

**SUBSTITUTE FOR  
SENATE BILL NO. 77**

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 20199 (MCL 333.20199) and by adding section  
21788.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 20199. (1) Except as **otherwise** provided in ~~subsection (2)~~  
2 ~~or section 20142, this article~~, a person who violates this article  
3 or a rule promulgated or an order issued under this article is  
4 guilty of a misdemeanor, punishable by fine of not more than  
5 \$1,000.00 for each day the violation continues or, ~~in case of~~ **for** a  
6 violation of sections 20551 to 20554, a fine of not more than  
7 \$1,000.00 for each occurrence.

8           (2) A person who violates sections 20181 to 20184 is guilty of



1 a misdemeanor ~~7~~-punishable by imprisonment for not more than 6  
2 months, or a fine of not more than \$2,000.00, or both.

3       **Sec. 21788. (1) A nursing home shall permit a resident or the**  
4 **resident's representative to monitor the resident in the resident's**  
5 **room through the use of an electronic monitoring device if all of**  
6 **the following requirements are met:**

7       (a) The monitoring is completely voluntary and is conducted at  
8 the election of the resident or, if the resident has a  
9 representative, the resident's representative.

10       (b) All costs of the monitoring, including, but not limited  
11 to, all of the following, are paid by the resident or the  
12 resident's representative:

13       (i) The cost of the electronic monitoring device.

14       (ii) Installation costs.

15       (iii) Maintenance costs.

16       (iv) Activation and deactivation costs.

17       (v) The cost of internet service unless internet service is  
18 provided by the nursing home.

19       (c) The monitoring is conducted only in the resident's room  
20 and in a manner that protects the privacy of other residents and  
21 visitors to the nursing home to the extent reasonably possible. If  
22 a resident or resident's representative wishes to install an  
23 electronic monitoring device in the resident's room, and if the  
24 resident shares the room with another resident, the written consent  
25 of the other resident or, if the other resident has a  
26 representative, the other resident's representative must be  
27 obtained before the electronic monitoring device is installed.

28       (d) There is a notice posted on the door of the resident's  
29 room stating that the room is being monitored by an electronic



1 monitoring device.

2 (e) The electronic monitoring device does not record audio in  
3 compliance with section 539c of the Michigan penal code, 1931 PA  
4 328, MCL 750.539c.

5 (f) Storage, access, and broadcasting of video recorded by the  
6 electronic monitoring device reasonably ensures that access is  
7 limited to only an authorized individual.

8 (2) This section does not allow the use of an electronic  
9 monitoring device to take still photographs or for the  
10 nonconsensual interception of private communications.

11 (3) A nursing home shall make reasonable accommodation for  
12 electronic monitoring by providing both of the following:

13 (a) A reasonably secure place to locate the electronic  
14 monitoring device.

15 (b) Access to a power source for the electronic monitoring  
16 device.

17 (4) A nursing home shall make a reasonable effort to allow a  
18 resident to change rooms if consent cannot be obtained from or is  
19 revoked by another resident of a nonprivate room or the other  
20 resident's representative.

21 (5) A nursing home shall not refuse to admit an individual as  
22 a resident of or remove a resident from the nursing home because of  
23 a request to install an electronic monitoring device.

24 (6) A nursing home must require a resident or the resident's  
25 representative who wishes to install an electronic monitoring  
26 device to make the request in writing along with a written  
27 declaration that the resident or, if the resident has a  
28 representative, the resident's representative accepts all civil and  
29 criminal liability for the inadvertent or intentional disclosure of



1 a recording for any purpose not authorized by law and liability for  
2 a violation of a resident's right to privacy arising out of any  
3 electronic monitoring conducted under this section.

4 (7) Subject to the Michigan rules of evidence, a tape or other  
5 recording created by an electronic monitoring device under this  
6 section is admissible in either a civil or a criminal action  
7 brought in a court in this state.

8 (8) A person shall not retain or store a tape or other  
9 recording created by an electronic monitoring device under this  
10 section for more than 12 months from the date the tape or other  
11 recording was created unless the tape or other recording is being  
12 used for 1 or more of the following purposes:

13 (a) By a federal, state, or local governmental agency,  
14 including a court or law enforcement agency, in carrying out the  
15 agency's functions, or by a private person or entity acting on  
16 behalf of a governmental agency in carrying out the agency's  
17 functions.

18 (b) In connection with a civil, criminal, administrative, or  
19 arbitration proceeding in a federal, state, or local court or  
20 governmental agency or before any self-regulatory body, including  
21 investigation in anticipation of litigation, or pursuant to an  
22 order of a federal, state, or local court, administrative agency,  
23 or self-regulatory body.

24 (c) To monitor a specific health condition, behavior, or  
25 degenerative condition at the direction of an individual licensed  
26 under part 170 or 175.

27 (9) A resident, or if the resident has a representative, the  
28 resident's representative may revoke an election under subsection  
29 (1) (a) by giving written notice of the revocation to the nursing



1 home. The resident or the resident's representative shall turn off  
2 the electronic monitoring device within 24 hours and remove the  
3 electronic monitoring device within 7 days of revoking an election.  
4 The resident or the resident's representative shall pay for all  
5 costs of discontinuing the monitoring, including, but not limited  
6 to, deactivation costs and cancellation fees.

7 (10) Another resident of a nonprivate room or, if the other  
8 resident has a representative, the other resident's representative  
9 may revoke consent given under subsection (1) (c) by giving written  
10 notice of the revocation to the nursing home and the resident who  
11 is being monitored or that resident's representative. The resident  
12 or the resident's representative shall turn off the electronic  
13 monitoring device within 24 hours and remove the electronic  
14 monitoring device within 7 days of receiving notice of a revocation  
15 of consent.

16 (11) Before June 1, 2021, a nursing home shall establish a  
17 written policy to implement this section. The policy may include,  
18 but is not limited to, all of the following:

19 (a) The procedure for a resident or the resident's  
20 representative or family member to request the monitoring of the  
21 resident's room by an electronic monitoring device.

22 (b) The procedure for obtaining consent from the resident, or  
23 if the resident has a representative, the resident's  
24 representative, if a family member makes the request for  
25 monitoring.

26 (c) The procedure for obtaining consent from another resident  
27 of a nonprivate room or, if the other resident has a  
28 representative, the other resident's representative, including the  
29 procedure for determining which areas of a nonprivate room may be



1 monitored by an electronic monitoring device and identifying the  
2 times of the day or activities, exams, or care during which the  
3 electronic monitoring device must be blocked or turned off.

4 (d) The procedure for a resident or the resident's  
5 representative to request a room change if consent cannot be  
6 obtained from or is revoked by another resident of a nonprivate  
7 room or the other resident's representative.

8 (e) The procedure for protecting the privacy of a resident and  
9 the resident's care.

10 (f) The procedure by which the resident, an authorized  
11 individual, and the nursing home may access a tape or other  
12 recording created by an electronic monitoring device.

13 (g) The procedure by which the resident or the resident's  
14 representative shall share the contents of a tape or other  
15 recording created by an electronic monitoring device with the  
16 nursing home if a complaint is made based on the contents of the  
17 tape or other recording.

18 (h) The right of an employee to request that a recording be  
19 used as evidence in a complaint or police report filed by an  
20 employee.

21 (i) The right of the resident or another resident of a  
22 nonprivate room to request that the electronic monitoring device be  
23 turned off for any reason elected by the resident or another  
24 resident of a nonprivate room as a condition of his or her consent  
25 or his or her representative's consent to the use of an electronic  
26 monitoring device in the room.

27 (j) Restrictions on sharing a tape or other recording created  
28 by an electronic monitoring device with third parties, except that  
29 the policy shall not restrict the sharing of a tape or other



1 recording with a person described in subsection (8) for a purpose  
2 described in subsection (8).

3 (k) The procedure for a resident or the resident's  
4 representative to revoke an election under subsection (1)(a).

5 (l) The procedure for another resident of a nonprivate room or  
6 the other resident's representative to revoke consent given under  
7 subsection (1)(c).

8 (12) A nursing home is not civilly or criminally liable for  
9 either of the following:

10 (a) The inadvertent or intentional disclosure of a recording  
11 by a resident or an authorized individual for any purpose not  
12 authorized by law.

13 (b) A violation of a resident's right to privacy arising out  
14 of any electronic monitoring conducted under this section.

15 (13) This section does not alter, abrogate, or limit a  
16 resident's right to otherwise use a device to record audio or  
17 video, or both, in the resident's room pursuant to the law.

18 (14) The department may promulgate rules to implement,  
19 administer, and enforce this section. In promulgating rules under  
20 this section, the department shall consider similar rules of other  
21 states.

22 (15) As used in this section, "authorized individual" means  
23 the resident's representative or a person appointed by the resident  
24 or the resident's representative to monitor recordings made under  
25 this section.

26 Enacting section 1. This amendatory act takes effect June 1,  
27 2021.

