

**Effective 5/3/2023**

**Superseded 7/1/2024**

**26B-2-236 Monitoring device -- Installation, notice, and consent -- Admission and discharge -- Liability.**

- (1) As used in this section:
  - (a) "Legal representative" means an individual who is legally authorized to make health care decisions on behalf of another individual.
  - (b)
    - (i) "Monitoring device" means:
      - (A) a video surveillance camera; or
      - (B) a microphone or other device that captures audio.
    - (ii) "Monitoring device" does not include:
      - (A) a device that is specifically intended to intercept wire, electronic, or oral communication without notice to or the consent of a party to the communication; or
      - (B) a device that is connected to the Internet or that is set up to transmit data via an electronic communication.
  - (c) "Resident" means an individual who receives health care from a facility.
  - (d) "Room" means a resident's private or shared primary living space.
  - (e) "Roommate" means an individual sharing a room with a resident.
- (2) A resident or the resident's legal representative may operate or install a monitoring device in the resident's room if the resident and the resident's legal representative, if any, unless the resident is incapable of informed consent:
  - (a) notifies the resident's assisted living facility in writing that the resident or the resident's legal representative, if any:
    - (i) intends to operate or install a monitoring device in the resident's room; and
    - (ii) consents to a waiver agreement, if required by an assisted living facility;
  - (b) obtains written consent from each of the resident's roommates, and their legal representative, if any, that specifically states the hours when each roommate consents to the resident or the resident's legal representative operating the monitoring device; and
  - (c) assumes all responsibility for any cost related to installing or operating the monitoring device.
- (3) An assisted living facility shall not be civilly or criminally liable to:
  - (a) a resident or resident's roommate for the operation of a monitoring device consistent with this part; and
  - (b) any person other than the resident or resident's roommate for any claims related to the use or operation of a monitoring device consistent with this part, unless the claim is caused by the acts or omissions of an employee or agent of the assisted living facility.
- (4)
  - (a) An assisted living facility may not deny an individual admission to the facility for the sole reason that the individual or the individual's legal representative requests to install or operate a monitoring device in the individual's room.
  - (b) An assisted living facility may not discharge a resident for the sole reason that the resident or the resident's legal representative requests to install or operate a monitoring device in the individual's room.
  - (c) An assisted living facility may require the resident or the resident's legal representative to place a sign near the entrance of the resident's room that states that the room contains a monitoring device.
- (5) Notwithstanding any other provision of this part, an individual may not, under this part, operate a monitoring device in an assisted living facility without a court order:

- (a) in secret; or
- (b) with an intent to intercept a wire, electronic, or oral communication without notice to or the consent of a party to the communication.