

BILL ANALYSIS

Senate Research Center
77R647 JRD-D

S.B. 177
By: Madla
Health and Human Services
1/22/2001
As Filed

DIGEST AND PURPOSE

Currently under state law, there is no provision allowing for the audio or video monitoring of a resident's room in a nursing home facility. As proposed, S.B. 177 allows for the audio or video monitoring and provides the parameters for both the resident and the nursing home to follow in relation to monitoring.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 242L, Health and Safety Code, by adding Section 242.505, as follows:

Sec. 242.505. RIGHT TO ELECTRONIC MONITORING. (a) Defines "electronic monitoring device."

(b) Requires an institution to permit a resident, the resident's next of kin at the request of the resident, or the resident's guardian to monitor the room of the resident through the use of electronic monitoring devices.

(c) Requires the institution to require a resident who conducts electronic monitoring or the resident's guardian to post a notice on the door of the resident's room. Requires the notice to state that the room is being monitored by an electronic monitoring device.

(d) Provides that electronic monitoring conducted under this section is not compulsory and may be conducted only at the request of the resident or the resident's guardian and must be paid for by the resident or the resident's guardian and must protect the privacy rights of other residents and visitors to the institution to the extent reasonably possible.

(e) Prohibits an institution from refusing to admit an individual to residency in the institution and removing a resident from the institution because of a request to conduct electronic monitoring.

(f) Requires an institution to make reasonable physical accommodation for electronic monitoring including certain requirements.

(g) Requires an institution to inform a resident or the resident's guardian of the resident's right to conduct electronic monitoring.

(h) Authorizes the institution, if electronic monitoring is conducted, to require the electronic monitoring to be conducted in plain view.

(i) Authorizes the institution to require that a request to conduct electronic monitoring be made in writing.

(j) Authorizes a tape or recording created through the use of electronic monitoring conducted under this section to be admitted into evidence in a civil or criminal court action or administrative proceeding, subject to applicable rules of evidence and procedure.

(k) Provides that a communication or other sound acquired by an audio electronic monitoring device installed under this section is not considered to fall under certain listed definitions.

(l) Provides that an administrator of an institution who knowingly refuses to permit a resident, the resident's next of kin at the request of a resident, or the resident's guardian to monitor the room of the resident in accordance with this section through the use of electronic monitoring devices commits an offense. Provides that an offense under this section is a Class A misdemeanor.

(m) Provides that an administrator of an institution who knowingly refuses to admit an individual to residency in the institution, or who knowingly allows the removal of a resident from the institution, because of a request to conduct electronic monitoring under this section commits an offense. Provides that an offense under this subsection is a Class A misdemeanor.

(n) Provides that a person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this section or a tape recording made by the device commits an offense. Provides that an offense under this subsection is a Class B misdemeanor. Provides that it is a defense to prosecution under this subsection that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed, the resident's guardian, or the resident's next of kin, if the next of kin was conducting the monitoring at the request of the resident.

SECTION 2. Amends Section 242.501(a), Health and Safety Code, as follows, to modify the Texas Department of Human Services, rulemaking authority, to adopt a statement regarding a resident's rights, to include the resident's right to place in the resident's room an electronic monitoring device that is owned and operated by the resident, provided by the resident's next of kin at the request of the resident, or provided by the resident's guardian.

SECTION 3. Effective date: upon passage or September 1, 2001.