

HOUSE BILL NO. HB0109

Electronic monitoring in long-term care facilities.

Sponsored by: Representative(s) Kirkbride, Brown, Hallinan, Paxton, Sweeney and Yin and Senator(s) Baldwin and Pappas

A BILL

for

1 AN ACT relating to public health and safety; regulating  
2 electronic monitoring in long-term care facilities;  
3 providing guidelines and obligations for facilities and  
4 residents; providing penalties and evidentiary standards;  
5 requiring rulemaking; specifying applicability; and  
6 providing for effective dates.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 35-2-1201 through 35-2-1208 are  
11 created to read:

12

13

ARTICLE 12

14

ELECTRONIC MONITORING OF LONG-TERM CARE

15

1           **35-2-1201. Short title.**

2

3       This act may be cited as the "Long-term Care Electronic  
4       Monitoring Act."

5

6           **35-2-1202. Definitions.**

7

8           (a) As used in this act:

9

10                   (i) "Capacity to consent" means an individual's  
11       ability to:

12

13                           (A) Understand and appreciate the  
14       significant benefits, risks and alternatives to proposed  
15       health care;

16

17                           (B) Understand and appreciate the nature  
18       and consequences of making decisions concerning one's  
19       person; and

20

21                           (C) Make and communicate a health care  
22       decision.

23

1           (ii) "Department" means the Wyoming department  
2 of health;

3  
4           (iii) "Electronic monitoring" means the  
5 placement and use of an electronic monitoring device by a  
6 resident in the resident's room pursuant to the  
7 requirements of this act;

8  
9           (iv) "Electronic monitoring device" means a  
10 video camera or other surveillance instrument with a fixed  
11 position that captures, records, transmits or broadcasts  
12 audio, video or both and that is installed in a resident's  
13 room and used for electronic monitoring of the resident and  
14 activities in the room;

15  
16           (v) "Facility" means an assisted living facility  
17 or a nursing care facility certified, licensed or otherwise  
18 authorized or permitted by law to provide long-term care in  
19 the facility's ordinary course of business and through its  
20 employees acting within the scope of their duties;

21  
22           (vi) "Resident" means a person who is eighteen  
23 (18) years or older residing at a facility;

1

2 (vii) "Resident's representative" means an  
3 individual with a power of attorney for health care or  
4 other legal authority to make health care decisions on  
5 behalf of a resident who lacks capacity to consent;

6

7 (viii) "Resident's room" means a resident's  
8 private or shared primary living space within a long-term  
9 care facility;

10

11 (ix) "This act" means W.S. 35-2-1201 through  
12 35-2-1208.

13

14 **35-2-1203. Authorized electronic monitoring;**  
15 **applicability.**

16

17 (a) No facility or resident of a facility shall  
18 engage in electronic monitoring or use electronic  
19 monitoring devices except as provided in this act.

20

21 (b) Notwithstanding W.S. 7-3-702, nothing in this act  
22 shall be construed to authorize or permit the use of an  
23 electronic monitoring device for the nonconsensual

1 interception or unauthorized recording, storage or  
2 disclosure of private communications or actions occurring  
3 in a resident's room.

4

5 (c) A facility may install and use electronic  
6 monitoring devices or security surveillance devices in the  
7 facility's common areas and other locations except for  
8 resident rooms as the facility deems necessary for  
9 monitoring the facility.

10

11 (d) A resident may seek to install and use electronic  
12 monitoring devices in the resident's room pursuant to the  
13 requirements of this act.

14

15 **35-2-1204. Authorized electronic monitoring; notice.**

16

17 (a) Every facility where electronic monitoring  
18 devices are in use shall post and maintain a notice or  
19 signage in a conspicuous location at or near the facility's  
20 main entrances stating that electronic monitoring devices  
21 may be in use in or throughout the facility.

22

1           (b) A facility shall post and maintain notice or  
2 signage in a conspicuous location at the entrance to each  
3 resident's room where an electronic monitoring device is  
4 being used. The notice or signage shall state that the  
5 resident's room is being monitored by an electronic  
6 monitoring device.

7

8           (c) When electronic monitoring or security  
9 surveillance is used at a facility, upon admission or at  
10 any other necessary time as determined by the facility, a  
11 facility shall obtain the resident's or the resident's  
12 representative's signature on a form furnished by the  
13 department and provided to the resident or representative  
14 by the facility. The form must at a minimum list the  
15 following:

16

17           (i) That each resident has the right to use  
18 electronic monitoring devices in the resident's room,  
19 provided that any other residents in the room consent to  
20 the electronic monitoring;

21

1           (ii) That the use of unauthorized electronic  
2 monitoring devices or covert placement of an electronic  
3 monitoring device is prohibited;

4

5           (iii) That other residents in the facility may  
6 be using electronic monitoring devices in their rooms;

7

8           (iv) That a resident may file a grievance with  
9 the facility if a facility interferes with a resident's  
10 right to use electronic monitoring and that a resident may  
11 file a grievance with the department if the facility fails  
12 to resolve or respond to the grievance;

13

14           (v) The security and privacy risks associated  
15 with the use of electronic monitoring devices;

16

17           (vi) Any other provisions required by the  
18 department pursuant to rules promulgated in accordance with  
19 this act.

20

21           **35-2-1205. Capacity; request; consent; records.**

22

1           (a) A resident with capacity to consent may request  
2 and consent to electronic monitoring pursuant to the  
3 provisions of this act. For a resident who lacks capacity  
4 to consent, the resident's representative may request and  
5 consent to electronic monitoring, provided the use of  
6 electronic monitoring does not contravene any prior  
7 expressed wishes of the resident and the resident does not  
8 object to electronic monitoring.

9

10           (b) A resident or the resident's representative shall  
11 request to use electronic monitoring in the resident's room  
12 using a form provided by the department and furnished to  
13 the resident or representative by the facility. The form  
14 required under this subsection shall require the resident  
15 or his representative to:

16

17           (i) Acknowledge that, by using an electronic  
18 monitoring device, the resident may reveal personal or  
19 sensitive information, including health-related  
20 information, to individuals with authorized access to the  
21 electronic monitoring device and confirm that the resident  
22 or his representative consents to any disclosure;

23



1           (ii) Release the facility from any civil  
2 liability for a violation of the resident's right to  
3 privacy in connection with the use of electronic monitoring  
4 devices;

5

6           (iii) Acknowledge that the consent of other  
7 residents residing in the same room is required and that  
8 the other residents residing in the same room may limit the  
9 resident's use of an electronic monitoring device;

10

11           (iv) Specify the desired type and number of  
12 devices, the proposed date of installation and a copy of  
13 any contracts with commercial entities that will oversee  
14 the installation and maintenance of the electronic  
15 monitoring devices;

16

17           (v) Acknowledge that facility approval of the  
18 type, number, location and installation of electronic  
19 monitoring devices is required before installation;

20

21           (vi) Acknowledge that the resident is  
22 responsible for all fees associated with the electronic  
23 monitoring device including purchase, installation,

1 removal, maintenance, internet connectivity and repair of  
2 any damage or markings resulting from installation;

3

4 (vii) Complete any other requirements specified  
5 by the department.

6

7 (c) No resident shall install an electronic  
8 monitoring device in the resident's room without the  
9 consent of any other resident residing in the same room. A  
10 resident may obtain the consent of all other residents in  
11 the same room by using a form furnished by the department  
12 and provided to the resident by the facility. The form  
13 shall require the consenting resident or his representative  
14 to:

15

16 (i) Acknowledge that he is not required to  
17 consent and may revoke his consent at any time;

18

19 (ii) Acknowledge the resident's right to impose  
20 limits on electronic monitoring pursuant to W.S.  
21 35-2-1206(g);

22

1           (iii) Release the facility from any liability  
2 for any violation of the resident's right to privacy that  
3 may arise from the use of electronic monitoring devices;

4

5           (iv) Complete any other requirements specified  
6 by the department.

7

8           (d) A resident requesting to use electronic  
9 monitoring may request to switch rooms or roommates,  
10 subject to availability and at the resident's expense. A  
11 facility unable to accommodate a resident's request shall  
12 reevaluate the request at least one (1) time every two (2)  
13 weeks until the facility is able to accommodate the  
14 request. A facility shall not be responsible for its  
15 inability to accommodate a resident's request at the time  
16 of the request.

17

18           (e) A resident or resident's representative who  
19 consented as provided in subsection (c) of this section may  
20 revoke that consent at any time and for any reason. If  
21 consent is revoked, a resident must immediately cease using  
22 any electronic monitoring devices in the room. A facility  
23 shall have authority to remove or disable any electronic

1 monitoring device from a room after consent is revoked and  
2 if the resident does not immediately cease using the  
3 device.

4

5 (f) All facilities shall obtain and retain all forms  
6 submitted by residents under this act. Forms shall be  
7 retained consistent with requirements for retaining medical  
8 records consistent with state and federal law.

9

10 **35-2-1206. Facility rules; installation of electronic**  
11 **monitoring devices; accommodation by facility.**

12

13 (a) A facility shall not refuse to admit, remove or  
14 retaliate against a resident who requests to use, uses or  
15 declines to consent to use electronic monitoring in his  
16 room pursuant to this act.

17

18 (b) A facility may develop policies governing the  
19 placement and installation of electronic monitoring  
20 devices, subject to the provisions of this act and any  
21 rules promulgated by the department.

22

1           (c) A facility shall not unnecessarily impair or  
2 impede a resident's use of electronic monitoring devices  
3 but may require installation of devices by a licensed  
4 contractor or facility personnel and may limit the  
5 placement of devices to maintain resident privacy and  
6 dignity.

7

8           (d) A resident shall obtain the facility's approval  
9 before installing or using any electronic monitoring  
10 device, subject to the consent of any other resident  
11 residing in the same room as required under W.S.  
12 35-2-1205(c).

13

14           (e) A resident or the resident's representative shall  
15 be responsible for all costs associated with purchasing,  
16 installing, using, maintaining, servicing and removing  
17 electronic monitoring devices. For electronic monitoring  
18 devices requiring an internet connection, the facility may  
19 restrict or limit a resident's use of the facility's  
20 network services for those devices and may charge a  
21 reasonable fee to the resident using the facility's  
22 internet for electronic monitoring.

23

1           (f) All electronic monitoring devices used by  
2 facilities and residents in facilities shall be of a type  
3 that has a stationary focus and is installed in a fixed,  
4 stationary location that is conspicuous and in plain view.  
5 The facility is responsible for ensuring that no electronic  
6 monitoring device is installed in a location that:

7

8           (i) Jeopardizes the privacy or dignity of any  
9 resident;

10

11           (ii) Contravenes any imposed limitation on its  
12 placement or use as set forth by the department, the  
13 facility, the resident or any other resident residing in  
14 the same room;

15

16           (iii) Jeopardizes the safety of a resident,  
17 employee, visitor or other person;

18

19           (iv) Violates federal, state or local  
20 regulations.

21

22           (g) Any resident residing in a room with electronic  
23 monitoring may establish limits on the use of electronic

1 monitoring. The resident may impose limits restricting  
2 monitoring during specific times, in the presence of  
3 specific individuals, during times of personal care and  
4 treatment or for any other reason. Upon request by the  
5 resident, the facility shall make reasonable efforts to  
6 disable or obscure the electronic monitoring devices and to  
7 accommodate the resident's requested limits on electronic  
8 monitoring when the facility can reasonably do so. The  
9 facility shall document all limits requested by the  
10 resident and the facility's efforts to accommodate those  
11 requests.

12

13 **35-2-1207. Admissibility of electronic monitoring;**  
14 **liability; reporting.**

15

16 (a) No court or state agency shall admit into  
17 evidence or consider during any proceeding any recording  
18 created using an electronic monitoring device in a facility  
19 unless the recording is otherwise admissible under the  
20 Wyoming Rules of Evidence and the recording:

21

22 (i) Contains verifiable indicators of the time  
23 and date of the recording;

1

2           (ii) Presents the contents of the recording in  
3 their original format; and

4

5           (iii) Has not been edited or artificially  
6 enhanced.

7

8           (b) Upon request, a facility shall receive a copy of  
9 any recording that a party uses in an administrative  
10 proceeding against the facility.

11

12           (c) A facility shall have no criminal or civil  
13 liability for:

14

15           (i) Disclosing a recording made by an electronic  
16 monitoring device for any purpose pursuant to this act; and

17

18           (ii) The disclosure of a recording for any  
19 purpose not authorized by this act by a resident, the  
20 resident's representative or any agent of the resident or  
21 the resident's representative.

22



1           (d) A facility that provides internet or network  
2 access to a resident for the resident's electronic  
3 monitoring device shall not be liable for any network  
4 security breach caused by or resulting in unauthorized  
5 access to the electronic monitoring devices or any data  
6 captured, recorded, transmitted or broadcasted by the  
7 devices.

8

9           (e) A facility shall have no civil or criminal  
10 liability for a violation of a resident's right to privacy  
11 that arises out of any electronic monitoring conducted in  
12 accordance with this act.

13

14           **35-2-1208. Electronic monitoring devices; rulemaking;**  
15 **compliance with rules.**

16

17           (a) The department shall promulgate rules necessary  
18 to implement this act including rules for receiving and  
19 resolving grievances received from residents.

20

21           (b) Any resident or facility using an electronic  
22 monitoring device before, on or after October 1, 2020 shall  
23 comply with this act.

1

2           **Section 2.** Before October 1, 2020, the department of  
3 health shall promulgate rules necessary to implement the  
4 provisions of this act.

5

6           **Section 3.**

7

8           (a) Except as provided in subsection (b) of this  
9 section, this act is effective immediately upon completion  
10 of all acts necessary for a bill to become law as provided  
11 by Article 4, Section 8 of the Wyoming Constitution.

12

13           (b) Section 1 of this act is effective October 1,  
14 2020.

15

16

(END)