

ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2020 BUDGET SESSION

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

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

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

ARTICLE 12  
ELECTRONIC MONITORING OF LONG-TERM CARE

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

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

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

(a) As used in this act:

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

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

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

ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2020 BUDGET SESSION

(C) Make and communicate a health care decision.

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

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

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

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

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

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

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

ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2020 BUDGET SESSION

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

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

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

(b) Notwithstanding W.S. 7-3-702, nothing in this act shall be construed to authorize or permit the use of an electronic monitoring device for the nonconsensual interception or unauthorized recording, storage or disclosure of private communications or actions occurring in a resident's room.

(c) A facility may install and use security surveillance devices in the facility's common areas and other locations except for resident rooms as the facility deems necessary for monitoring the facility. Any recording made by security surveillance devices under this subsection shall be the property of the facility.

(d) A resident or resident's representative may seek to install and use electronic monitoring devices in the resident's room pursuant to the requirements of this act. Any recording made by an electronic monitoring device under this subsection shall be the property of the resident or the resident's representative but may be used by a facility as provided by rule of the department.

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

(a) Every facility where electronic monitoring devices are in use shall post and maintain a notice or

ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2020 BUDGET SESSION

signage in a conspicuous location at or near the facility's main entrances stating that electronic monitoring devices may be in use in or throughout the facility.

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

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

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

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

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

(iv) That a resident may file a grievance with the facility if a facility interferes with a resident's right to use electronic monitoring and that a resident may

ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2020 BUDGET SESSION

file a grievance with the department if the facility fails to resolve or respond to the grievance;

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

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

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

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

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

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

ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2020 BUDGET SESSION

(ii) Waive any claim of liability against the facility for any civil damages for any release or use of a recording made by security surveillance devices under the control or in the custody of the facility or for a violation of the resident's right to privacy in connection with the use of electronic monitoring devices, except for acts or omissions constituting gross negligence or willful or wanton misconduct;

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

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

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

(vi) Acknowledge that the resident is responsible for all fees associated with the electronic monitoring device including purchase, installation, removal, maintenance, internet connectivity and repair of any damage or markings resulting from installation;

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

(c) No resident shall install an electronic monitoring device in the resident's room without the consent of any other resident residing in the same room. A

ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2020 BUDGET SESSION

resident may obtain the consent of all other residents in the same room by using a form furnished by the department and provided to the resident by the facility. The form shall require the consenting resident or his representative to:

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

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

(iii) Waive any claim of liability against the facility for any civil damages for any release or use of a recording made by an electronic monitoring device under the control or in the custody of the facility or for a violation of the resident's right to privacy in connection with the use of electronic monitoring devices, except for acts or omissions constituting gross negligence or willful or wanton misconduct;

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

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

ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2020 BUDGET SESSION

(e) A resident or resident's representative who consented as provided in subsection (c) of this section may revoke that consent at any time and for any reason. If consent is revoked, a resident must immediately cease using any electronic monitoring devices in the room. A facility shall have authority to remove or disable any electronic monitoring device from a room after consent is revoked and if the resident does not immediately cease using the device.

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

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

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

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

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



ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2020 BUDGET SESSION

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

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

(f) All electronic monitoring devices used by facilities and residents in facilities shall be conspicuous and in plain view. The facility is responsible for ensuring that no electronic monitoring device is installed in a location that:

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

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

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

(iv) Violates federal, state or local regulations.

ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2020 BUDGET SESSION

(g) Any resident residing in a room with electronic monitoring may establish limits on the use of electronic monitoring. The resident may impose limits restricting monitoring during specific times, in the presence of specific individuals, during times of personal care and treatment or for any other reason. Upon request by the resident, the facility shall make reasonable efforts to disable or obscure the electronic monitoring devices and to accommodate the resident's requested limits on electronic monitoring when the facility can reasonably do so. The facility shall document all limits requested by the resident and the facility's efforts to accommodate those requests.

(h) A facility or employee of the facility shall not have access to video or audio recordings captured by an electronic monitoring device except as specified in this act.

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

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

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

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

ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2020 BUDGET SESSION

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

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

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

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

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

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

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

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

ORIGINAL HOUSE  
BILL NO. HB0109

ENGROSSED

ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING  
2020 BUDGET SESSION

**Section 3.**

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

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

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk