

# NURSING HOME VIRTUAL VISITATION ACT

Act 596 of the 2018 Regular Session

## NOTICE OF RIGHT TO INSTALL AND USE A MONITORING DEVICE IN YOUR ROOM AT A NURSING HOME

**WHO** can exercise this Right to Install and Use a Monitoring Device?

1. A Resident of a Nursing Home, provided that the resident has capacity to consent; or
2. A Legal Representative of a Resident in a Nursing Home, if the Resident does not have capacity to consent.

**WHEN** can you exercise this Right to Install and Use a Monitoring Device?

1. For any resident admitted to a nursing home on or before January 1, 2019: On or before January 1, 2019, each licensed nursing home shall provide to each current resident (or, your legal representative, if applicable), a copy of this Notice, and shall give each resident or his legal representative a choice to have a monitoring device installed in the room of the resident and provide a copy of the attached Authorization Form.
2. For any resident admitted to a nursing home after January 1, 2019: At the time of admission to a nursing home, the nursing home shall notify you (or your legal representative, if applicable) of your right to have a monitoring device installed in your room and provide a copy of this Notice; at that time, the nursing home shall offer you the option to have a monitoring device in your room and provide a copy of the attached Authorization Form.
3. Further, you (or your roommate) may choose to install a monitoring device in your room in the nursing home at any time while you reside in the nursing home.

**HOW**: You can install and use a monitoring device in your room at a nursing home if ALL of the following conditions are met:

1. **NOTICE**
  - a. You (or your legal representative) give notice of the installation to the nursing home by submitting a completed authorization form to the nursing home;
2. **AUTHORIZATION AND CONSENT**
  - a. You (or your legal representative) complete the attached Authorization and Consent Form (Form HSS 596-1), Sections I and II.
  - b. Each of your roommates occupying the same room (or their legal representatives) gives written consent for the installation of the monitoring device by completing Section III of the attached Authorization Form.
  - c. Consent shall include a release of liability for any violation of privacy through the use of the monitoring device and shall include a waiver of the resident's right to privacy in connection with the use of the monitoring device.
3. **PAYMENT AND INSTALLATION**:
  - a. You pay for the monitoring device, and you pay for all installation, operation, maintenance, and removal costs associated with the device.
  - b. Any alterations to the structure of the room to accommodate the monitoring device **MUST** be done only by a licensed contractor, subject to approval of the nursing home.
  - c. The monitoring device **MUST** be in compliance with the National Fire Protection Life Safety regulations.
4. **MONITORING DEVICE RECORDINGS**:
  - a. The recordings of the monitoring device, if it records activity visually, **MUST** include a record of the date and time of the recording.
5. **MONITORING DEVICE**:
  - a. The monitoring device shall be in a fixed, stationary position.
  - b. The monitoring device shall monitor only the resident who consents either personally or through his legal representative to be monitored.

Can you change your mind about the installation and use of a monitoring device in your room?

Yes. You or your legal representative may REVERSE a choice to have or not have a monitoring device installed and used. You may reverse your choice at any time, but you must give notice of such reversal to the nursing home and to the ombudsman. You may use the attached Reversal Form, Form HSS 596-2.

Whose choice is it to have a monitoring device installed and used in your room?

1. This is a choice that ONLY you and/or your legal representative can make.
2. A nursing home CANNOT deny a person/resident admission to a nursing home just because the person/resident chooses to authorize installation and use of a monitoring device.

What happens if you want a monitoring device in your room, but your roommate does not want one?

1. If your roommate refuses to consent to having a monitoring device installed in your room, then the nursing home shall make a reasonable attempt to accommodate you, as follows:
  - a. The nursing home offers to move you or your roommate to another shared room that is available at the time of your request; or
  - b. The nursing home offers to move you to a private room, provided that you pay the private room rate.
2. If the nursing home is unable to accommodate you due to lack of space, then the nursing home shall reevaluate your request at least every two weeks until your request is fulfilled or withdrawn.

What Documentation Must Be Maintained by Nursing Home?

1. The nursing home is to keep a record of each resident's authorization to have a monitoring device, each resident's choice not to have monitoring device, and each resident's decision(s) to reverse his decision on whether or not to have a monitoring device.
2. The nursing home is to make these records available to the ombudsman.

Signage:

1. If a resident of a nursing facility installs and uses a monitoring device ("conducts electronic monitoring"), a sign shall be clearly and conspicuously posted at the MAIN entrance of the nursing home building to alert and inform visitors.
  - a. The sign is to be in a large, clearly legible type and font and bear the words "Electronic Monitoring" and state "The rooms of some resident may be equipped with electronic monitoring devices installed by or on behalf of the resident."
  - b. The nursing home shall be responsible for reasonable costs of installation and maintenance of this "facility sign."
2. Additionally, a sign shall be clearly and conspicuously posted at the entrance of a resident's room where authorized electronic monitoring is being conducted.
  - a. The sign is to be in large, clearly legible type and font and shall bear the words "This room is electronically monitored."
  - b. The resident or his legal representative shall be responsible for installing and maintaining the "room sign."
  - c. The installing and maintaining of the room sign shall be in accordance with the written policy of the nursing home.

Prohibited Acts Under the Nursing Home Virtual Visitation Act:

1. No nursing home shall deny a person or resident admission to or discharge from a nursing home, or otherwise discriminate or retaliate against a person or resident, because the person or resident chooses to authorize installation and use of a monitoring device.
  - a. Any person who knowingly or willfully violates these provisions shall be subject to sanctions/action by the Louisiana Department of Health.
2. No person shall intentionally hamper, obstruct, tamper with, or destroy a monitoring device or a recording made by a monitoring device installed in a nursing home; this does not apply to the resident who owns the monitoring device or recording, or to the resident's legal representative.

Immunity:

1. In any civil action against a nursing home, material obtained through the use of a monitoring device shall not be used if the device was installed or used without the knowledge of the nursing home, or installed or used without the prescribed form.
2. Compliance with the provisions of the Nursing Home Virtual Visitation Act shall be a complete defense to any civil or criminal action brought against the resident, legal representative, or nursing home for the use or presence of a monitoring device.

Reporting Abuse and Neglect:

1. Any person who views an incident that he considers abuse or neglect after viewing a recording made in a nursing home shall report the incident to the nursing home as soon as possible.
  - a. The nursing home **MUST** be given a copy of the recording in which the suspected incident of abuse or neglect occurred.
  - b. If the recording must be transferred to a different format to be viewed, the transfer shall be done at the expense of the nursing home by a qualified professional who can certify that the contents of the recording were not altered.