

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 camera or other device that captures, records, transmits or  
11 broadcasts audio, video or both and that is placed, used or  
12 installed in a resident's room;

13

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

19

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

22

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

5

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

9

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

12

13           **35-2-1203. Authorized electronic monitoring;**  
14 **applicability.**

15

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

19

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

1 disclosure of private communications or actions occurring  
2 in a resident's room.

3

4 (c) A facility may install and use electronic  
5 monitoring devices or security surveillance devices in the  
6 facility's common areas and other locations except for  
7 resident rooms as the facility deems necessary for  
8 monitoring the facility. Any recording made by an  
9 electronic monitoring device under this subsection shall be  
10 the property of the facility subject to reasonable use by  
11 residents as provided by rule of the department.

12

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

20

21 **35-2-1204. Authorized electronic monitoring; notice.**

22

1           (a) Every facility where electronic monitoring  
2 devices are in use shall post and maintain a notice or  
3 signage in a conspicuous location at or near the facility's  
4 main entrances stating that electronic monitoring devices  
5 may be in use in or throughout the facility.

6

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

13

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

22

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

5

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

9

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

12

13           (iv) That a resident may file a grievance with  
14 the facility if a facility interferes with a resident's  
15 right to use electronic monitoring and that a resident may  
16 file a grievance with the department if the facility fails  
17 to resolve or respond to the grievance;

18

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

21

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

4  
5           **35-2-1205. Capacity; request; consent; records.**

6  
7           (a) A resident with capacity to consent may request  
8 and consent to electronic monitoring pursuant to the  
9 provisions of this act. For a resident who lacks capacity  
10 to consent, the resident's representative may request and  
11 consent to electronic monitoring, provided the use of  
12 electronic monitoring does not contravene any prior  
13 expressed wishes of the resident and the resident does not  
14 object to electronic monitoring.

15  
16           (b) A resident or the resident's representative shall  
17 request to use electronic monitoring in the resident's room  
18 using a form provided by the department and furnished to  
19 the resident or representative by the facility. The form  
20 required under this subsection shall require the resident  
21 or his representative to:

22



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

7

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

16

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

21

22           (iv) Specify the desired type and number of  
23 devices, the proposed date of installation and a copy of

1 any contracts with commercial entities that will oversee  
2 the installation and maintenance of the electronic  
3 monitoring devices;

4

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

8

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

14

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

17

18 (c) No resident shall install an electronic  
19 monitoring device in the resident's room without the  
20 consent of any other resident residing in the same room. A  
21 resident may obtain the consent of all other residents in  
22 the same room by using a form furnished by the department  
23 and provided to the resident by the facility. The form

1 shall require the consenting resident or his representative  
2 to:

3

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

6

7 (ii) Acknowledge the resident's right to impose  
8 limits on electronic monitoring pursuant to W.S.  
9 35-2-1206(g);

10

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

19

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

22

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

10

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

20

21           (f) All facilities shall obtain and retain all forms  
22 submitted by residents under this act. Forms shall be

1 retained consistent with requirements for retaining medical  
2 records consistent with state and federal law.

3

4 **35-2-1206. Facility rules; installation of electronic**  
5 **monitoring devices; accommodation by facility.**

6

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

11

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

16

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

23

1           (d) A resident shall obtain the facility's approval  
2 before installing or using any electronic monitoring  
3 device, subject to the consent of any other resident  
4 residing in the same room as required under W.S.  
5 35-2-1205(c).

6

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

16

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

22

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

3

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

8

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

11

12           (iv) Violates federal, state or local  
13 regulations.

14

15           (g) Any resident residing in a room with electronic  
16 monitoring may establish limits on the use of electronic  
17 monitoring. The resident may impose limits restricting  
18 monitoring during specific times, in the presence of  
19 specific individuals, during times of personal care and  
20 treatment or for any other reason. Upon request by the  
21 resident, the facility shall make reasonable efforts to  
22 disable or obscure the electronic monitoring devices and to  
23 accommodate the resident's requested limits on electronic

1 monitoring when the facility can reasonably do so. The  
2 facility shall document all limits requested by the  
3 resident and the facility's efforts to accommodate those  
4 requests.

5

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

10

11 **35-2-1207. Admissibility of electronic monitoring;**  
12 **liability; reporting.**

13

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

19

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

23



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

3

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

6

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

11

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

19

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

1

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

4

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

8

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

12

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

16

17           **Section 3.**

18

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

23

1           (b) Section 1 of this act is effective October 1,  
2 2020.

3

4

(END)