

ASSEMBLY BILL

No. 1300

Introduced by Assembly Member Voepel

February 19, 2021

An act to add Article 10 (commencing with Section 1569.90) to Chapter 3.2 of Division 2 of the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

AB 1300, as introduced, Voepel. Residential care facilities for the elderly: electronic monitoring.

The California Residential Care Facilities for the Elderly Act (act) requires the State Department of Social Services to license, inspect, and regulate residential care facilities for the elderly and imposes criminal penalties on a person who violates the act or who willfully or repeatedly violates any rule or regulation adopted under the act. The act enumerates specific rights and liberties for residents that are to be posted inside the facility and personally provided to each resident. These rights include, among others, being granted a reasonable level of personal privacy in accommodations, medical treatment, personal care and assistance, visits, communications, telephone conversations, use of the internet, and meetings of resident and family groups.

This bill would enact the Electronic Monitoring in Residential Care Facilities for the Elderly Act to authorize the use of electronic monitoring devices either inside a resident's room by a resident or in certain areas of a facility by the facility under specified conditions. For the use of a personal electronic monitoring device inside a resident's room by a resident, the bill would require, among other things, the resident or the resident's representative, as defined, to provide the

facility with a completed notification and consent form, as specified, that includes the consent of the resident’s roommate, if any. The bill would also require the resident or the resident’s representative to post a sign at the entrance to the resident’s room stating that the room is monitored electronically. For the use of a facility electronic monitoring device, the bill would require the facility to, among other things, post signage at all entrances and exits that provides notice of electronic monitoring, archive the electronic monitoring digital data for 365 days, and provide the department access to the data upon 24 hours’ notice. By expanding the duties of licensed facilities under the act with regard to authorizing residents and facilities to conduct electronic monitoring under these conditions, the bill would expand an existing crime, thereby imposing a state-mandated local program.

The bill would make it a misdemeanor to knowingly hamper, obstruct, tamper with, or destroy a personal electronic monitoring device or a facility electronic monitoring device or the recordings made therefrom, except as provided. The bill would make it a felony to knowingly hamper, obstruct, tamper with, or destroy a personal electronic monitoring device or a facility electronic monitoring device or the recordings made therefrom in the commission of, or in the attempt to conceal the commission of, a felony. By creating new crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Article 10 (commencing with Section 1569.90)
- 2 is added to Chapter 3.2 of Division 2 of the Health and Safety
- 3 Code, to read:

1 Article 10. Electronic Monitoring

2
3 1569.90. This article shall be known, and may be cited as, the
4 Electronic Monitoring in Residential Care Facilities for the Elderly
5 Act.

6 1569.91. For purposes of this article, the following definitions
7 shall apply:

8 (a) “Department” means the State Department of Social
9 Services, Community Care Licensing Division.

10 (b) “Electronic monitoring ” means the placement and use of a
11 personal electronic monitoring device by a resident in their room,
12 or by a facility in accordance with this article.

13 (c) “Facility” means a residential care facility for the elderly
14 licensed pursuant to this chapter.

15 (d) “Facility electronic monitoring device” means one or more
16 pieces of equipment, instruments, or components that are owned
17 by the facility and have fixed position video camera or cameras
18 installed in the facility’s public spaces that broadcast, stream, or
19 record sounds or activity occurring in the room to a third party
20 having access to a receiver, a web-based application, or ancillary
21 transmission method outside of the room.

22 (e) “Personal electronic monitoring device” means one or more
23 pieces of equipment, instruments, or components, including, but
24 not limited to, a fixed position video camera, an audio device
25 (including microphones, baby monitors, or application-based
26 electronic assistants), or a combination thereof, that is installed in
27 a resident’s room under the provisions of this article, that
28 broadcasts, streams, or records sounds, activity, or both occurring
29 in the room to a third party having access to a receiver, a web-based
30 application, or ancillary transmission method. Such equipment is
31 owned by the resident or resident’s representative. Such electronic
32 monitoring device shall be limited to commercially produced
33 consumer systems and equipment with cloud-based digital storage.

34 (f) (1) “Representative” means any of the following:

35 (A) An individual chosen by the resident to act on behalf of the
36 resident in order to support the resident in decision-making,
37 accessing medical, social, or other personal information, managing
38 financial matters, or receiving notifications.

39 (B) A person authorized by state or federal law, including, but
40 not limited to, agents under power of attorney, representative

1 payees, and other fiduciaries, to act on behalf of the resident or
2 roommate in order to support the resident or roommate in
3 decision-making, accessing medical, social, or other personal
4 information, managing financial matters, or receiving notifications.

5 (C) A legal representative, is as used in Section 712 of the
6 federal Older Americans Act of 1965, as amended (P.L. 89-63).

7 (D) The resident’s court-appointed guardian or conservator.

8 (2) This definition does not expand the scope of authority of
9 any resident or representative beyond the authority specifically
10 authorized by the resident, state or federal law, or a court of
11 competent jurisdiction.

12 1569.92. (a) A resident or representative may install or cause
13 to be installed a personal electronic monitoring device in the
14 resident’s room or rooms for the purpose of voluntarily conducting
15 electronic monitoring.

16 (b) If the resident or representative chooses to install a personal
17 electronic monitoring device, the resident or representative shall
18 be responsible for contracting with an internet service provider
19 and paying for access to the digital application.

20 (c) The facility shall make a reasonable attempt to accommodate
21 the resident’s installation needs, including, but not limited to,
22 allowing escorted access to the facility. The facility has the burden
23 of showing that the requested accommodation is not reasonable.

24 (d) The personal electronic monitoring device shall be
25 conspicuously placed in the room or rooms.

26 (e) (1) If a resident has an active personal electronic monitoring
27 device in the room or rooms, a sign shall be clearly and
28 conspicuously posted at the entrance to the resident’s room. The
29 sign shall be printed in black three-quarter-inch inch Helvetica
30 font and shall read, “This room is electronically monitored.”

31 (2) The resident or representative is responsible for posting the
32 sign required by this subdivision. The facility shall notify the
33 resident or representative of the signage requirement.

34 (f) This article does not permit the use of a personal electronic
35 monitoring device to take still photographs or for the
36 nonconsensual interception of private communications.

37 1569.93. (a) A resident or representative shall commence
38 electronic surveillance after a notification and consent form is
39 completed and submitted to the facility.

1 (b) The notification and consent form required by subdivision
2 (a) shall include all of the following information:

3 (1) The resident's or representative's signed consent to electronic
4 monitoring.

5 (2) If the resident has a roommate, the roommate's or the
6 roommate's representative's consent to electronic monitoring.

7 (3) The type of electronic monitoring device to be used.

8 (4) The installation and setup needs of the electronic monitoring
9 device.

10 (c) A copy of the completed notification and consent form shall
11 be placed in the resident's room and in the files of the resident
12 and, if applicable, the resident's roommate.

13 (d) On or before March 1, 2022, the department shall prescribe
14 the form of the notification and consent form required pursuant to
15 subdivision (a).

16 (e) (1) A resident using a personal electronic monitoring device
17 shall disable the device when a new roommate moves in to the
18 space until the resident obtains a notification and consent form
19 from the new roommate.

20 (2) If a new roommate refuses to consent to the personal
21 electronic monitoring device, the facility shall make reasonable
22 attempts to accommodate the resident who wants electronic
23 monitoring by relocating that resident to another suitable room
24 within the facility at the same monthly rate. If the resident who
25 wants electronic monitoring chooses to reside in a private room
26 in order to use a personal electronic monitoring device, the resident
27 shall pay the private room rate if required by the licensee. If the
28 facility is unable to accommodate the resident due to lack of
29 suitable available space, the facility shall reevaluate the request at
30 least monthly until the request is fulfilled.

31 (f) A resident or representative, or a roommate or their
32 representative, may withdraw consent at any time. Withdrawal of
33 consent shall be documented in the resident's record. If a roommate
34 withdraws consent and the resident wishes to continue use of the
35 personal electronic monitoring device, the facility shall make
36 reasonable attempts to accommodate the resident who wants to
37 continue electronic monitoring by relocating the resident to another
38 suitable room in the facility at the same monthly rate. If the facility
39 is unable to accommodate the resident due to lack of space, the

1 facility shall reevaluate the request at least monthly until the request
2 is fulfilled.

3 (g) The resident or roommate, or their representatives, can
4 condition their consent on specified conditions, which shall be
5 noted on the notification and consent form. These conditions may
6 include any of the following:

7 (1) Requiring that the personal electronic monitoring device be
8 turned off or that the visual component be blocked for the duration
9 of an exam or procedure by a health care professional.

10 (2) Requiring that the personal electronic monitoring device be
11 turned off for the duration of a visit with a spiritual advisor,
12 ombudsman, attorney, financial planner, intimate partner, or other
13 visitor.

14 (3) Any other condition or restriction elected by the resident or
15 roommate on the use of the personal electronic monitoring device.

16 1569.94. (a) A resident or roommate may temporarily turn off
17 the personal electronic monitoring device, disable or block the
18 visual recording or streaming component of the device, or disable,
19 block, or reduce the volume of the audio recording or streaming
20 component of the device for any reason. A resident or roommate
21 may also request that a third party facilitate the temporary
22 disablement, blockage, or shut down of the personal electronic
23 monitoring device.

24 (b) The facility shall not be civilly or criminally liable for a
25 violation of a resident’s right to privacy arising out of the use of
26 resident’s personal electronic monitoring device unless the
27 violation of a resident’s right to privacy results from the facility’s
28 wrongdoing or failures pursuant to the provisions of Section
29 1569.97.

30 1569.95. (a) A resident or representative choosing to conduct
31 electronic monitoring must do so at the resident’s or
32 representative’s own expense, including paying for the purchase,
33 installation, maintenance, data archival, digital application
34 subscription, and removal costs. All electronic monitoring digital
35 data, including sound and video, shall remain the property of the
36 resident or representative. The resident or representative has no
37 obligation to share the digital data with a third party, including the
38 facility, except pursuant to a court order.

39 (b) b) If a resident or representative chooses to install a personal
40 electronic monitoring device that uses internet technology for

1 visual or audio monitoring, the resident is responsible for
2 contracting with an internet service provider, unless internet service
3 is included in the facility's monthly rental rate.

4 (c) A facility may not charge the resident a fee for the cost of
5 electricity used by a personal electronic monitoring device.

6 1569.96. (a) A facility shall not access digital data created by
7 a personal electronic monitoring device without the written consent
8 of the resident or representative or a court order.

9 (b) The owner of a personal electronic monitoring device shall
10 provide a copy of any digital data to parties involved in a civil,
11 criminal, or administrative proceeding, upon a court order, if the
12 digital data was made during the time period that the conduct at
13 issue in the proceeding allegedly occurred.

14 1569.97. (a) A facility electronic monitoring device without
15 audio components may only be used in the following areas of the
16 facility:

17 (1) Entrances and exits, providing that the cameras are focused
18 only on the entrance or exit doorways.

19 (2) Areas used exclusively by employees, including, but not
20 limited to, medication preparation and storage areas and food
21 preparation areas.

22 (3) Facility lobby, foyer, or similar areas used for the reception
23 of nonresidents.

24 (4) Common indoor areas, including areas for dining and leisure
25 activities. A restroom or sleeping area is not a common area for
26 these purposes and shall not be monitored electronically under any
27 circumstances.

28 (5) Outdoor areas, including valet and common parking lots,
29 delivery areas, gardens, landscaped grounds, or other exterior
30 common areas.

31 (b) A facility using a facility electronic monitoring device shall
32 do all of the following:

33 (1) Ensure that broadcasting, streaming, or recording of
34 live-captured activity displayed on a screen or other device is
35 inaccessible for viewing by residents, unauthorized employees, or
36 third parties.

37 (2) Provide written disclosure of the full use of facility electronic
38 monitoring devices to the department and each resident or
39 representative before the resident is admitted into the facility.

1 (3) Post signage at all entrances and exits, ensuring that all
2 persons who enter the facility are on notice that portions of the
3 facility may be electronically monitored.

4 (4) Archive each 24 hours of electronic monitored digital data
5 for 365 days before being overwritten or destroyed.

6 (5) Provide the department with access to archived data upon
7 24 hours notice to the facility’s administrator.

8 (6) Use the facility electronic monitoring device in compliance
9 with all applicable state and federal laws, including laws relating
10 to recording images and words of nonconsenting parties and
11 privacy.

12 1569.98. (a) A person or entity shall not knowingly hamper,
13 obstruct, tamper with, or destroy a personal electronic monitoring
14 device installed in a resident’s room without permission of the
15 resident or representative who signed the notification and consent
16 form.

17 (b) A person or entity shall not knowingly hamper, obstruct,
18 tamper with, or destroy a video or audio recording obtained by a
19 personal electronic monitoring device in accordance with this
20 article without the permission of the resident or representative who
21 signed the notice and consent form.

22 (c) A person or entity shall not knowingly hamper, obstruct,
23 tamper with, or destroy a facility electronic monitoring device.

24 (d) A person or entity shall not knowingly hamper, obstruct,
25 tamper with, or destroy video or audio recording obtained by a
26 facility electronic monitoring device in accordance with this article.

27 (e) Violation of this section is a misdemeanor. Violation of this
28 section in the commission of, or in the attempt to conceal, a
29 misdemeanor offense is a misdemeanor. Violation of this section
30 in the commission of, or in the attempt to conceal, a felony is a
31 felony.

32 1569.99. (a) The department shall establish a program to assist
33 residents receiving Medi-Cal assistance in the purchase and
34 installation of personal electronic monitoring devices. Subject to
35 funds being appropriated for this purpose, the department shall
36 distribute up to fifty thousand dollars (\$50,000) annually to
37 residents receiving Medi-Cal assistance for the purchase and
38 installation of personal electronic monitoring devices. Application
39 for, and disbursement of, funds shall be made in a manner
40 prescribed by the department.

1 (b) On or before March 1, of each year, each facility shall report
2 to the department, in a manner prescribed by the department, the
3 number of personal electronic monitoring device notification and
4 consent forms received during the prior 12-month period. The
5 department shall post this information on the department’s internet
6 website on or before May 1 of each year.

7 (c) On or before October 1, 2022, the department shall adopt
8 regulations to implement this article.

9 SEC. 2. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

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