

HOUSE BILL No. 2229

By Committee on Children and Seniors

2-11

1 AN ACT concerning adult care homes; relating to electronic monitoring;
2 amending K.S.A. 2018 Supp. 39-981 and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 2018 Supp. 39-981 is hereby amended to read as
6 follows: 39-981. (a) As used in this section:

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

9 (2) "authorized electronic monitoring" means the placement of one or
10 more electronic monitoring devices in the room of an adult care home
11 resident and making recordings with such devices after notifying the adult
12 care home of the resident's intent to conduct electronic monitoring;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (i) Each adult care home shall post a conspicuous notice at the
43 entrance to the adult care home and each resident's room stating that the

1 rooms of some residents may be monitored electronically by or on behalf
2 of the room's resident or residents.

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

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

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

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

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

18 (4) who may request authorized electronic monitoring;

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

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

22 (A) Prohibiting video recording;

23 (B) prohibiting audio recording;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 Sec. 2. K.S.A. 2018 Supp. 39-981 is hereby repealed.

27 Sec. 3. This act shall take effect and be in force from and after its
28 publication in the statute book.