

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 807 (Delegates Love and Menes)
(By Request)

Health and Government Operations

Nursing Facilities - Electronic Monitoring

This bill requires a related institution, such as a nursing home, to install and use electronic monitoring devices in resident rooms to monitor the safety of residents, including the rooms of residents most at risk of falling and sustaining injuries.

Fiscal Summary

State Effect: The Department of Health and Mental Hygiene (DHMH) could monitor compliance with existing resources. The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

Local Effect: The criminal penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: Meaningful. Small business providers would incur additional administrative expenses to comply with the bill's monitoring and notification requirements.

Analysis

Bill Summary: The bill applies to related institution homes that have 50 or more residents and a nursing assistant staff ratio of more than 2:1. An institution must post a notice in a conspicuous location stating that rooms of residents are being monitored by an electronic monitoring device. The area in an institution that receives the signals from the electronic monitoring devices must: (1) be staffed 24 hours per day; (2) be out of the view and hearing of visitors and other institution residents; and (3) have a communication

system that immediately notifies the appropriate staff of a monitored resident's need for assistance.

Monitoring conducted must be: (1) noncompulsory and with the written permission of the resident or resident's legal representative; and (2) funded by the institution.

An institution must develop and implement policies regarding the protection of privacy rights of residents that elect not to be monitored and visitors. An institution may not discharge or refuse to admit an individual because of a refusal to accept electronic monitoring.

Subject to the Maryland Rules of Evidence, a tape created through the use of electronic monitoring is admissible in either a civil or criminal action brought in a Maryland court.

A person who operates an institution in violation of the bill's provisions is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,000 or imprisonment not exceeding five years, or both.

A person who willfully and without consent of the institution hampers, obstructs, tampers with, or destroys an electronic monitoring device or tape is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,000 or imprisonment not exceeding 90 days or both.

Current Law: Under Maryland's wiretapping and electronic surveillance laws, it is unlawful to willfully intercept any wire, oral, or electronic communication. "Interception" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device. A person who violates these provisions is guilty of a felony and subject to imprisonment for not more than five years or a fine of not more than \$10,000, or both. There are specified exceptions for lawful acts performed by such individuals as: (1) a switchboard operator, or wire or electronic communication service employee; (2) an investigative or law enforcement officer acting in a criminal investigation or other specified circumstances; (3) a person who is a party to the intercepted communication, where all of the parties have given prior consent; (4) an employee of a governmental emergency communications center; and (5) a person intercepting an electronic communication that is readily accessible to the general public.

There are no provisions in current law authorizing or mandating electronic monitoring in nursing homes.

Background: Chapter 409 of 2003 ("Vera's Law"), requires DHMH to develop guidelines for a nursing home that elects to use electronic monitoring with the consent of

a resident or the resident's legal representative. In January 2004, DHMH reported to the Senate Finance Committee and the House Health and Government Operations Committee on its proposed guidelines. The guidelines contain mandatory criteria that relate to privacy and consent.

Additional Information

Prior Introductions: HB 1097, an identical bill, was introduced in the 2003 session. It was not reported by the House Health and Government Operations Committee.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene (Office of Health Care Quality), Department of Aging, Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2004
mh/jr

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