

SENATE BILL No. 311

By Committee on Judiciary

1-24

1 AN ACT concerning adult care homes; relating to electronic monitoring;
2 admission into evidence; amending K.S.A. 2019 Supp. 39-981 and
3 repealing the existing section.

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

6 Section 1. K.S.A. 2019 Supp. 39-981 is hereby amended to read as
7 follows: 39-981. (a) As used in this section:

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

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

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

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

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

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

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

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

36 (2) be informed of the proper procedures for reporting complaints, as

1 outlined by the Kansas department for aging and disability services;

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

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

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

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

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

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

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

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

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

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

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

43 (i) Each adult care home shall post a conspicuous notice at the

1 entrance to the adult care home and each resident's room stating that the
2 rooms of some residents may be monitored electronically by or on behalf
3 of the room's resident or residents.

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

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

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

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

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

19 (4) who may request authorized electronic monitoring;

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

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

23 (A) Prohibiting video recording;

24 (B) prohibiting audio recording;

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

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

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

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

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

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

1 on such tape or recording, unless:

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

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

7 ~~(1)~~ (1) A person is prohibited from knowingly hindering, obstructing,
8 tampering with or destroying, without the consent of the resident or
9 individual who authorized electronic monitoring.:

10 (A) An electronic monitoring device installed in a resident's room in
11 accordance with this section.; *or*

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

16 ~~(2)~~(A) Any person who violates this subsection shall be guilty of a
17 class B nonperson misdemeanor, *except as provided in subsections (m)(2)*
18 *(B) and (m)(2)(C).*

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

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

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

28 Sec. 2. K.S.A. 2019 Supp. 39-981 is hereby repealed.

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