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## OLR Bill Analysis

sSB 975 (File 193, as amended by Senate "A")\*

### ***AN ACT STRENGTHENING THE BILL OF RIGHTS FOR LONG-TERM CARE FACILITY RESIDENTS.***

#### **SUMMARY**

This bill makes various changes affecting long-term care facility residents. Principally, it:

1. adds to the nursing home patients' bill of rights (see BACKGROUND) the right to treat their living quarters as their own home and extends these rights to residents of managed residential facilities (e.g., assisted living facilities);
2. allows nursing home residents to use technology of their choosing that facilitates virtual monitoring or virtual visitation and establishes related notification, use, and consent requirements;
3. requires residents to pay for the technology and its installation, maintenance, operation, deactivation, and removal;
4. requires nursing homes to provide residents with free internet access, electricity, and a power source for virtual monitoring or virtual visitation technology, under certain conditions;
5. generally grants nursing homes immunity from civil, criminal, or administrative liability related to residents' use of this technology;
6. exempts from virtual monitoring technology requirements, mobile telephones used primarily for phone communication or tablets not used for virtual monitoring (hereafter "mobile phones and tablets"), with certain exceptions;

7. allows the long-term care ombudsman to develop and provide on its website standard consent and notification forms for the use of virtual monitoring technology; and
8. allows the Department of Public Health (DPH) commissioner to adopt regulations to implement the bill's nursing home virtual monitoring and virtual visitation provisions.

EFFECTIVE DATE: July 1, 2021, except the provisions on virtual monitoring and virtual visitation in nursing homes take effect October 1, 2021.

\*Senate Amendment "A" (1) adds the provisions on virtual monitoring and virtual visitation in nursing homes and (2) removes a provision in the underlying bill that added to the patients' bill of rights, the right to access representatives of the Department of Social Services.

## **§§ 1 & 2 — NURSING HOME PATIENTS BILL OF RIGHTS**

The bill adds to the nursing home patients' bill of rights, which applies to patients in nursing homes, residential care homes, and chronic disease hospitals. For these patients, the bill adds the right to treat their living quarters as their own home. It also specifies that they have no fewer rights than other state residents, subject to rules designed to protect other patients' privacy, health, and safety at the facility. Under the bill, this includes the right to:

1. associate and communicate privately with people the patient chooses and
2. purchase and use technology the patient chooses, including technology that facilitates virtual visitation with family and others, provided the technology's use and operation does not violate any individual's right to privacy under state or federal law.

The bill also extends these rights to residents of managed residential communities (e.g., assisted living facilities) under their bill of rights,

which is generally similar to the nursing home patients' bill of rights.

Under current law, the nursing home patients' bill of rights grants patients the right to be encouraged and assisted in exercising their rights as a patient and citizen, including:

1. being fully informed about their rights by state and federal advocacy programs and
2. voicing grievances and recommending changes to facility staff or outside representatives without restraint, discrimination, coercion, or reprisal.

The bill expands this right to also include the right to access representatives of the Department of Public Health and the Office of the Long-Term Care Ombudsman.

#### **§ 501 — VIRTUAL MONITORING AND VIRTUAL VISITATION IN NURSING HOMES**

The bill allows nursing home residents to use technology of their choosing that facilitates virtual monitoring or virtual visitation and establishes related notification, use, and consent requirements.

Under the bill, "technology" means a device capable of remote audio or video communications that may include recording capabilities. A "resident representative" is a person who is the resident's (1) legally appointed health care representative, guardian, or conservator; (2) designee, as indicated in a signed written document in the resident's facility records; or (3) legally liable relative or other responsible party who is not a facility employee or contractor.

#### ***Roommate Notice and Consent***

If a nursing home resident intends to use technology for virtual monitoring in a shared living situation, the bill requires the resident or the resident's representative to provide advanced notice to the roommate or the roommate's representative specifying 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 or the resident's representative must also obtain the roommate's or representative's consent to use virtual monitoring technology. If the roommate withdraws consent, the resident or resident's representative must stop using the virtual monitoring technology until consent is obtained.

Under the bill, if the roommate continues to refuse consent, the nursing home must work with the resident on an alternative, including transferring the resident to another room with a roommate who has agreed to consent to such monitoring. The nursing home must do this only if an appropriate room is available and the resident is able to pay any price difference.

### ***Resident Notification to Facility***

Under the bill, the resident or resident's representative must file a signed, written notice with the facility 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 is capable of recording audio or video or being remotely activated or controlled;
3. acknowledge that the resident is responsible for purchasing, installing, maintaining, repairing, operating, deactivating, and removing the technology; and
4. include a waiver of all civil, criminal, and administrative liability for the nursing home.

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

### ***Internet Access***

The bill requires nursing home facilities to provide residents free internet access, electricity, and a power source for virtual monitoring or virtual visitation technology. The nursing home must do so under the following conditions:

1. the nursing home includes the cost of providing internet access in cost reports that it files with the Department of Social Services (DSS) for Medicaid reimbursement;
2. the cost is reimbursed to the facility if the department determines it is eligible for reimbursement under DSS's fair rent rate;
3. the DSS commissioner uses any available federal funding for COVID-19 related expenses (see BACKGROUND) to provide nursing homes grants to make these internet infrastructure upgrades; and
4. the nursing home may assess a prorated portion of any unreimbursed cost of these upgrades to any private-pay resident using this technology.

Residents may also procure their own internet. Private-pay residents who do so cannot be charged for the cost of the nursing home's internet infrastructure upgrades.

### ***Nursing Home Policies and Procedures***

The bill authorizes nursing homes to set policies and procedures for using virtual monitoring technology that address:

1. placement of technology devices in a conspicuously visible, stationary location in the resident's room or living quarters, except for mobile phones and tablets;
2. restrictions on the technology's use to record video or audio outside the resident's room or living quarters or in any shared common space;
3. compliance with applicable federal, state, and local life, safety,

- and fire protection requirements;
4. limitations on the technology's use for virtual monitoring when its use 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 in the event of a disruption to the facility's internet service; and
  6. actions that the nursing home may take for a resident's or resident representative's failure to comply with applicable federal, state, and local laws or facility policy in using the technology and the process for a resident to appeal these actions.

***Exemption for Mobile Phones and Tablets***

The bill's requirements for virtual monitoring technology do not apply to mobile telephones that are used primarily for phone communication or tablets not used for virtual monitoring (hereafter "mobile phones and tablets"), except for requirements related to (1) nursing home policies and procedures on the use of this technology; (2) civil, criminal, and administrative liability for nursing homes; (3) nursing home notification requirements; (4) long-term care ombudsman notification and consent forms; and (5) DPH regulations.

***Nursing Home Immunity From Liability***

Under the bill, a nursing home is immune from any civil, criminal, or administrative liability for:

1. violations of any individual's privacy rights under state or federal law caused by a resident's use of technology;
2. damage to the resident's technology, including malfunction not caused by the nursing home's negligence; and
3. instances when the audio or video produced by the resident's technology is inadvertently or intentionally disclosed to, or

intercepted or used by, an unauthorized third party.

### ***Facility Notice Requirements***

The bill requires nursing homes to place a conspicuous notice:

1. at the facility's entrance indicating that virtual monitoring or virtual visitation technology may be in use in some resident rooms or living quarters and
2. on the door of a resident's room or living quarters where this technology may be used, except for mobile phones and tablets.

### ***Notification and Consent Forms***

The bill authorizes the long-term care ombudsman, in consultation with DPH and nursing home representatives, to develop and provide standard forms on its website for:

1. residents' notice to a nursing 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 nursing home that a roommate has withdrawn consent for using virtual monitoring technology.

### ***Use of Recordings and Images***

Under the bill, the technology and any recordings or images obtained from it must be used by the resident and any person communicating with or monitoring the resident in a manner that does not violate an individual's right to privacy under state or federal law.

## **BACKGROUND**

### ***Patients' Bill of Rights***

Existing law establishes a patients' bill of rights for nursing home, residential care home, and chronic disease hospital patients. It contains a broad and detailed set of rights an individual must be fully informed

of before or upon admission to the facility and during the patient's stay. Among other things, patients have the right to (1) be free from abuse and neglect, (2) participate in the planning of their care, (3) manage their own financial affairs, and (4) have their grievances resolved promptly (CGS § 19a-550). Federal nursing home law contains provisions generally similar to state law concerning these rights (42 U.S.C. § 1395i-3(c) and 42 C.F.R. § 483.10).

***Related Executive Order***

The governor's May 13, 2020, executive order authorizes the DSS commissioner to distribute Coronavirus Relief Funds (CRF) the state receives under the federal "Coronavirus Aid, Relief, and Economic Security Act" ("CARES Act," P.L. 116-136) to nursing homes as well as CRF grants of \$600 per bed per day to cover necessary expenditures incurred due to the COVID-19 pandemic.

Nursing homes must use these grants to cover necessary expenditures incurred due to the COVID-19 pandemic and report to DSS that the funds were used on eligible expenditures in accordance with related federal requirements and guidance (EO 7NN, §§ 5 & 6, May 13, 2020).

**COMMITTEE ACTION**

Aging Committee

Joint Favorable Substitute

Yea    16        Nay    0        (03/11/2021)