

## **BILL ANALYSIS**

Senate Research Center  
77R11015 JRD-D

C.S.S.B. 177  
By: Madla  
Health and Human Services  
3/30/2001  
Committee Report (Substituted)

### **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. C.S.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**

Rulemaking authority is expressly granted to the Texas Department of Human Services in SECTION 1 (Sections 242.844, 242.845, 242.846, 242.847, and 242.849, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 242, Health and Safety Code, by adding Subchapter R, as follows:

#### **SUBCHAPTER R. ELECTRONIC MONITORING OF RESIDENT'S ROOM**

Sec. 242.841. DEFINITIONS. Defines "authorized electronic monitoring" and "electronic monitoring device."

Sec. 242.842. CRIMINAL AND CIVIL LIABILITY. Sets forth the conditions for a defense to prosecution under Section 16.02 (Unlawful Interception, Use, or Disclosure of Wire, Oral, or Electronic Communications), Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication. Provides that this subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in the room of a resident of an institution or in connection with using or disclosing a tape or recording made by the device except under certain conditions. Provides that a communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be certain types of communications.

Sec. 242.843. COVERT USE OF ELECTRONIC MONITORING DEVICE; LIABILITY OF DEPARTMENT OR INSTITUTION. Sets forth the conditions under which, for the purposes of this subchapter, the placement and use of an electronic monitoring device in the room of a resident is considered to be covert. Prohibits the Texas Department of Human Services (department) and the institution from being held civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of a resident.

Sec. 242.844. REQUIRED FORM ON ADMISSION. Requires the department by rule to prescribe a form that must be completed and signed on a resident's admission to an institution by or on behalf of the resident. Sets forth certain requirements of the form.

Sec. 242.845. AUTHORIZED ELECTRONIC MONITORING: WHO MAY REQUEST. Authorizes only the resident, if the resident has the capacity to request electronic monitoring and

has not been judicially declared to lack the required capacity, to request authorized electronic monitoring (monitoring) under this subchapter, notwithstanding the terms of any durable power of attorney or similar instrument. Authorizes only the guardian of a resident, if the resident has been judicially declared to lack the capacity required for taking an action such as requesting monitoring, to request monitoring under this subchapter. Authorizes only the legal representative of a resident, if the resident does not have capacity to request monitoring but has not been judicially declared to lack the required capacity, to request monitoring under this subchapter. Requires the department, by rule, to prescribe certain guidelines.

Sec. 242.846. AUTHORIZED ELECTRONIC MONITORING: FORM OF REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM. (a) Requires a resident or the guardian or legal representative of a resident who wishes to conduct monitoring to make the request to the institution on a form prescribed by the department.

(b) Requires the form prescribed by the department to require the resident or the resident's guardian or legal representative to perform certain actions.

(c) Authorizes consent under Subsection (b)(3) to be given only by certain persons.

(d) Requires the form prescribed by the department under Subsection (b)(3) to condition the consent of another resident in the room on the other resident also releasing the institution from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Authorizes another resident in the room to condition consent on certain items.

(f) Requires monitoring to cease if another resident is moved into the room of a resident where monitoring is being conducted until the new resident has consented in accordance with this section.

(g) Authorizes the department to include other information that the department considers to be appropriate on either of the forms that the department is required to prescribe under this section.

(h) Authorizes the department to adopt rules prescribing the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Sets forth certain conditions of monitoring.

Sec. 242.847. AUTHORIZED ELECTRONIC MONITORING: GENERAL PROVISIONS. (a) Requires an institution to permit a resident or a resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

(b) Requires the institution to require a resident who conducts monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. Requires the notice to state that the room is being monitored by an electronic monitoring device.

(c) Provides that monitoring conducted under this subchapter is not compulsory and is authorized to be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) Prohibits an institution from refusing to admit an individual to residency in the

institution and from removing a resident from the institution because of a request to conduct monitoring.

(e) Requires an institution to make certain reasonable physical accommodation for authorized monitoring.

(f) Requires the resident or the resident's guardian or legal guardian to pay for all costs associated with conducting monitoring, other than the costs of electricity. Provides that the resident or the resident's guardian or legal representative is responsible for certain items.

(g) Authorizes an institution to require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. Authorizes the department to adopt rules regarding the safe placement of an electronic monitoring device.

(h) Authorizes the institution, if monitoring is conducted, to require the resident or the resident's guardian or legal representative to conduct the monitoring in plain view.

(i) Authorizes but does not require an institution to place a resident in a different room to accommodate a request to conduct monitoring.

Sec. 242.848. REPORTING ABUSE AND NEGLECT. Sets forth the conditions under which certain persons are considered to have viewed or listened to a tape or recording for certain purposes relating to reporting abuse or neglect under Sections 242.122 and 242.131. Provides that the person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. Provides that a person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred. Requires the person who possesses the tape or recording, if abuse or neglect of the resident is reported to the institution and the institution requests a copy of any relevant tape or recording made by an electronic monitoring device, to provide the institution with a copy at the institution's expense.

Sec. 242.849. USE OF TAPE OR RECORDING BY AGENCY OR COURT. Authorizes a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter to be admitted into evidence in a civil or criminal court action or administrative proceeding, subject to applicable rules of evidence and procedure and the requirements of this section. Prohibits a court or administrative agency from admitting into evidence a tape or recording created through the use of covert or authorized electronic monitoring or taking or authorizing action based on the tape or recording unless certain conditions are met. Requires a person who sends more than one tape or recording to the department to identify for the department each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found. Authorizes the department to adopt rules encouraging persons who send a tape or recording to the department to identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

Sec. 242.850. ENFORCEMENT. Authorizes the department to impose appropriate sanctions under this chapter on an administrator of an institution who knowingly takes certain actions. Authorizes the department to assess an administrative penalty under Section 242.066 against an institution that takes certain actions.

Sec. 242.851. CRIMINAL OFFENSE. Sets forth actions which constitute an offense under this subchapter. Provides that an offense under this section is a Class B misdemeanor. Sets forth a defense to prosecution under this section.

SECTION 2. Amends Section 242.501(a), Health and Safety Code, to modify the rulemaking authority of the department 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 or provided by the resident's guardian or legal representative.

SECTION 3. Amends Section 242.653, Health and Safety Code, by adding Subsection (f) to require the long-term care legislative oversight committee to monitor the implementation of Subchapter R and study the impact of that law on the department, institutions, and residents.

SECTION 4. Requires the department to devise a procedure under which current residents of convalescent and nursing homes and related institutions or, when appropriate, another person on a resident's behalf, are encouraged to sign the form that is required to be signed on admission under Section 242.844, Health and Safety Code, as added by this Act.

SECTION 5. Effective date: upon passage or September 1, 2001.

### **SUMMARY OF COMMITTEE CHANGES**

SECTION 1. Amends As Filed S.B. 177 by adding Subchapter R, relating to electronic monitoring of resident's rooms, to the Health and Safety Code.

SECTION 2. Amends As Filed S.B. 177 by removing proposed text relating to the right of a resident to place in the resident's room an electronic monitoring device provided by the resident's next of kin at the request of the resident.

SECTION 3. Amends As Filed S.B. 177 by adding proposed Section 242.653(f), Health and Safety Code, to require the long-term care legislative oversight committee to monitor the implementation of Subchapter R and study the impact of that law on the department, institutions, and residents.

SECTION 4. Amends As Filed S.B. 177 by requiring the Texas Department of Human Services to devise a procedure under which current residents of convalescent and nursing homes and related institutions or, when appropriate, another person on a resident's behalf, are encouraged to sign the form that is required to be signed on admission under Section 242.844, Health and Safety Code, as added by this Act.

SECTION 5. Amends As Filed S.B. 177 by redesignating proposed SECTION 3 as SECTION 5.