



House of Representatives

General Assembly

File No. 173

January Session, 2021

Substitute House Bill No. 6552

House of Representatives, March 29, 2021

The Committee on Aging reported through REP. PHIPPS of the 100th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE RIGHTS OF RESIDENTS IN NURSING HOME FACILITIES TO USE THE TECHNOLOGY OF THEIR CHOICE FOR VIRTUAL CONNECTIONS TO FAMILY, FRIENDS AND OTHER PERSONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2021*) (a) For purposes of this
2 section:

3 (1) "Nursing home facility" has the same meaning as provided in
4 section 19a-490 of the general statutes;

5 (2) "Resident" means a resident of a nursing home facility;

6 (3) "Resident representative" means (A) a court-appointed
7 conservator of the person or guardian, (B) a health care representative
8 appointed pursuant to section 19a-575a of the general statutes, or (C) if
9 there is no court-appointed conservator of the person or guardian, or
10 health care representative, a person who is (i) designated in a written
11 document signed by the resident and included in the resident's records

12 on file with the facility, or (ii) if there is no such written document, a
13 person who is a legally liable relative or other responsible party,
14 provided such person is not an employer or contractor of the facility;

15 (4) "Technology" means a device capable of remote audio or video
16 communications that may include recording capabilities;

17 (5) "Virtual monitoring" means remote monitoring of a resident by a
18 third party via technology owned and operated by the resident in the
19 resident's room or living quarters; and

20 (6) "Virtual visitation" means remote visitation between a resident
21 and family members or other persons with technology.

22 (b) A resident shall have the right to use technology of the resident's
23 choice that facilitates virtual monitoring or virtual visitation, provided:

24 (1) The purchase, activation, installation, maintenance, repair,
25 operation, deactivation and removal of such technology is at the
26 expense of the resident;

27 (2) The technology and any recordings obtained therefrom are used
28 by the resident and any person communicating with the resident or
29 monitoring the resident in a manner that does not violate any
30 individual's right to privacy under state or federal law and in
31 accordance with the provisions of this section;

32 (3) A clear and conspicuous notice is placed on the door of the
33 resident's room or living unit indicating that technology enabling
34 virtual monitoring and intended for such use may be in use;

35 (4) In cases where the resident intends to use technology for virtual
36 monitoring in shared living situations, the resident or resident
37 representative provides advance notice to a roommate or the
38 roommate's representative specifying the type of technology, the
39 proposed location of the device, its intended use, intended hours of
40 operation and whether the device is capable of recording audio or video
41 or being activated remotely;

42 (5) The resident or resident representative (A) obtains the written
43 consent of all roommates or resident representatives of all roommates
44 for the use of the technology for virtual monitoring, and (B) if any
45 roommate withdraws consent, ceases using the technology for virtual
46 monitoring until consent is obtained; and

47 (6) The resident or resident representative files a signed, written
48 notice with the nursing home facility and a copy of any written consent
49 of any roommate not less than seven days before installing or using such
50 technology for virtual monitoring that (A) identifies the type of
51 technology, its intended use, intended hours of operation and location
52 of such technology in the room or living quarters, (B) states whether the
53 technology is capable of recording audio or video or being activated or
54 controlled remotely, (C) acknowledges that the resident is responsible
55 for the purchase, activation, installation, maintenance, repair, operation,
56 deactivation and removal of such technology, and (D) includes a waiver
57 of all civil, criminal and administrative liability for the nursing home
58 facility in accordance with subsection (d) of this section.

59 The provisions of this subsection shall not apply to cellular mobile
60 telephones used primarily for telephonic communication or tablets not
61 used for virtual monitoring. If a roommate withdraws consent for the
62 use of technology for virtual monitoring, a resident or resident
63 representative shall inform the facility, in writing, not later than seven
64 days after the roommate withdraws consent.

65 (c) (1) A nursing home facility shall provide Internet access, electricity
66 and a power source for technology used for virtual monitoring or virtual
67 visitation at no cost to a resident, provided (A) a nursing home facility
68 includes the cost of providing Internet access in cost reports filed with
69 the Department of Social Services for purposes of Medicaid
70 reimbursement, (B) the cost associated with any necessary upgrades to
71 Internet infrastructure to provide adequate Internet access for residents
72 to use such technology is considered a capital improvement eligible for
73 reimbursement under fair rent rate provisions of subsection (f) of
74 section 17b-340 of the general statutes, (C) the Commissioner of Social

75 Services uses any available funding provided by the federal government
76 to the state and authorized by the federal government for expenses
77 related to COVID-19 at nursing home facilities to provide grants-in-aid
78 to such facilities for such upgrades, provided such use is approved by
79 the federal government, and (D) a nursing home facility may assess a
80 prorated portion of any unreimbursed cost of such upgrades to any
81 resident privately paying for a residence in such facility and using such
82 technology. A resident may also procure his or her own Internet
83 connectivity. A private-paying resident who procures his or her own
84 Internet connectivity shall not be charged for the cost of any Internet
85 infrastructure upgrades by the nursing home facility necessary for
86 residents to use such technology.

87 (2) A nursing home facility may establish policies and procedures on
88 the use of technology for virtual monitoring addressing (A) except for
89 cellular mobile telephones used primarily for telephonic
90 communication or tablets not used for virtual monitoring, placement of
91 any technology device in a conspicuously visible, stationary location in
92 the resident's room or living quarters, (B) restrictions on use of the
93 technology to record video or audio outside the resident's room or living
94 quarters or in any shared common space, (C) compliance with
95 applicable federal, state and local life safety and fire protection
96 requirements, (D) limitations on use of technology for virtual
97 monitoring when such use will interfere with resident care or privacy
98 unless the resident, a roommate of the resident, or his or her resident
99 representative, consents to such use, (E) the ability to limit use of
100 technology in the event of a disruption to the facility's Internet service,
101 and (F) actions that the nursing home facility may take for failure to
102 comply with applicable federal, state and local laws or facility policy in
103 the use of technology and the process by which a resident may appeal
104 such actions.

105 (d) A nursing home facility shall be immune from any civil, criminal
106 or administrative liability for any (1) violation of privacy rights of any
107 individual under state or federal law caused by a resident's use of
108 technology; (2) damage to the resident's technology, including, but not

109 limited to, malfunction not caused by the negligence of the nursing
110 home facility; and (3) instance when audio or video produced by the
111 resident's technology is inadvertently or intentionally disclosed to,
112 intercepted or used by an unauthorized third party.

113 (e) A nursing home facility shall place a conspicuous notice (1) at the
114 entrance to the facility indicating that technology enabling virtual
115 monitoring or virtual visitation may be in use in some residents' rooms
116 or living quarters; and (2) except for cellular mobile telephones used
117 primarily for telephonic communication or tablets not used for virtual
118 monitoring, on the door of any resident's room or living quarters where
119 such technology may be used for virtual monitoring. In cases where any
120 roommate of a resident refuses to give consent for use of technology for
121 virtual monitoring that may capture audio or video of the roommate, a
122 nursing home facility shall work with both the resident and the
123 roommate to seek an acceptable accommodation for use of the
124 technology with the roommate's consent. If the roommate continues to
125 refuse consent, the nursing home facility shall work with the resident
126 wishing to use such technology to develop an alternative, including
127 transfer to another room with a roommate who consents to use of the
128 technology, provided an appropriate room is available and the resident
129 is able to pay any difference in price if the new room is more costly than
130 the resident's current room.

131 (f) The Office of the Long-Term Care Ombudsman may provide
132 standard forms on its Internet web site for (1) notice by a resident to a
133 nursing home facility of the resident's plan to install and use technology
134 of his or her choice for virtual monitoring; (2) consent forms for any
135 roommate of a resident who wishes to use technology for virtual
136 monitoring that may capture audio or video of the roommate; and (3)
137 forms for a resident or resident representative to notify the facility that
138 a roommate has withdrawn consent for use of technology for virtual
139 monitoring. The Office of the Long-Term Care Ombudsman shall
140 develop such standard forms in consultation with nursing home facility
141 representatives and the Department of Public Health.

142 (g) The Commissioner of Public Health may adopt regulations in
 143 accordance with the provisions of chapter 54 of the general statutes to
 144 implement the provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2021	New section

Statement of Legislative Commissioners:

In Section 1(b)(3), "enabling virtual monitoring" was changed to "enabling virtual monitoring and intended for such use" for accuracy and consistency; in Section 1(b)(5)(A), "the roommate" was changed to "all roommates" and "'resident representative of the roommate" was changed to "resident representatives of all roommates" for accuracy and internal consistency; in Section 1(b)(5)(B), "the roommate" was changed to "any roommate" for accuracy and internal consistency; in Section 1(b)(6)(A), "hours of use" was changed to "hours of operation" for consistency; in Section 1(c)(1)(C), "such upgrades," was changed to "such upgrades, provided such use is approved by the federal government," for accuracy; in Section 1(c)(2)(D), "their resident representatives" was changed to "his or her resident representative" for consistency; in Section 1(e)(2), "may be used" was changed to "may be used for virtual monitoring" for accuracy and consistency; and in Section 1(f)(1), "their choice" was changed to "his or her choice" for consistency.

AGE Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which creates various nursing home requirements and expands nursing home residents' ability to access certain technologies for virtual visitation, is not anticipated to result in a fiscal impact to the state or municipalities.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 6552*****AN ACT CONCERNING THE RIGHTS OF RESIDENTS IN NURSING HOME FACILITIES TO USE THE TECHNOLOGY OF THEIR CHOICE FOR VIRTUAL CONNECTIONS TO FAMILY, FRIENDS AND OTHER PERSONS.*****SUMMARY**

This bill allows a nursing home resident to use technology of their choosing that facilitates virtual monitoring or virtual visitation. A resident may do this only if:

1. the resident pays for the technology and its installation, maintenance, operation, deactivation, and removal;
2. the resident submits to the nursing home a signed written notice and any roommate's signed written consent at least seven days before installing or using virtual monitoring technology;
3. the resident stops using virtual monitoring technology if any roommate withdraws his or her consent to its use;
4. the nursing home places a clear and conspicuous notice at the facility's entrance and on the door of the resident's room or living unit stating that this technology may be in use; and
5. the technology and any recordings obtained from it are 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.

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”).

Additionally, the bill:

1. 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;
2. generally grants nursing homes immunity from civil, criminal, or administrative liability related to residents’ use of this technology;
3. allows nursing homes to establish policies and procedures for using virtual monitoring technology;
4. 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
5. allows the Department of Public Health (DPH) commissioner to adopt regulations to implement the bill’s provisions.

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.

EFFECTIVE DATE: October 1, 2021

NOTIFICATION AND CONSENT

Roommate Notice and Consent

If the 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 is capable of recording audio or video or being 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.

Facility Notification

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 it files with the Department of Social Services (DSS) for Medicaid reimbursement;
2. the cost associated with any related internet infrastructure upgrades is considered a capital improvement that 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 such 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.

VIRTUAL MONITORING 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.

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;
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

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. resident 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.

BACKGROUND

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)