

Electronic Monitoring in Adult Care Homes; HB 2232

HB 2232 allows a resident of an adult care home, or a resident's guardian or legal representative, to conduct authorized electronic monitoring (monitoring) in the resident's room subject to requirements set out in the bill. The bill defines applicable terms; provides protections for the residents and adult care homes; establishes guidelines for monitoring, including the required notification and the content of the notification form; addresses the responsibilities of an adult care home and a resident or a resident's guardian or legal representative; addresses the privacy rights of a resident and any other person sharing a room with the resident; addresses the terms under which a tape or recording could be admitted into evidence or considered during any proceeding; establishes penalties for violations related to permissible electronic monitoring; and requires the Secretary for Aging and Disability Services (Secretary) to adopt rules and regulations necessary to administer the provisions of the bill.

Definitions

The bill defines the following terms:

- “Adult care home” to have the same meaning as in the Adult Care Home Licensure Act, and amendments thereto;
- “Authorized electronic monitoring” means the placement of one or more electronic monitoring devices (device) in the room of an adult care home resident and making recordings with such devices after notifying the adult care home of the resident's intent to conduct electronic monitoring;
- “Electronic monitoring device” means a surveillance instrument used to broadcast or record activity or sound occurring in a room, but not to intercept wire or electronic communications; and
- “Resident's room” means a room in an adult care home that is used as a resident's private living quarters.

Resident's Rights

A resident is allowed to conduct monitoring in the resident's room subject to the requirements outlined in the bill. The bill prohibits an adult care home from discharging, refusing to admit, or otherwise retaliating against a resident or person based on conducting or consenting to monitoring.

Requirements of Monitoring Notification Form

A resident, or a resident's guardian or legal representative, who desires to conduct monitoring is required to use a form prescribed by the Secretary to notify the adult care home. The form is to be maintained in the resident's file at the adult care home and requires the resident, or the resident's guardian or legal representative, to:

- Release the adult care home from civil liability for a violation of the resident's privacy rights with regard to the use of the device;
- Be informed of the proper complaint reporting procedures, as outlined by the Kansas Department for Aging and Disability Services (KDADS);
- Choose, if the device is a video surveillance camera, whether the camera will always be unobstructed or will be obstructed in specific circumstances to protect the resident's dignity; and
- Obtain, if the resident resides in a multi-resident room, the consent of the other residents in the room on a form prescribed for this purpose by the Secretary.

An adult care home is required to provide a copy of the completed form to the resident, any resident or residents with whom the resident shares a room, and the Office of the State Long-Term Care Ombudsman.

Physical Accommodations for Monitoring

The bill requires an adult care home to make reasonable physical accommodations for monitoring, including:

- Providing a reasonably secure place to mount the device;
- Providing access to power sources for the device;
- Making reasonable accommodations if a resident in a multi-resident room wishes to conduct monitoring but a resident or residents who share the room with the resident wishing to conduct monitoring do not consent to the monitoring, including offering to move the resident who wishes to conduct monitoring to another shared room that is or becomes available; and
- Making reasonable accommodations if a resident in a multi-resident room wishes to conduct monitoring but another resident who begins residing in the room does not consent to the monitoring, before moving the resident wishing to conduct monitoring.

A resident, or the resident's guardian or legal representative, is required to pay all costs associated with installing and maintaining a requested device.

Consent

New Roommate Consent

The bill requires a resident who previously conducted monitoring to obtain consent from any new roommates before resuming monitoring. The adult care home is allowed to turn off the

device if the new roommate does not consent to monitoring and the resident conducting monitoring does not remove or disable the device.

Withdrawal of Consent

The bill allows consent to be withdrawn by a resident, a resident's guardian or legal representative, or any roommate at any time, and the withdrawal of consent is to be documented in the resident's clinical record. The adult care home is allowed to turn off the device if a roommate withdraws consent to monitoring and the resident conducting monitoring does not remove or disable the device.

Posting of Notice and Monitoring in Plain View

Each adult care home is required to post a conspicuous notice at the entrance to the adult care home and at the entrance of each resident's room stating the rooms of some residents may be monitored electronically by or on behalf of the room's resident or residents.

An adult care home is allowed to require a resident, or the resident's guardian or legal representative, to conduct monitoring in plain view.

Form Addressing Monitoring Guidelines

On or before a person's admission to an adult care home, the person is required to complete and sign a form prescribed by the Secretary, and such form is to be maintained in the person's resident file. The form is to state the following:

- That a person who places a device in a resident's room or discloses a recording made on such device may be civilly liable for any unlawful violation of the privacy rights of another person;
- That a resident, or a resident's guardian or legal representative, is entitled to conduct monitoring as authorized in the bill;
- The basic procedures required to request monitoring;
- Who may request monitoring;
- Who may consent to monitoring;
- Restrictions a resident may elect to place on monitoring conducted in the resident's room, including, but not limited to:
 - Prohibiting video recording; or
 - Prohibiting audio recording;

- Turning off the device or blocking the visual recording component in the following instances: during an exam or procedure administered by a health care professional; while the resident is dressing or bathing; or during a resident's visit with a spiritual adviser, ombudsman, attorney, financial planner, intimate partner, or other visitor; and
- Any other information related to monitoring the Secretary deems necessary or appropriate to include on the form.

Device Requirements

The bill requires a device installed or operated pursuant to the bill to comply with the requirements of the National Fire Protection Association 101 Life Safety Code, or other standards determined by the Secretary to have substantially equivalent requirements.

Tape or Recording Requirements

No court or state agency is allowed to admit into evidence or consider during any proceeding any tape or recording created using an electronic monitoring device, or take or authorize action based on such tape or recording, unless:

- The tape or recording shows the time and date when the event occurred; and
- The contents of the tape or recording have not been edited or artificially enhanced.

Interference with Monitoring and Penalties

The bill prohibits a person from knowingly hindering, obstructing, tampering with, or destroying a device installed in a resident's room in accordance with this bill or a video or audio recording obtained in accordance with this bill, without the consent of the resident or individual who authorized the monitoring.

A person violating these provisions is guilty of a class B nonperson misdemeanor. Such violations done with the intent to commit or conceal the commission of a misdemeanor offense is a class A nonperson misdemeanor; if done with the intent to commit or conceal the commission of a felony offense, it is a severity level 8 nonperson felony.

Rules and Regulations Authority

The Secretary is required to adopt rules and regulations necessary to administer the provisions of the bill on or before January 1, 2019.