SOUNDS OR ACTIVITY TO OR FOR THE RESIDENT, THE
16 RESIDENT'S AUTHORIZED REPRESENTATIVE OR AN AUTHORIZED THIRD PARTY.

17 (b) INCLUDES THE TAPES OR RECORDINGS FROM THE ELECTRONIC MONITORING
18 DEVICE.

19 3. "ELECTRONIC MONITORING DEVICE" MEANS ANY DEVICE OR TECHNOLOGY
20 THAT HAS A PLACED, FIXED OR OTHERWISE INSTALLED LOCATION, THAT CAPTURES,
21 RECORDS OR BROADCASTS AUDIO OR VIDEO, OR BOTH, AND THAT IS USED FOR
22 ELECTRONIC MONITORING.

23 4. "FACILITY" MEANS THE NURSING CARE INSTITUTION OR ASSISTED LIVING
24 FACILITY IN WHICH THE RESIDENT IS LIVING.

25 5. "RESIDENT" MEANS A PERSON WHO RESIDES IN A NURSING CARE
26 INSTITUTION OR ASSISTED LIVING FACILITY.

27 36-447.52. Right to electronic monitoring

28 A RESIDENT OR THE RESIDENT'S AUTHORIZED REPRESENTATIVE HAS THE RIGHT
29 TO CONDUCT ELECTRONIC MONITORING OF THE RESIDENT'S ROOM THROUGH THE USE OF
30 ELECTRONIC MONITORING DEVICES PLACED, FIXED OR OTHERWISE INSTALLED IN THE
31 RESIDENT'S ROOM AS PROVIDED IN THIS ARTICLE.

32 36-447.53. Notice; intent to conduct electronic monitoring

33 A. A RESIDENT IN A NURSING CARE INSTITUTION OR ASSISTED LIVING
34 FACILITY OR THE RESIDENT'S AUTHORIZED REPRESENTATIVE SHALL NOTIFY THE
35 FACILITY OF THE PLANNED INSTALLATION AND USE OF AN ELECTRONIC MONITORING
36 DEVICE IN THE LIVING QUARTERS OF THE RESIDENT BY SUBMITTING TO THE

1 FACILITY A WRITTEN AND COMPLETED NOTICE AND CONSENT FORM AS PRESCRIBED BY
2 THE DEPARTMENT PURSUANT TO SECTION 36-447.54. THE NOTICE AND CONSENT FORM
3 SERVES TO INFORM THE FACILITY THAT THE RESIDENT OR RESIDENT'S AUTHORIZED
4 REPRESENTATIVE INTENDS TO CONDUCT ELECTRONIC MONITORING AND CONSENTS TO
5 THE MONITORING AND DESCRIBES HOW THE RESIDENT OR THE RESIDENT'S AUTHORIZED
6 REPRESENTATIVE INTENDS TO CONDUCT THE MONITORING. THE NOTICE AND CONSENT
7 FORM MUST BE PROVIDED TO THE FACILITY BEFORE THE RESIDENT OR RESIDENT'S
8 AUTHORIZED REPRESENTATIVE INSTALLS AN ELECTRONIC MONITORING DEVICE AND
9 BEGINS ELECTRONIC MONITORING.

10 B. FOR A RESIDENT WHO HAS THE ABILITY TO CONSENT BUT WHOSE
11 AUTHORIZED REPRESENTATIVE HAS THE AUTHORITY TO CONSENT TO THE ELECTRONIC
12 MONITORING, THE RESIDENT'S AUTHORIZED REPRESENTATIVE MAY CONSENT ON BEHALF
13 OF THE RESIDENT IF BOTH OF THE FOLLOWING APPLY:

14 1. THE RESIDENT'S AUTHORIZED REPRESENTATIVE HAS FULLY EXPLAINED THE
15 PROPOSED ELECTRONIC MONITORING TO THE RESIDENT, INCLUDING THE RESIDENT'S
16 RIGHT TO OBJECT TO THE ELECTRONIC MONITORING.

17 2. THE RESIDENT HAS NOT AFFIRMATIVELY OBJECTED TO THE PROPOSED
18 FORM, FORMAT AND SCOPE OF ELECTRONIC MONITORING.

19 C. FOR A RESIDENT WHO DOES NOT HAVE THE ABILITY TO CONSENT TO THE
20 ELECTRONIC MONITORING, THE RESIDENT'S AUTHORIZED REPRESENTATIVE MAY
21 CONSENT ON BEHALF OF THE RESIDENT IF ALL OF THE FOLLOWING APPLY:

22 1. THE RESIDENT'S AUTHORIZED REPRESENTATIVE HAS THE AUTHORITY TO
23 CONSENT.

24 2. THE RESIDENT'S AUTHORIZED REPRESENTATIVE HAS FULLY EXPLAINED THE
25 PROPOSED ELECTRONIC MONITORING TO THE RESIDENT, INCLUDING THE RESIDENT'S
26 RIGHT TO OBJECT TO THE ELECTRONIC MONITORING.

27 3. THE RESIDENT HAS NOT AFFIRMATIVELY OBJECTED TO THE PROPOSED
28 FORM, FORMAT AND SCOPE OF ELECTRONIC MONITORING.

29 4. THE RESIDENT DOES NOT HAVE AN EXECUTED LIVING WILL, MEDICAL
30 POWER OF ATTORNEY, PREHOSPITAL MEDICAL DIRECTIVE OR OTHER LEGAL DOCUMENT
31 IN WHICH THE RESIDENT SPECIFIED THE RESIDENT'S OBJECTION TO ELECTRONIC
32 MONITORING.

33 D. A RESIDENT OR THE RESIDENT'S AUTHORIZED REPRESENTATIVE MAY
34 CONSENT TO ELECTRONIC MONITORING WITH ANY LIMITING OR QUALIFYING TERMS OR
35 CONDITIONS THAT THE RESIDENT OR RESIDENT'S AUTHORIZED REPRESENTATIVE
36 CHOOSES REGARDING THE MANNER IN WHICH THE ELECTRONIC MONITORING IS
37 CONDUCTED. THE LIMITING OR QUALIFYING TERMS OR CONDITIONS SHALL BE
38 SPECIFIED IN THE NOTICE AND CONSENT FORM PURSUANT TO SECTION 36-447.54.

39 36-447.54. Notice and consent form

40 A. THE DEPARTMENT SHALL PRESCRIBE THE NOTICE AND CONSENT FORM THAT
41 MUST BE COMPLETED BY THE RESIDENT OR THE RESIDENT'S AUTHORIZED
42 REPRESENTATIVE PURSUANT TO THIS ARTICLE AND SHALL INCLUDE ADEQUATE SPACE
43 ON THE FORM FOR THE RESIDENT OR AUTHORIZED REPRESENTATIVE TO OUTLINE
44 CHOICES REGARDING ALL OF THE FOLLOWING:

45 1. THE RESIDENT'S OR AUTHORIZED REPRESENTATIVE'S INTENT TO CONDUCT
46 ELECTRONIC MONITORING AND THE INTENDED START DATE.

47 2. THE TYPE, FUNCTION AND INTENDED PURPOSE OF THE ELECTRONIC
48 MONITORING DEVICE TO BE USED.

- 1 3. ANY INSTALLATION SPECIFICATIONS, SUCH AS THE PLANNED MOUNTING OF
2 A DEVICE TO A WALL OR CEILING.
- 3 4. THE RESIDENT'S OR AUTHORIZED REPRESENTATIVE'S CHOSEN TERMS AND
4 CONDITIONS FOR THE USE OF THE ELECTRONIC MONITORING DEVICE, INCLUDING:
5 (a) WHETHER TO INCLUDE OR EXCLUDE AUDIO RECORDING.
6 (b) WHETHER TO INCLUDE OR EXCLUDE VIDEO RECORDING.
7 (c) WHETHER TO INCLUDE OR EXCLUDE BROADCASTING OF AUDIO OR VIDEO.
8 (d) WHEN TO TURN THE ELECTRONIC MONITORING DEVICE ON OR OFF OR
9 BLOCK OR UNBLOCK THE VIDEO RECORDING COMPONENT OF THE ELECTRONIC
10 MONITORING DEVICE FOR THE DURATION OF AN EXAMINATION OR PROCEDURE BY A
11 HEALTH CARE PROFESSIONAL, INCLUDING HOW THE ELECTRONIC MONITORING DEVICE
12 WILL BE TURNED ON OR OFF AND TURNED BACK ON OR OFF AND BY WHOM.
13 (e) WHEN TO TURN THE ELECTRONIC MONITORING DEVICE ON OR OFF OR
14 BLOCK OR UNBLOCK THE VIDEO RECORDING COMPONENT OF THE ELECTRONIC
15 MONITORING DEVICE WHILE DRESSING OR BATHING IS PERFORMED, INCLUDING HOW
16 THE ELECTRONIC MONITORING DEVICE WILL BE TURNED ON OR OFF AND TURNED BACK
17 ON OR OFF AND BY WHOM.
18 (f) WHEN TO TURN THE ELECTRONIC MONITORING DEVICE ON OR OFF FOR THE
19 DURATION OF A VISIT WITH A SPIRITUAL ADVISER, OMBUDSMAN, ATTORNEY,
20 FINANCIAL PLANNER, INTIMATE PARTNER OR OTHER VISITOR, INCLUDING HOW THE
21 ELECTRONIC MONITORING DEVICE WILL BE TURNED ON OR OFF AND TURNED BACK ON
22 OR OFF AND BY WHOM.
23 (g) ANY OTHER CONDITION OR RESTRICTION ELECTED BY THE RESIDENT OR
24 AUTHORIZED REPRESENTATIVE REGARDING THE USE OF AN ELECTRONIC MONITORING
25 DEVICE.
- 26 5. WHETHER THE RESIDENT'S OR AUTHORIZED REPRESENTATIVE'S PLANNED
27 ELECTRONIC MONITORING REQUIRES ROOMMATE CONSENT PURSUANT TO SECTION
28 36-447.55.
- 29 6. A DESCRIPTION OF WHO MAY BE ABLE TO HEAR OR VIEW THE RECORDINGS
30 IN REAL TIME OR ON DEMAND.
- 31 7. A DESCRIPTION OF WHO MAY BE ABLE TO TEMPORARILY DISABLE, OBSCURE
32 OR OTHERWISE COMPLY WITH THE TERMS AND CONDITIONS DESCRIBED IN PARAGRAPH 4
33 OF THIS SUBSECTION.
- 34 8. A STATEMENT OF HOW THE RECORDINGS MAY BE USED AND WITH WHOM THE
35 RECORDING MAY BE SHARED.
- 36 9. THE RESIDENT'S SIGNED CONSENT TO ELECTRONIC MONITORING OR THE
37 SIGNATURE OF THE RESIDENT'S AUTHORIZED REPRESENTATIVE, IF APPLICABLE. IF A
38 PERSON OTHER THAN THE RESIDENT SIGNS THE CONSENT FORM, THAT PERSON SHALL
39 INDICATE THE SOURCE OF AUTHORITY ALLOWING THE PERSON'S SIGNATURE AND SHALL
40 ATTEST ON THE FORM THAT THE RESIDENT WAS ASKED IF THE RESIDENT WANTS
41 ELECTRONIC MONITORING TO BE CONDUCTED AND THE RESIDENT DID NOT
42 AFFIRMATIVELY OBJECT.
- 43 10. IF THE ELECTRONIC MONITORING REQUIRES ROOMMATE CONSENT PURSUANT
44 TO SECTION 36-447.55, THE SIGNED CONSENT OF THE RESIDENT'S ROOMMATE OR THE
45 ROOMMATE'S AUTHORIZED REPRESENTATIVE, IF APPLICABLE. IF A ROOMMATE'S
46 AUTHORIZED REPRESENTATIVE SIGNS THE CONSENT FORM, THAT PERSON SHALL
47 INDICATE THE SOURCE OF AUTHORITY ALLOWING THE PERSON'S SIGNATURE AND SHALL
48 ATTEST ON THE FORM THAT THE ROOMMATE WAS ASKED IF THE ROOMMATE AGREES TO

1 THE ELECTRONIC MONITORING TO BE CONDUCTED AS PROPOSED BY THE RESIDENT AND
2 THE ROOMMATE DID NOT AFFIRMATIVELY OBJECT.

3 11. A SIGNATURE AND DATE BOX FOR DOCUMENTING THE SIGNATURE AND
4 CONSENT OF THE RESIDENT, THE RESIDENT'S AUTHORIZED REPRESENTATIVE, THE
5 ROOMMATE OR THE ROOMMATE'S AUTHORIZED REPRESENTATIVE.

6 B. THE DEPARTMENT SHALL ISSUE THE REQUIRED NOTICE AND CONSENT FORM
7 REQUIRED IN THIS ARTICLE NOT LATER THAN SIXTY DAYS AFTER THE EFFECTIVE
8 DATE OF THIS SECTION. IF THE DEPARTMENT HAS NOT ISSUED THE FORM BY THAT
9 DATE, A RESIDENT MAY USE A FORM THAT SUBSTANTIALLY COMPLIES WITH THIS
10 ARTICLE UNTIL THE DEPARTMENT-PREScribed FORM IS AVAILABLE. THIS SECTION
11 DOES NOT INVALIDATE A NOTICE AND CONSENT FORM THAT WAS USED BEFORE THE
12 DEPARTMENT CIRCULATES A DEPARTMENT-PREScribed FORM SOLELY DUE TO THE FORM
13 NOT BEING THE FORM PREScribed BY THE DEPARTMENT.

14 36-447.55. Roommate consent requirement; refusal to consent;
15 accommodations; withdrawal of consent

16 A. BEFORE IMPLEMENTING ELECTRONIC MONITORING, A RESIDENT OR
17 RESIDENT'S AUTHORIZED REPRESENTATIVE SHALL OBTAIN THE WRITTEN CONSENT ON
18 THE NOTICE AND CONSENT FORM OF ANY OTHER RESIDENT RESIDING IN THE SHARED
19 ROOM OR SHARED PRIVATE LIVING UNIT. THE RESIDENT OR RESIDENT'S AUTHORIZED
20 REPRESENTATIVE SHALL DESCRIBE THE FORM, FORMAT AND SCOPE OF ELECTRONIC
21 MONITORING TO WHICH THE ROOMMATE OR ROOMMATE'S AUTHORIZED REPRESENTATIVE
22 AGREES, INCLUDING THE SPECIFICATIONS PREScribed IN SECTION 36-447.54.

23 B. THE CONSENT OF A ROOMMATE OR THE ROOMMATE'S AUTHORIZED
24 REPRESENTATIVE UNDER THIS SECTION AUTHORIZES THE RESIDENT'S USE OF ANY
25 ELECTRONIC MONITORING OBTAINED UNDER THIS ARTICLE.

26 C. THIS ARTICLE DOES NOT PREVENT TWO ROOMMATES FROM JOINTLY
27 NOTIFYING THE FACILITY OF THEIR JOINT PLAN TO USE ELECTRONIC MONITORING.

28 D. ANY RESIDENT WHO IS CONDUCTING ELECTRONIC MONITORING THAT
29 REQUIRES ROOMMATE CONSENT AND WHO HAS A NEW ROOMMATE SHALL IMMEDIATELY
30 REMOVE OR DISABLE AN ELECTRONIC MONITORING DEVICE WHEN THE NEW ROOMMATE
31 MOVES INTO A SHARED ROOM OR SHARED PRIVATE LIVING UNIT, UNLESS OR UNTIL
32 THE RESIDENT OBTAINS THE WRITTEN CONSENT OF THE NEW ROOMMATE OR THE
33 ROOMMATE'S AUTHORIZED REPRESENTATIVE AS REQUIRED BY THIS SECTION. ON
34 OBTAINING THE NEW ROOMMATE'S SIGNED NOTICE AND CONSENT FORM AND SUBMITTING
35 THE FORM TO THE FACILITY, THE RESIDENT MAY RESUME ELECTRONIC MONITORING.

36 E. IF A RESIDENT WHO IS RESIDING IN A SHARED ROOM OR SHARED LIVING
37 UNIT HAS A ROOMMATE WHO REFUSES TO CONSENT TO THE USE OF THE ELECTRONIC
38 MONITORING DEVICE AND THE PARTIES CANNOT AGREE TO A MODIFICATION OF THE
39 RESIDENT'S DESIRED ELECTRONIC MONITORING, THE FACILITY SHALL MAKE A
40 REASONABLE ATTEMPT TO ACCOMMODATE THE RESIDENT WHO WANTS TO CONDUCT
41 ELECTRONIC MONITORING. A FACILITY MEETS THE REQUIREMENT TO REASONABLY
42 ATTEMPT TO ACCOMMODATE A RESIDENT OR A RESIDENT'S AUTHORIZED
43 REPRESENTATIVE WHO WANTS TO CONDUCT ELECTRONIC MONITORING PURSUANT TO THIS
44 SUBSECTION IF THE FACILITY OFFERS TO MOVE THE RESIDENT AT THE RESIDENT'S
45 EXPENSE TO ANOTHER SHARED ROOM OR SHARED LIVING UNIT THAT IS AVAILABLE AT
46 THE TIME OF THE REQUEST. IF A RESIDENT CHOOSES TO RESIDE IN A PRIVATE
47 ROOM OR PRIVATE LIVING UNIT IN A FACILITY IN ORDER TO ACCOMMODATE THE USE
48 OF AN ELECTRONIC MONITORING DEVICE, THE RESIDENT SHALL PAY THE FACILITY'S

1 PRIVATE ROOM RATE. THE FACILITY IS NOT REQUIRED TO PROVIDE A PRIVATE
2 ROOM, A SINGLE-BED ROOM OR A PRIVATE LIVING UNIT TO A RESIDENT WHO IS
3 UNABLE OR UNWILLING TO PAY.

4 F. A ROOMMATE OR THE ROOMMATE'S AUTHORIZED REPRESENTATIVE MAY
5 WITHDRAW CONSENT TO ELECTRONIC MONITORING AT ANY TIME. THE WITHDRAWAL OF
6 CONSENT SHALL BE DOCUMENTED ON THE ORIGINAL NOTICE AND CONSENT FORM. THE
7 RESIDENT OR THE RESIDENT'S AUTHORIZED REPRESENTATIVE SHALL IMMEDIATELY
8 REMOVE OR DISABLE THE ELECTRONIC MONITORING DEVICE WHEN CONSENT IS
9 WITHDRAWN BY A ROOMMATE OR THE ROOMMATE'S AUTHORIZED REPRESENTATIVE, AND
10 THE FACILITY SHALL MAKE A REASONABLE ATTEMPT TO ACCOMMODATE THE RESIDENT
11 OR RESIDENT'S AUTHORIZED REPRESENTATIVE WHO WANTS TO CONTINUE TO CONDUCT
12 ELECTRONIC MONITORING PURSUANT TO THIS SECTION.

13 36-447.56. Facilities; signage; requirements

14 A. A FACILITY WHERE ELECTRONIC MONITORING IS OCCURRING SHALL POST A
15 SIGN AT EACH FACILITY ENTRANCE THAT STATES, IN ENGLISH AND IN SPANISH:
16 "ELECTRONIC MONITORING DEVICES, INCLUDING SECURITY CAMERAS AND AUDIO
17 DEVICES, MAY BE PRESENT TO RECORD PERSONS AND ACTIVITIES." THE SIGN SHALL
18 BE IN LARGE, CLEARLY LEGIBLE TYPE AND FONT. THE FACILITY SHALL BEAR THE
19 COSTS ASSOCIATED WITH INSTALLING AND MAINTAINING THE SIGN REQUIRED BY THIS
20 SUBSECTION.

21 B. A RESIDENT WHO CONDUCTS AUTHORIZED ELECTRONIC MONITORING OR THE
22 RESIDENT'S AUTHORIZED REPRESENTATIVE MAY POST AND MAINTAIN A NOTICE AT THE
23 ENTRANCE TO THE RESIDENT'S ROOM STATING THAT THE ROOM IS BEING MONITORED
24 BY AN ELECTRONIC MONITORING DEVICE.

25 36-447.57. Electronic monitoring devices; responsibility for
26 costs; internet service; accommodations;
27 interference or tampering prohibited

28 A. A RESIDENT OR THE RESIDENT'S AUTHORIZED REPRESENTATIVE WHO
29 CHOOSES TO CONDUCT ELECTRONIC MONITORING SHALL DO SO AT THE RESIDENT'S OWN
30 EXPENSE, INCLUDING PURCHASE, INSTALLATION, INTERNET SERVICE, MAINTENANCE
31 AND REMOVAL COSTS. THE RESIDENT OR AUTHORIZED REPRESENTATIVE IS SOLELY
32 RESPONSIBLE FOR:

33 1. CHOOSING THE ELECTRONIC MONITORING DEVICE, SUBJECT TO THE LIMITS
34 PRESCRIBED IN THIS SECTION.

35 2. PAYING THE COST OF THE ELECTRONIC MONITORING DEVICE AND THE COST
36 OF INSTALLING, MAINTAINING AND REMOVING THE ELECTRONIC MONITORING DEVICE,
37 IF APPLICABLE, OTHER THAN THE COST OF ELECTRICITY USED TO POWER THE
38 ELECTRONIC MONITORING DEVICE. AFTER REMOVING THE ELECTRONIC MONITORING
39 DEVICE, THE RESIDENT OR THE RESIDENT'S AUTHORIZED REPRESENTATIVE SHALL
40 RESTORE THE FACILITY'S PROPERTY TO ITS CONDITION BEFORE THE ELECTRONIC
41 MONITORING DEVICE WAS INSTALLED.

42 3. IF APPLICABLE, PAYING THE COST OF INTERNET SERVICE FOR AN
43 ELECTRONIC MONITORING DEVICE.

44 B. A FACILITY IS NOT REQUIRED TO PROVIDE INTERNET SERVICE OR
45 NETWORK ACCESS TO ANY ELECTRONIC MONITORING DEVICE INSTALLED BY A RESIDENT
46 OR THE RESIDENT'S AUTHORIZED REPRESENTATIVE. ANY INTERNET SERVICE FOR AN
47 ELECTRONIC MONITORING DEVICE IS THE SOLE RESPONSIBILITY OF THE RESIDENT OR
48 THE RESIDENT'S AUTHORIZED REPRESENTATIVE.

1 C. A FACILITY MAY CHOOSE TO PROVIDE INTERNET SERVICE OR NETWORK
2 ACCESS AND CHARGE A RESIDENT OR THE RESIDENT'S AUTHORIZED REPRESENTATIVE
3 FOR THE INTERNET SERVICE OR NETWORK ACCESS THAT IS USED FOR AN ELECTRONIC
4 MONITORING DEVICE INSTALLED BY THE RESIDENT OR AUTHORIZED REPRESENTATIVE.
5 THE COST OF THE INTERNET SERVICE OR NETWORK ACCESS CHARGED TO THE RESIDENT
6 OR AUTHORIZED REPRESENTATIVE MAY NOT EXCEED THE ACTUAL COST OF THE
7 INTERNET SERVICE OR NETWORK ACCESS INCURRED BY THE FACILITY.

8 D. A FACILITY MAY NOT PREVENT A RESIDENT OR THE RESIDENT'S
9 AUTHORIZED REPRESENTATIVE FROM PURCHASING, MAINTAINING AND PAYING FOR
10 SEPARATE INTERNET SERVICE OR NETWORK ACCESS THAT IS INDEPENDENT FROM THE
11 FACILITY'S INTERNET SERVICE OR NETWORK.

12 E. AN ELECTRONIC MONITORING DEVICE CHOSEN BY A RESIDENT OR THE
13 RESIDENT'S AUTHORIZED REPRESENTATIVE MUST BE CAPABLE OF BEING TEMPORARILY
14 DISABLED OR TURNED ON AND OFF BY THE RESIDENT OR AUTHORIZED REPRESENTATIVE
15 CONSISTENT WITH THE RESIDENT'S CHOICES RELATING TO ACTIVATION AND
16 DEACTIVATION AS OUTLINED IN THE NOTICE AND CONSENT FORM. IF THE
17 ELECTRONIC MONITORING DEVICE TRANSMITS VIDEO OR OTHER VISUAL DISPLAYS,
18 BROADCASTS OR RECORDINGS, THE ELECTRONIC MONITORING DEVICE, TO THE
19 GREATEST EXTENT PRACTICABLE, MUST BE INSTALLED:

- 20 1. WITH A FIXED VIEWPOINT OF THE LIVING QUARTERS.
- 21 2. IN A MANNER THAT AVOIDS CAPTURING IMAGES OF ACTIVITIES SUCH AS
22 BATHING, DRESSING AND TOILETING.
- 23 3. IN A CONSPICUOUSLY VISIBLE LOCATION IN THE ROOM.

24 F. A FACILITY SHALL MAKE A REASONABLE ATTEMPT TO ACCOMMODATE THE
25 RESIDENT'S ELECTRONIC MONITORING INSTALLATION NEEDS, UNLESS DOING SO WOULD
26 PLACE AN UNDUE BURDEN ON THE FACILITY. A FACILITY HAS THE BURDEN OF
27 PROVING THAT THE REQUESTED ACCOMMODATION IS NOT REASONABLE. ACCOMMODATIONS
28 INCLUDE:

- 29 1. PROVIDING A REASONABLY SECURE PLACE TO MOUNT THE DEVICE.
- 30 2. PROVIDING ACCESS TO POWER SOURCES FOR THE DEVICE.
- 31 3. ALLOWING ACCESS TO THE FACILITY'S PUBLIC-USE INTERNET OR WI-FI
32 SYSTEMS WHEN AVAILABLE FOR OTHER PUBLIC USES.

33 G. A PERSON OTHER THAN THE RESIDENT, THE RESIDENT'S AUTHORIZED
34 REPRESENTATIVE OR AN INDIVIDUAL EXPRESSLY AUTHORIZED BY THE RESIDENT OR
35 RESIDENT'S AUTHORIZED REPRESENTATIVE MAY NOT:

- 36 1. OBSTRUCT, TAMPER WITH OR DESTROY THE ELECTRONIC MONITORING
37 DEVICE OR ANY RECORDING MADE BY THE ELECTRONIC MONITORING DEVICE.
- 38 2. VIEW OR LISTEN TO ANY IMAGE OR SOUND THAT IS DISPLAYED,
39 BROADCAST OR RECORDED BY THE ELECTRONIC MONITORING DEVICE.

40 H. A PERSON MAY NOT KNOWINGLY TOUCH, HAMPER, OBSTRUCT, TAMPER WITH
41 OR DESTROY AN ELECTRONIC MONITORING DEVICE PLACED IN A RESIDENT'S ROOM OR
42 PRIVATE LIVING UNIT WITHOUT THE PERMISSION OF THE RESIDENT OR RESIDENT'S
43 AUTHORIZED REPRESENTATIVE.

44 I. IT IS NOT A VIOLATION OF THIS SECTION IF A PERSON TURNS OFF THE
45 ELECTRONIC MONITORING DEVICE OR BLOCKS THE VISUAL RECORDING COMPONENT OF
46 THE ELECTRONIC MONITORING DEVICE AT THE DIRECTION OF THE RESIDENT OR
47 RESIDENT'S AUTHORIZED REPRESENTATIVE, CONSISTENT WITH THE RESIDENT'S
48 NOTICE AND CONSENT FORM.

1 J. A FACILITY MAY NOT INTERFERE WITH THE RIGHT OF A RESIDENT TO USE
2 AN ELECTRONIC MONITORING DEVICE AND MAY NOT REQUIRE A RESIDENT TO SUBMIT A
3 REQUEST FOR APPROVAL.

4 36-447.58. Authority to access recorded images or sounds;
5 confidentiality; admissibility as evidence

6 A. ANY RECORDING OBTAINED AS THE RESULT OF AUTHORIZED ELECTRONIC
7 MONITORING PURSUANT TO THIS ARTICLE IS CONSIDERED THE PERSONAL PROPERTY OF
8 THE RESIDENT WHO INSTALLED THE ELECTRONIC MONITORING DEVICE.

9 B. EXCEPT AS OTHERWISE DESCRIBED IN THIS SECTION, A PERSON,
10 FACILITY OR FACILITY REPRESENTATIVE MAY NOT ACCESS ANY VIDEO OR AUDIO
11 RECORDING CREATED THROUGH AUTHORIZED ELECTRONIC MONITORING WITHOUT THE
12 WRITTEN CONSENT OF THE RESIDENT OR THE RESIDENT'S AUTHORIZED
13 REPRESENTATIVE. THE FOLLOWING PERSONS MAY VIEW OR LISTEN TO THE IMAGES OR
14 SOUNDS THAT ARE DISPLAYED, BROADCAST OR RECORDED BY AN ELECTRONIC
15 MONITORING DEVICE INSTALLED AND USED PURSUANT TO THIS ARTICLE OR MAY
16 TEMPORARILY DISABLE OR TURN OFF THE DEVICE:

17 1. ANYONE TO WHOM THE RESIDENT OR AUTHORIZED REPRESENTATIVE GRANTS
18 PERMISSION.

19 2. A REPRESENTATIVE OF A LAW ENFORCEMENT AGENCY WHO IS CONDUCTING
20 AN INVESTIGATION.

21 3. A REPRESENTATIVE OF THE DEPARTMENT OF HEALTH SERVICES OR THE
22 DEPARTMENT OF ECONOMIC SECURITY, DIVISION OF ADULT PROTECTIVE SERVICES,
23 WHO IS CONDUCTING AN INVESTIGATION.

24 4. THE STATE LONG-TERM CARE OMBUDSMAN, WITH THE PERMISSION OF THE
25 RESIDENT OR AUTHORIZED REPRESENTATIVE.

26 5. AN ATTORNEY WHO IS REPRESENTING THE RESIDENT OR A ROOMMATE OF
27 THE RESIDENT AND WHO ACTS WITHIN THE SCOPE OF THAT REPRESENTATION.

28 C. AN EMPLOYEE OF THE FACILITY OR AN EMPLOYEE OF A CONTRACTOR
29 PROVIDING SERVICES AT THE FACILITY WHO IS THE SUBJECT OF PROPOSED
30 DISCIPLINARY ACTION BASED ON IMAGES, VIDEO OR SOUND OBTAINED BY THE
31 RESIDENT'S ELECTRONIC MONITORING MAY BE GIVEN ACCESS TO THAT MATERIAL FOR
32 PURPOSES OF DEFENDING AGAINST THE PROPOSED ACTION, CONSISTENT WITH THE
33 RULES OF EVIDENCE AND PROCEDURE IN THAT JURISDICTION, IF APPLICABLE. ANY
34 PERSON, INCLUDING AN EMPLOYEE OF THE FACILITY OR AN EMPLOYEE OF A
35 CONTRACTOR AGENCY, WHO VIEWS, HEARS, OBTAINS OR RECEIVES A RECORDING OR A
36 COPY OF THE RECORDING OF ANY MATERIAL OBTAINED THROUGH ELECTRONIC
37 MONITORING SHALL TREAT THE MATERIAL RECORDING OR COPY CONFIDENTIALLY AND
38 MAY NOT FURTHER DISSEMINATE IT TO ANY OTHER PERSON EXCEPT AS REQUIRED BY
39 LAW. ANY COPY OF THE RECORDING SHALL BE RETURNED TO THE FACILITY OR THE
40 RESIDENT WHO PROVIDED THE COPY WHEN IT IS NO LONGER NEEDED FOR PURPOSES OF
41 DEFENDING AGAINST A PROPOSED ACTION.

42 D. EXCEPT AS PROHIBITED BY ANY OTHER STATE OR FEDERAL LAW, A
43 RECORDING OR COPY OF A RECORDING MADE AS PROVIDED IN THIS ARTICLE MAY BE
44 DISSEMINATED ONLY BY THE RESIDENT OR THE RESIDENT'S AUTHORIZED
45 REPRESENTATIVE OR BY ANY RECIPIENT OF THE RECORDING FOR THE PURPOSE OF
46 ADDRESSING HEALTH, SAFETY OR WELFARE CONCERNS OF ONE OR MORE RESIDENTS.
47 A RESIDENT OR THE RESIDENT'S AUTHORIZED REPRESENTATIVE MAY NOT POST OR
48 SHARE ANY VIDEO OR AUDIO RECORDING CREATED THROUGH AUTHORIZED ELECTRONIC

1 MONITORING ON A SOCIAL MEDIA PLATFORM OR WEBSITE WITHOUT THE CONSENT OF
2 EACH INDIVIDUAL WHO IS DEPICTED IN THE VIDEO OR AUDIO RECORDING.

3 E. THE RESIDENT OR RESIDENT'S AUTHORIZED REPRESENTATIVE SHALL
4 PROVIDE A COPY OF ANY VIDEO OR AUDIO RECORDING TO ANY AUTHORIZED PARTY
5 INVOLVED IN A CIVIL, CRIMINAL OR ADMINISTRATIVE PROCEEDING ON REASONABLE
6 REQUEST BY A PARTY OF ANY PROCEEDING RELATED TO OR ARISING OUT OF HEALTH,
7 SAFETY OR WELFARE CONCERNS OF ONE OR MORE RESIDENTS THAT IS RECORDED,
8 DISCOVERED OR CAPTURED IN THE ELECTRONIC MONITORING VIDEO OR AUDIO MADE
9 DURING THE TIME PERIOD THAT THE CONDUCT AT ISSUE IN THE PROCEEDING
10 ALLEGEDLY OCCURRED.

11 F. SUBJECT TO APPLICABLE RULES OF EVIDENCE AND PROCEDURE, ANY VIDEO
12 OR AUDIO RECORDING CREATED THROUGH ELECTRONIC MONITORING UNDER THIS
13 SECTION MAY BE ADMITTED INTO EVIDENCE IN A CIVIL, CRIMINAL OR
14 ADMINISTRATIVE PROCEEDING.

15 36-447.59. Facilities; resident protections; contracts

16 A. A FACILITY MAY NOT:

17 1. REMOVE A CURRENT RESIDENT OR REFUSE TO ADMIT A POTENTIAL
18 RESIDENT OR OTHERWISE DISCRIMINATE OR RETALIATE AGAINST A RESIDENT OR
19 POTENTIAL RESIDENT BECAUSE OF THE RESIDENT'S OR POTENTIAL RESIDENT'S
20 DECISION TO CONDUCT ELECTRONIC MONITORING OF THE RESIDENT'S ROOM.

21 2. RETALIATE OR DISCRIMINATE AGAINST ANY RESIDENT FOR CONSENTING OR
22 REFUSING TO CONSENT TO ELECTRONIC MONITORING.

23 3. INFLUENCE OR ATTEMPT TO INFLUENCE ANY ROOMMATE TO OBJECT OR
24 WITHDRAW CONSENT FOR THE PURPOSE OF OBFUSCATING A RESIDENT'S CHOICE TO
25 HAVE ELECTRONIC MONITORING OR MOVE OR ATTEMPT TO MOVE INTO A RESIDENT'S
26 ROOM A NEW ROOMMATE WHO THE FACILITY KNOWS WILL OR IS LIKELY TO OBJECT TO
27 MONITORING FOR THE PURPOSE OF OBFUSCATING THE RESIDENT'S CHOICE TO HAVE
28 ELECTRONIC MONITORING.

29 B. A CONTRACT THAT PROHIBITS, LIMITS OR OTHERWISE MODIFIES THE
30 RIGHTS AND OBLIGATIONS UNDER THIS ARTICLE IS CONTRARY TO PUBLIC POLICY AND
31 IS VOID AND UNENFORCEABLE.

32 36-447.60. Facilities; employees; protections; policies

33 A. A FACILITY MAY NOT BE HELD LIABLE FOR ANY BREACH OF PRIVACY OR
34 DATA SECURITY RELATED TO ANY ELECTRONIC MONITORING DEVICE INSTALLED BY A
35 RESIDENT OR THE RESIDENT'S AUTHORIZED REPRESENTATIVE.

36 B. A FACILITY IS NOT RESPONSIBLE FOR MAINTAINING, REPAIRING OR
37 REPLACING ANY ELECTRONIC MONITORING DEVICE INSTALLED BY A RESIDENT OR THE
38 RESIDENT'S AUTHORIZED REPRESENTATIVE UNLESS THE DAMAGE IS CAUSED BY
39 FACILITY STAFF.

40 C. A FACILITY MAY NOT BE HELD RESPONSIBLE FOR ANY ELECTRONIC
41 MONITORING DEVICE THAT DOES NOT WORK DURING A POWER OUTAGE.

42 D. EACH FACILITY SHALL HAVE A POLICY OR PROCEDURE TO NOTIFY
43 EMPLOYEES THAT ELECTRONIC MONITORING MAY BE TAKING PLACE IN A RESIDENT'S
44 PRIVATE LIVING SPACE. EACH FACILITY SHALL HAVE A POLICY OR PROCEDURE
45 REGARDING EMPLOYEES WHO REFUSE TO ENTER THE LIVING QUARTERS OF A RESIDENT
46 THAT CONTAINS AN ELECTRONIC MONITORING DEVICE INSTALLED PURSUANT TO THIS
47 ARTICLE.

48 36-447.61. Civil penalty

House Amendments to S.B. 1041

1 THE DEPARTMENT MAY ASSESS A CIVIL PENALTY PURSUANT TO SECTION
2 36-431.01 AGAINST A FACILITY THAT VIOLATES THIS ARTICLE.
3 36-447.62. Rulemaking
4 THE DEPARTMENT SHALL ADOPT ANY RULES NECESSARY TO IMPLEMENT THIS
5 ARTICLE."
6 Amend title to conform

QUANG H. NGUYEN

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