



PA 26-28—HB 5142

Aging Committee

Public Health Committee

AN ACT CONCERNING THE USE OF TECHNOLOGY FOR VIRTUAL MONITORING IN RESIDENTIAL CARE HOMES

SUMMARY: This act allows residential care home residents to use technology of their choosing for virtual monitoring and sets related notification, use, and consent requirements.

Existing law, unchanged by the act, similarly allows nursing home residents to use this technology (as well as technology for virtual visits) and gives nursing homes immunity from liability arising from its use in three circumstances. The act narrows these circumstances and gives residential care homes the same immunity.

Under the act, “virtual monitoring technology” allows someone to remotely monitor a resident using devices capable of audio or video communications, which may be able to record, that the resident owns and operates in his or her room or living area. The resident must purchase, activate, install, maintain, repair, operate, deactivate, and remove the technology at his or her own expense.

The act authorizes the Department of Public Health commissioner to adopt regulations to implement the act’s provisions on residential care homes.

EFFECTIVE DATE: October 1, 2026

RESIDENTIAL CARE HOME VIRTUAL MONITORING

Roommate Notice and Consent

If a residential care home resident intends to use technology for virtual monitoring in a shared living space, the act requires the resident to first notify any roommates and tell them the type and location of the technology, its intended use and hours of operation, and whether it can record audio or video or be activated remotely.

The resident must also get the roommate’s written consent to use the technology. If the roommate later withdraws consent, the resident must stop using the virtual monitoring technology unless he or she again consents.

Generally, the act authorizes “resident representatives” to do things it allows or requires a resident to do (give or get consent to use the technology, for example). A “resident representative” is the resident’s legally appointed health care representative, guardian, or conservator. If the resident does not have one of these individuals their resident representative can be a designee, as indicated in a signed written document in the resident’s facility records or a legally liable relative or other responsible party who is not a facility employee or contractor.

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Resident Notification to the Home

Under the act, the resident must file a signed, written notice with the home and a copy of the roommate's consent, if applicable, at least seven days before installing or using the virtual monitoring technology. The notice must:

1. identify the type of technology and its intended use, hours of use, and location in the resident's room or living unit;
2. state whether the technology can record audio or video or be remotely activated or controlled;
3. acknowledge that the resident is responsible for purchasing, installing, activating, maintaining, repairing, operating, deactivating, and removing the technology; and
4. include a waiver of all civil, criminal, and administrative liability for the residential care home in line with the act (see below).

The resident must also notify the residential care home in writing within seven days if a roommate withdraws his or her consent for the technology's use.

Residential Care Home Policies and Procedures

The act authorizes residential care homes to set policies and procedures for using virtual monitoring technology that address:

1. placing the devices in a visible, stationary location in the resident's room or living areas;
2. restrictions on recording video or audio outside the resident's room or living areas or in any shared common spaces;
3. compliance with applicable federal, state, and local life safety and fire protection requirements;
4. limitations on using the technology when it will interfere with resident care or privacy unless the resident, any roommate, or their representatives consent to its use;
5. the ability to limit the technology's use if the home's internet service is disrupted; and
6. actions that the residential care home may take if a resident does not comply with applicable federal, state, and local laws or facility policy in using the technology, including a process for residents to appeal these actions.

Facility Notice Requirements

The act requires a conspicuous notice to be placed on the door of a resident's room or living area where virtual monitoring technology may be used.

Notification and Consent Forms

The act authorizes the long-term care ombudsman, in consultation with the Department of Public Health and residential care home representatives, to develop and provide standard forms on its website for:

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1. residents' notice to a residential care home of their intent to install and use virtual monitoring technology,
2. roommate consent forms for residents who wish to use virtual monitoring technology that may capture audio or video of a roommate, and
3. resident notice to the residential care home that a roommate has withdrawn consent for using virtual monitoring technology.

Use of Recordings and Images and Mobile Devices

Under the act, the resident and anyone communicating with or monitoring them must use the technology and any recordings or images from it in a way that does not violate anyone's right to privacy under state or federal law.

Although the act broadly exempts from its requirements cell phones primarily used for phone calls and tablets not used for virtual monitoring, it specifies this requirement applies to cell phones and tablets as well.

IMMUNITY FROM LIABILITY

Nursing Homes

Under existing law, nursing home residents can use technology for virtual visitations as well as virtual monitoring (see BACKGROUND). Nursing homes are immune from civil, criminal, and administrative liability from its use in three circumstances. The act narrows these circumstances, as described in the below table.

When Nursing Homes Have Immunity Under Prior Law and the Act

<i>Prior Law</i>	<i>Act</i>
An individual's privacy rights, under state or federal law, were violated due to a resident's use of the technology	Home has immunity only for violations of state, not federal, law and if the resident was using the technology as the law allows
A resident's technology was damaged but not because of the home's negligence	Home has immunity only if it neither intentionally nor negligently caused the damage
Audio or video a resident recorded was accidentally or intentionally disclosed to an unauthorized party or an unauthorized party intercepted or used it	Home has immunity only if it did not intentionally cause the audio or video to be disclosed, intercepted, or used by the unauthorized party

Residential Care Homes

The act also makes residential care homes immune from civil, criminal, and administrative liability for damages caused by the use of video monitoring (but not virtual visitation) technology in the same three circumstances, meaning when:

1. an individual's rights to privacy under state law are violated by a resident using the technology as the act allows;
2. a resident's technology is damaged or malfunctions, as long as the home did not intentionally or negligently cause it; or

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3. audio or video a resident made is accidentally or intentionally disclosed to or used or intercepted by an unauthorized party, as long as the home did not intentionally cause it.

BACKGROUND

Virtual Visitation Technology

By law, nursing home residents have a right to use virtual visitation, as well as virtual monitoring, technology as long as they comply with the law's notice, use, and consent requirements. "Virtual visitation" is remote visitation between a resident and family member or other person using a device capable of audio or video communications that may be able to record.

Additionally, the nursing home patients' bill of rights states that residents of nursing homes and residential care homes (among other facility types) are entitled to buy and use virtual visitation technology, so long as it does not violate other individuals' right to privacy under state or federal law. Patients who are negligently deprived of these rights may bring a private cause of action in court.