



2020 South Dakota Legislature

House Bill 1056

Introduced by: **Representative** Mulally

1 **An Act to authorize electronic monitoring of residents in assisted living centers and**
 2 **nursing facilities.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1.** That a NEW SECTION be added:

5 **34-12I-1. Definitions.**

6 Terms as used in this chapter mean:

7 (1) "Authorized representative," the spouse of a resident, the legal guardian of a
 8 resident, or the agent of a resident acting under a power of attorney;

9 (2) "Electronic monitoring device," a video surveillance instrument with a closed loop
 10 recording camera, which is installed in a resident's room, in accordance with this
 11 Act, and broadcasts or records activities occurring in the room;

12 (3) "Facility," an assisted living center or a nursing home; and

13 (4) "Resident," a person residing in a facility.

14 **Section 2.** That a NEW SECTION be added:

15 **34-12I-2. Electronic monitoring device--Installation.**

16 A resident or the resident's authorized representative may install or provide for the
 17 installation of an electronic monitoring device in the resident's room, in accordance with
 18 this Act.

19 **Section 3.** That a NEW SECTION be added:

20 **34-12I-3. Notification of electronic monitoring--Content.**

21 Before installing or providing for the installation of an electronic monitoring device,
 22 the resident or the resident's authorized representative shall provide written notification
 23 to the facility of the intent to conduct electronic monitoring in the resident's room. The

1 notification must be provided on a form developed by the Department of Health and
2 available from the department and from the facility.

3 The resident or the resident's authorized representative shall sign the form.

4 The facility shall retain the form, together with the resident's other records.

5 The form must:

6 (1) Identify the type of electronic monitoring device to be installed;

7 (2) Identify the date on which the monitoring is to begin;

8 (3) Describe any anticipated alteration to the resident's room or to the facility in order
9 to provide for the mounting of the electronic monitoring device or the transmittal
10 of data;

11 (4) Be accompanied by a copy of any contract for maintenance of the electronic
12 monitoring device by a commercial entity;

13 (5) Identify any person by whom the resulting video recordings may be viewed, any
14 person with whom the resulting video recordings may be shared, and the conditions
15 under which the resulting video recordings may be viewed or shared;

16 (6) Specify the provisions under which and the manner in which consent for the
17 electronic video monitoring may be revoked by the resident or the resident's
18 authorized representative and provide for the disabling or removal of the electronic
19 monitoring device in the case of any such revocation;

20 (7) Indicate whether the electronic monitoring device is to be turned off or blocked,
21 and if so by whom, during any examination of the resident or other procedure
22 performed by a health care professional;

23 (8) Indicate whether the electronic monitoring device is to be turned off or blocked,
24 and if so by whom, while dressing, grooming, washing, or bathing of the resident
25 is occurring;

26 (9) Indicate whether the electronic monitoring device is to be turned off or blocked,
27 and if so by whom, during the resident's visit with a spiritual advisor, attorney,
28 financial advisor, intimate partner, or any other visitor; and

29 (10) Include any other condition or restriction on the use of the electronic monitoring
30 device.

31 **Section 4.** That a NEW SECTION be added:

32 **34-12I-4. Sharing of room--Consent.**

33 If the resident shares a room with another person, the form required by § 34-12I-
34 3 must also include a signed statement by the other person or that person's authorized

1 representative, evidencing consent to the electronic monitoring, together with any
2 conditions or limitations that the other person or the authorized representative elects to
3 place on that consent.

4 If the resident is assigned a new person with whom to share the room, the consent
5 of that person or that person's authorized representative must be obtained before
6 monitoring may continue. The facility shall disable or remove the electronic monitoring
7 device until the consent is obtained.

8 If a person with whom the resident shares a room or that person's authorized
9 representative notifies the facility in writing that consent for the monitoring is withdrawn,
10 the facility shall disable or remove the electronic monitoring device.

11 **Section 5.** That a NEW SECTION be added:

12 **34-12I-5. Cost of device--Responsibility.**

13 A resident is responsible for the cost of installing the electronic monitoring device,
14 the cost of operating and maintaining the electronic monitoring device, and any alteration
15 or damage to the facility resulting from the installation, operation, maintenance, or
16 removal of the electronic monitoring device.

17 **Section 6.** That a NEW SECTION be added:

18 **34-12I-6. Operation of device--Notice.**

19 If a resident conducts electronic monitoring in accordance with this Act, the facility
20 shall post a notice at the entrance to the resident's room, indicating that an electronic
21 monitoring device is operational in the room.

22 **Section 7.** That a NEW SECTION be added:

23 **34-12I-7. Disabling device--Penalty.**

24 Unless acting under the written permission of the person who signed or is
25 authorized to sign the notification form required by § 34-12I-3, a person may not
26 knowingly:

27 (1) Turn off or disable an electronic monitoring device;

28 (2) Obstruct, tamper with, or destroy an electronic monitoring device; or

29 (3) Tamper with or destroy a video recording created in accordance with this Act.

30 A violation of this section is a Class 2 misdemeanor.

31 **Section 8.** That a NEW SECTION be added:

1 **34-12I-8. Monitoring of residents--Limitations.**

2 Nothing in this Act limits a facility from instituting otherwise permissible monitoring
3 of the facility's residents or its premises.

4 Nothing in this Act authorizes the use of an electronic monitoring device for the
5 purpose of creating audio recordings or taking still photographs.