

## 2020 Kansas Statutes

**39-981. Authorized electronic monitoring; reasonable accommodations; notice; consent; use as evidence; prohibitions.** (a) As used in this section:

(1) "Adult care home" means the same as defined in K.S.A. 39-923, and amendments thereto;

(2) "authorized electronic monitoring" means the placement of one or more electronic monitoring devices 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;

(3) "electronic monitoring device" means a surveillance instrument used to broadcast or record activity or sound occurring in a room, including a video surveillance camera or an audio device designed to acquire communications or other sounds occurring in the room, but not to intercept wire or electronic communications; and

(4) "resident's room" means a room in an adult care home that is used as a resident's private living quarters.

(b) A resident shall be permitted to conduct authorized electronic monitoring in the resident's room subject to the requirements of this section.

(c) An adult care home shall not discharge or refuse to admit a resident or person or otherwise retaliate against a resident or person based on conducting or consenting to authorized electronic monitoring.

(d) A resident, or such resident's guardian or legal representative, who wishes to conduct authorized electronic monitoring shall notify the adult care home on a form prescribed by the secretary for aging and disability services. Such form shall be maintained in such person's resident file at the adult care home and shall require the resident, or such resident's guardian or legal representative, to:

(1) Release the adult care home from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) be informed of the proper procedures for reporting complaints, as outlined by the Kansas department for aging and disability services;

(3) if the electronic monitoring device is a video surveillance camera, choose whether the camera will always be unobstructed or will be obstructed in specified circumstances to protect the dignity of the resident; and

(4) if the resident resides in a multi-resident room, obtain the consent of other residents in the room on a form prescribed for this purpose by the secretary.

The adult care home shall provide a copy of the completed form to the resident, any resident or residents with whom the resident shall share a room and the office of the state long-term care ombudsman.

(e) An adult care home shall make reasonable physical accommodations for authorized electronic monitoring, including:

(1) Providing a reasonably secure place to mount the electronic monitoring device;

(2) providing access to power sources for the electronic monitoring device;

(3) making reasonable accommodations if a resident in a multi-resident room wishes to conduct electronic monitoring pursuant to this section and the resident or residents with whom the resident shares the room do not consent to the monitoring, including offering to move the resident who wishes to conduct electronic monitoring to another shared room that is available or becomes available; and

(4) making reasonable accommodations if a resident wishes to conduct electronic monitoring and another resident begins residing in the multi-resident room who does not consent to the monitoring before moving the resident wishing to conduct electronic monitoring.

(f) Any resident who has previously conducted authorized electronic monitoring must obtain consent from any new roommates before the resident may resume authorized electronic monitoring. If a new roommate does not consent to electronic monitoring and the resident conducting the authorized electronic monitoring does not remove or disable the electronic monitoring device, the adult care home may turn off the device.

(g) Consent may be withdrawn by the resident, the resident's guardian or legal representative, or any roommate at any time, and the withdrawal of consent shall be documented in the resident's clinical record. If a roommate withdraws consent and the resident conducting the electronic monitoring does not remove or disable the electronic monitoring device, the facility may turn off the electronic monitoring device.

(h) A resident, or such resident's guardian or legal representative, shall pay all costs associated with installing and maintaining an electronic monitoring device requested under this section.

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

(j) If electronic monitoring is conducted, the adult care home may require the resident, the resident's guardian or legal representative, to conduct the electronic monitoring in plain view.

(k) On or before a person's admission to an adult care home, such person shall complete and sign a form prescribed by the secretary for aging and disability services. Such form shall be maintained in such person's resident file at the adult care home and shall state the following:

(1) That a person who places an electronic monitoring device in a resident's room or discloses a recording made by such device may be civilly liable for any unlawful violation of the privacy rights of another person;

(2) that a resident, or such resident's guardian or legal representative, is entitled to conduct authorized electronic monitoring under this section;

(3) the basic procedures required to request authorized electronic monitoring;

(4) who may request authorized electronic monitoring;

(5) who may consent to authorized electronic monitoring; and

(6) restrictions that a resident may elect to place on electronic monitoring conducted in the resident's room, including, but not limited to:

(A) Prohibiting video recording;

(B) prohibiting audio recording;

(C) turning off the device or blocking the visual recording component of the device during an exam or procedure administered by a healthcare professional;

(D) turning off the device or blocking the visual recording component of the device while the resident is dressing or bathing; or

(E) turning off the device or blocking the visual recording component of the device during a resident's visit with a spiritual adviser, ombudsman, attorney, financial planner, intimate partner or other visitor; and

(7) any other information related to authorized electronic monitoring that the secretary deems necessary or appropriate to include on such form.

(l) Any electronic monitoring device installed or operated pursuant to this section shall comply with the requirements of the national fire protection association 101 life safety code, or other standards determined by the secretary for aging and disability as having substantially equivalent requirements.

(m) No court or state agency shall admit into evidence or consider during any proceeding any tape or recording created using an electronic monitoring device in a resident's room in an adult care home, whether authorized under this section or not, or take or authorize any action based on such tape or recording, unless:

(1) The tape or recording shows the time and date when the events shown on the tape or recording occurred, if the tape or recording is a video tape or recording; and

(2) the contents of the tape or recording have not been edited or artificially enhanced.

(n) (1) A person is prohibited from knowingly hindering, obstructing, tampering with or destroying, without the consent of the resident or individual who authorized electronic monitoring, an electronic monitoring device installed in a resident's room in accordance with this section.

(2) A person is prohibited from knowingly hindering, obstructing, tampering with or destroying, without the consent of the resident or individual who authorized electronic monitoring, a video or audio recording obtained in accordance with this section.

(3) (A) Any person who violates this subsection shall be guilty of a class B nonperson misdemeanor.

(B) Any person who violates this subsection with the intent to commit or conceal the commission of a misdemeanor offense shall be guilty of a class A nonperson misdemeanor.

(C) Any person who violates this subsection with the intent to commit or conceal the commission of a felony offense shall be guilty of a severity level 8, nonperson felony.

(o) The secretary for aging and disability services shall adopt rules and regulations prior to January 1, 2019, as may be necessary to administer the provisions of this section.

**History:** L. 2018, ch. 54, § 1; July 1.