

# HOUSE BILL NO. 6126

August 17, 2020, Introduced by Reps. Chirkun, Sabo, Tyrone Carter, Brixie, Tate, Cherry and Yaroch and referred to the Committee on Health Policy.

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



1 \$1,000.00 for each day the violation continues or, ~~in case of~~ **for** a  
 2 violation of sections 20551 to 20554, a fine of not more than  
 3 \$1,000.00 for each occurrence.

4 (2) A person who violates sections 20181 to 20184 is guilty of  
 5 a misdemeanor ~~r~~-punishable by imprisonment for not more than 6  
 6 months, or a fine of not more than \$2,000.00, or both.

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

11 (a) The monitoring is completely voluntary and is conducted at  
 12 the election of the resident or, if the resident has a  
 13 representative, the resident's representative.

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

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

18 (ii) Installation costs.

19 (iii) Maintenance costs.

20 (iv) Activation and deactivation costs.

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

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



1 representative, the other resident's representative must be  
2 obtained before the electronic monitoring device is installed.

3 (d) There is a notice posted on the door of the resident's  
4 room stating that the room is being monitored by an electronic  
5 monitoring device.

6 (e) The electronic monitoring device does not record audio in  
7 compliance with section 539c of the Michigan penal code, 1931 PA  
8 328, MCL 750.539c.

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

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

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

17 (a) A reasonably secure place to locate the electronic  
18 monitoring device.

19 (b) Access to a power source for the electronic monitoring  
20 device.

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

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

28 (6) A nursing home must require a resident or the resident's  
29 representative who wishes to install an electronic monitoring



1 device to make the request in writing along with a written  
2 declaration that the resident or, if the resident has a  
3 representative, the resident's representative accepts all civil and  
4 criminal liability for the inadvertent or intentional disclosure of  
5 a recording for any purpose not authorized by law and liability for  
6 a violation of a resident's right to privacy arising out of any  
7 electronic monitoring conducted under this section.

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

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

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

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

28 (c) To monitor a specific health condition, behavior, or  
29 degenerative condition at the direction of an individual licensed



1 under part 170 or 175.

2 (9) A resident, or if the resident has a representative, the  
 3 resident's representative may revoke an election under subsection  
 4 (1)(a) by giving written notice of the revocation to the nursing  
 5 home. The resident or the resident's representative shall turn off  
 6 the electronic monitoring device within 24 hours and remove the  
 7 electronic monitoring device within 7 days of revoking an election.  
 8 The resident or the resident's representative shall pay for all  
 9 costs of discontinuing the monitoring, including, but not limited  
 10 to, deactivation costs and cancellation fees.

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

20 (11) Before June 1, 2020, a nursing home shall establish a  
 21 written policy to implement this section. The policy may include,  
 22 but is not limited to, all of the following:

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

26 (b) The procedure for obtaining consent from the resident, or  
 27 if the resident has a representative, the resident's  
 28 representative, if a family member makes the request for  
 29 monitoring.



1 (c) The procedure for obtaining consent from another resident  
2 of a nonprivate room or, if the other resident has a  
3 representative, the other resident's representative, including the  
4 procedure for determining which areas of a nonprivate room may be  
5 monitored by an electronic monitoring device and identifying the  
6 times of the day or activities, exams, or care during which the  
7 electronic monitoring device must be blocked or turned off.

8 (d) The procedure for a resident or the resident's  
9 representative to request a room change if consent cannot be  
10 obtained from or is revoked by another resident of a nonprivate  
11 room or the other resident's representative.

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

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

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

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

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



1 monitoring device in the room.

2 (j) Restrictions on sharing a tape or other recording created  
3 by an electronic monitoring device with third parties, except that  
4 the policy shall not restrict the sharing of a tape or other  
5 recording with a person described in subsection (8) for a purpose  
6 described in subsection (8).

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

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

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

14 (a) The inadvertent or intentional disclosure of a recording  
15 by a resident or an authorized individual for any purpose not  
16 authorized by law.

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

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

22 (14) The department may promulgate rules to implement,  
23 administer, and enforce this section. In promulgating rules under  
24 this section, the department shall consider similar rules of other  
25 states.

26 (15) As used in this section, "authorized individual" means  
27 the resident's representative or a person appointed by the resident  
28 or the resident's representative to monitor recordings made under  
29 this section.



1 Enacting section 1. This amendatory act takes effect June 1,  
2 2020.

