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SENATE BILL 401

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO LONG-TERM CARE; ENACTING THE PATIENT CARE
MONITORING ACT; ESTABLISHING AUTHORIZATION AND USE OF
MONITORING DEVICES; PROVIDING FOR WAIVERS; PROVIDING FOR
ENFORCEMENT AND PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Patient Care Monitoring Act".

Section 2. DEFINITIONS.--As used in the Patient Care
Monitoring Act:

A. "agency" means the state agency on aging;

B. "facility" means a long-term care facility
licensed pursuant to the provisions of Section 24-1-5 NMSA 1978
and may also include:

(1) a skilled nursing facility;

- 1 (2) an intermediate care nursing facility,
2 including an intermediate care nursing facility for the
3 mentally retarded;
- 4 (3) a nursing facility;
- 5 (4) an adult residential shelter care home;
- 6 (5) a boarding home;
- 7 (6) any adult care home or adult residential
8 care facility; and
- 9 (7) any swing bed in an acute care facility or
10 extended care facility;

11 C. "monitoring device" means a surveillance
12 instrument that broadcasts or records activity, but does not
13 include a still camera;

14 D. "patient" means a person who is a resident of a
15 facility;

16 E. "program" means the New Mexico long-term care
17 ombudsman program; and

18 F. "surrogate" means a legal guardian or a legally
19 appointed substitute decision-maker who is authorized to act on
20 behalf of a patient.

21 Section 3. MONITORING DEVICE--AUTHORIZATION AND USE.--

22 A. A patient or a surrogate may authorize
23 installation and use of a monitoring device in a facility
24 provided that:

- 25 (1) the facility is given notice of the

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1 installation;

2 (2) the agency and the program are given
3 notice of the installation on a form prescribed by the agency
4 with copies provided to all affected parties;

5 (3) the monitoring device and all installation
6 and maintenance costs are paid for by the patient; and

7 (4) written consent is given by each patient
8 or surrogate of each patient occupying the same room.

9 B. The patient may establish and the facility shall
10 accommodate limits on the use, including the time of operation,
11 direction, focus or volume, of a monitoring device.

12 Section 4. MONITORING DEVICE OPTION--INSTALLATION--
13 ACCOMMODATION BY FACILITY.--

14 A. At the time of admission to a facility, a
15 patient shall be offered the option to have a monitoring
16 device, and a record of the patient's authorization or choice
17 not to have a monitoring device shall be kept by the facility
18 and a copy shall be provided to the program.

19 B. After authorization, consent and notice, a
20 patient or surrogate may install a monitoring device in the
21 patient's room at the patient's expense.

22 C. The facility shall cooperate to accommodate the
23 installation of the monitoring device, provided the
24 installation does not place undue burden on the facility.

25 Section 5. CONSENT--WAIVER.--

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1 A. Consent to the authorization for the
2 installation and use of a monitoring device may be given only
3 by the patient or the surrogate.

4 B. Consent to the authorization for the
5 installation and use of a monitoring device shall include a
6 waiver of immunity for the facility for a violation of the
7 patient's right to privacy insofar as the use of the monitoring
8 device is concerned.

9 C. A patient or the surrogate may reverse a choice
10 to have or not have a monitoring device installed and used at
11 any time, after notice to the facility and to the program upon
12 a form prescribed by the agency.

13 Section 6. AUTHORIZATION FORM--CONTENTS.--The form for
14 the authorization of installation and use of a monitoring
15 device shall provide for:

16 A. consent of the patient or the surrogate
17 authorizing the installation and use of the monitoring device;

18 B. notice to the facility of the patient's
19 installation of a monitoring device and specifics as to its
20 type, function and use;

21 C. consent of any other patient or that patient's
22 surrogate sharing the same room;

23 D. notice of release from liability for privacy
24 violation through the use of the monitoring device; and

25 E. waiver of the patient's right to privacy in

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1 conjunction with the use of the monitoring device.

2 Section 7. IMMUNITY--UNAUTHORIZED USE.--

3 A. In any civil action against the facility,
4 material obtained through the use of a monitoring device may
5 not be used if the monitoring device was installed or used
6 without the knowledge of the facility or without the prescribed
7 form.

8 B. Compliance with the provisions of the Patient
9 Care Monitoring Act shall be a defense against any civil action
10 against the patient or surrogate for invasion of privacy.

11 Section 8. NOTICE TO CURRENT PATIENTS.--Within six months
12 of the effective date of the Patient Care Monitoring Act, all
13 facilities shall provide to each patient or surrogate a form
14 prescribed by the agency explaining the provisions of the
15 Patient Care Monitoring Act and giving each patient or
16 surrogate a choice to have a monitoring device installed in the
17 patient's room. Copies of the completed form shall be provided
18 to the agency.

19 Section 9. NOTICE.--Notice shall be posted in a
20 conspicuous place at the entrance to a room with a monitoring
21 device that a monitoring device is in use in that room of the
22 facility.

23 Section 10. RULES.--The agency shall adopt rules
24 necessary to implement the provisions of the Patient Care
25 Monitoring Act.

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1 Section 11. PROHIBITED ACTS.--No person or patient shall
2 be denied admission to or discharged from a facility because of
3 a choice to authorize installation and use of a monitoring
4 device. Any person who violates this section shall be subject
5 to the provisions of Section 28-17-19 NMSA 1978.

6 Section 12. CRIMINAL ACTS.--Any person other than a
7 patient or surrogate found guilty of intentionally hampering,
8 obstructing, tampering with or destroying a monitoring device
9 or a recording made by a monitoring device installed in a
10 facility pursuant to the Patient Care Monitoring Act is guilty
11 of a fourth degree felony and shall be sentenced pursuant to
12 Section 31-18-15 NMSA 1978.

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