

SESSION OF 2018

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2232**

As Amended by Senate Committee on Public  
Health and Welfare

**Brief\***

HB 2232, as amended, would allow a resident of an adult care home, or a resident's guardian or legal representative, to conduct authorized electronic monitoring (monitoring) in the resident's room subject to requirements set out in the bill. The bill would define applicable terms; provide protections for the residents and adult care homes; establish guidelines for monitoring, including the required notification and the content of the notification form; address the responsibilities of an adult care home and a resident or a resident's guardian or legal representative; address the privacy rights of a resident and any other person sharing a room with the resident; address the terms under which a tape or recording could be admitted into evidence or considered during any proceeding; establish penalties for violations related to permissible electronic monitoring; and require the Secretary for Aging and Disability Services (Secretary) to adopt rules and regulations necessary to administer the provisions of the bill.

Additional bill details follow.

***Definitions***

The bill would define the following terms:

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “Adult care home” to have the same meaning as in the Adult Care Home Licensure Act, and amendments thereto;
- “Authorized electronic monitoring” to mean the placement of one or more electronic monitoring devices (device) in the room of an adult care home resident and making recordings with such devices after notifying the adult care home of the resident’s intent to conduct electronic monitoring;
- “Electronic monitoring device” to mean a surveillance instrument used to broadcast or record activity or sound occurring in a room, but not to intercept wire or electronic communications; and
- “Resident’s room” to mean a room in an adult care home that is used as a resident’s private living quarters.

### ***Resident’s Rights***

A resident would be allowed to conduct monitoring in the resident’s room subject to the requirements outlined in the bill. The bill would prohibit an adult care home from discharging, refusing to admit, or otherwise retaliating against a resident or person based on conducting or consenting to monitoring.

### ***Requirements of Monitoring Notification Form***

A resident, or a resident’s guardian or legal representative, who desires to conduct monitoring would be required to use a form prescribed by the Secretary to notify the adult care home. The form would be maintained in the resident’s file at the adult care home and would require the resident, or the resident’s guardian or legal representative, to:

- Release the adult care home from civil liability for a violation of the resident's privacy rights with regard to the use of the device;
- Be informed of the proper complaint reporting procedures, as outlined by the Kansas Department for Aging and Disability Services (KDADS);
- Choose, if the device is a video surveillance camera, whether the camera will always be unobstructed or will be obstructed in specific circumstances to protect the resident's dignity; and
- Obtain, if the resident resides in a multi-resident room, the consent of the other residents in the room on a form prescribed for this purpose by the Secretary.

An adult care home would be required to provide a copy of the completed form to the resident, any resident or residents with whom the resident shares a room, and the Office of the State Long-Term Care Ombudsman.

### ***Physical Accommodations for Monitoring***

The bill would require an adult care home to make reasonable physical accommodations for monitoring, including:

- Providing a reasonably secure place to mount the device;
- Providing access to power sources for the device;
- Making reasonable accommodations if a resident in a multi-resident room wishes to conduct monitoring but a resident or residents who share the room with the resident wishing to conduct monitoring do not consent to the monitoring,

including offering to move the resident who wishes to conduct monitoring to another shared room that is or becomes available; and

- Making reasonable accommodations if a resident in a multi-resident room wishes to conduct monitoring but another resident who begins residing in the room does not consent to the monitoring, before moving the resident wishing to conduct monitoring.

A resident, or the resident's guardian or legal representative, would be required to pay all costs associated with installing and maintaining a requested device.

## **Consent**

### *New Roommate Consent*

The bill would require a resident who previously conducted monitoring to obtain consent from any new roommates before resuming monitoring. The adult care home would be allowed to turn off the device if the new roommate does not consent to monitoring and the resident conducting monitoring does not remove or disable the device.

### *Withdrawal of Consent*

The bill would allow consent to be withdrawn by a resident, a resident's guardian or legal representative, or any roommate at any time, and the withdrawal of consent would be documented in the resident's clinical record. The adult care home would be allowed to turn off the device if a roommate withdraws consent to monitoring and the resident conducting monitoring does not remove or disable the device.

### ***Posting of Notice and Monitoring in Plain View***

Each adult care home would be required to post a conspicuous notice at the entrance to the adult care home and at the entrance of each resident's room stating the rooms of some residents may be monitored electronically by or on behalf of the room's resident or residents.

An adult care home would be allowed to require a resident, or the resident's guardian or legal representative, to conduct monitoring in plain view.

### ***Form Addressing Monitoring Guidelines***

On or before a person's admission to an adult care home, the person would be required to complete and sign a form prescribed by the Secretary, and such form would be maintained in the person's resident file. The form would state the following:

- That a person who places a device in a resident's room or discloses a recording made on such device may be civilly liable for any unlawful violation of the privacy rights of another person;
- That a resident, or a resident's guardian or legal representative, is entitled to conduct monitoring as authorized in the bill;
- The basic procedures required to request monitoring;
- Who may request monitoring;
- Who may consent to monitoring;
- Restrictions a resident may elect to place on monitoring conducted in the resident's room, including, but not limited to:

- Prohibiting video recording; or
- Prohibiting audio recording;
- Turning off the device or blocking the visual recording component in the following instances: during an exam or procedure administered by a health care professional; while the resident is dressing or bathing; or during a resident's visit with a spiritual adviser, ombudsman, attorney, financial planner, intimate partner, or other visitor; and
- Any other information related to monitoring the Secretary deems necessary or appropriate to include on the form.

### ***Device Requirements***

A device installed or operated pursuant to the bill would be required to comply with the requirements of the National Fire Protection Association 101 Life Safety Code, or other standards determined by the Secretary to have substantially equivalent requirements.

### ***Tape or Recording Requirements***

No court or state agency would be allowed to admit into evidence or consider during any proceeding any tape or recording created using an electronic monitoring device, or take or authorize action based on such tape or recording unless:

- The tape or recording shows the time and date when the event occurred; and
- The contents of the tape or recording have not been edited or artificially enhanced.

### ***Interference with Monitoring and Penalties***

The bill would prohibit a person from knowingly hindering, obstructing, tampering with, or destroying a device installed in a resident's room in accordance with this bill or a video or audio recording obtained in accordance with this bill, without the consent of the resident or individual who authorized the monitoring.

A person violating these provisions would be guilty of a class B nonperson misdemeanor. Such violations done with the intent to commit or conceal the commission of a misdemeanor offense would be a class A nonperson misdemeanor; if done with the intent to commit or conceal the commission of a felony offense, it would be a severity level 8, nonperson felony.

### ***Rules and Regulations Authority***

The Secretary would be required to adopt rules and regulations necessary to administer the provisions of the bill on or before January 1, 2019.

### **Background**

During the 2017 Legislative Session, the bill was introduced by the House Committee on Children and Seniors at the request of Representative Gallagher. In the House Committee hearing, Representative Gallagher, two private citizens, and representatives of Kansas Advocates for Better Care and the Heart of America Chapter of the Alzheimer's Association testified in favor of the bill. The proponents generally stated monitoring would safeguard residents by helping to prevent abuse and alerting family or designated representatives when a resident falls or is experiencing distress, allowing them to notify the adult care home the resident needs attention. The Alzheimer's Association representative also testified the monitoring would be a

conduit to understanding difficult behaviors in dementia and assist in focusing on prevention and safety. The private citizens shared stories of family members and others who experienced abuse and could have benefited from the use of monitoring and told of the difference in care experienced in adult care facilities that allowed monitoring. Written-only proponent testimony was provided by AARP Kansas.

Opponent testimony was provided by a representative of LeadingAge Kansas, who proposed amendments to address the practical, legal, and ethical concerns believed to exist in the bill. The amendments addressed the need for signage outside of a resident's room to provide notification of monitoring; reduced the level of physical accommodations expected of adult care homes to facilitate monitoring; allowed the adult care home to require monitoring be conducted in plain view; addressed the reporting of abuse, neglect, and exploitation; and required the information provided to a resident or the resident's representative include the legal requirement to report abuse, neglect, and exploitation.

Neutral testimony was provided by the Kansas State Long-Term Care Ombudsman and a representative of the Kansas Health Care Association and the Kansas Center for Assisted Living. Those providing neutral testimony generally expressed concern regarding the nature and use of the prescribed consent form, the need for additional signage outside of a resident's room to provide notice of monitoring, how turning off the device would be addressed when a resident is receiving personal care or conducting private business, and the need to further protect a resident's rights to consent and privacy. The Kansas State Long-Term Care Ombudsman also proposed a number of amendments to address concerns. Written-only neutral testimony was provided by the American Civil Liberties Union of Kansas.

The House Committee amended the bill to incorporate the compromise language agreed to by stakeholders who testified during the bill hearing. The amendments would require the form notifying an adult care home of a resident's

or a resident's guardian or legal representative's desire to conduct monitoring provide information on the proper procedures for reporting complaints as outlined by KDADS, and require a copy of the completed form be provided to the resident, any resident or residents with whom the resident shares a room, and the Office of the State Long-Term Care Ombudsman; clarify the level of physical accommodations expected of an adult care home to facilitate monitoring; address consent requirements for any new roommates before a resident may resume monitoring, the withdrawal of consent by any parties involved, and the conditions under which an adult care home may turn off the electronic monitoring device; require the posting of a conspicuous notice of monitoring at the entrance to a resident's room; and allow an adult care home to require the monitoring be conducted in plain view.

In the Senate Committee on Public Health and Welfare hearing on January 18, 2018, proponent testimony was provided by Representative Gallagher; an occupational therapist; and representatives of the Alzheimer's Association, Kansas Advocates for Better Care, and Kansas Health Care Association. Proponents generally stated the use of electronic monitoring can help prevent abuse of patients and alert family or designated representatives when a patient falls or is in distress. Written-only proponent testimony was provided by a private citizen and representatives of AARP Kansas and Comfort Care Homes.

Neutral testimony was provided by a representative of LeadingAge Kansas and the Long-Term Care Ombudsman. Written-only neutral testimony was provided by representatives of KDADS and the Kansas Sentencing Commission.

No opponent testimony was provided.

The Senate Committee amended the bill to require adult care homes to post a conspicuous notice at the entrance of each residents' room stating that the rooms of some residents may be monitored electronically; change the sentencing level

for a person who knowingly hinders, obstructs, tampers with, or destroys a video or audio recording with the intent to commit or conceal the commission of a felony offense from a severity level 4, nonperson felony to a severity level 8, nonperson felony; define "resident's room"; prohibit a court or state agency from admitting into evidence or being considered during any proceeding, a tape or recording created using electronic monitoring device in a resident's room, unless the tape or recording shows the time and date and the contents of the tape or recording have not been edited or artificially enhanced; and require the Secretary to adopt rules and regulations on or by January 1, 2019.

According to the 2017 fiscal note prepared by the Division of the Budget on the bill, as introduced, enactment of the bill would require KDADS to develop rules and regulations regarding electronic monitoring of adult care home residents. KDADS anticipates electronic monitoring would result in additional complaints to the licensing division's complaint hotline requiring an estimated 1.00 new Complaint Intake Specialist FTE position to handle the additional workload, with estimated salary and benefits costs for the position totaling \$69,051 per year and equipment and supplies estimated at \$4,000 per year. The total fiscal effect of enactment of the bill would be \$73,051 per year for KDADS. The estimate for each FY 2018 and FY 2019 would include \$47,483 in federal funds, \$10,958 from agency fee funds, and \$14,610 from the State General Fund. Any fiscal effect associated with the bill was not reflected in *The FY 2018 Governor's Budget Report*.