

Representative Timothy D. Hawkes proposes the following substitute bill:

MONITORING EQUIPMENT IN A CARE FACILITY

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill adds provisions to the Health Care Facility Licensing and Inspection Act related to monitoring devices installed in assisted living facilities.

Highlighted Provisions:

This bill:

- ▶ allows a resident of an assisted living facility to install a video or audio monitoring device in the resident's room under certain conditions;
- ▶ prohibits an assisted living facility from denying an individual admission to the facility or discharging a resident from the facility solely because the individual or resident wants to operate or install a monitoring device in the individual's or resident's room; and
- ▶ provides certain liability protections related to operating or installing a monitoring device in a resident's room.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 ENACTS:

27 **26-21-301**, Utah Code Annotated 1953

28 **26-21-302**, Utah Code Annotated 1953

29 **26-21-303**, Utah Code Annotated 1953

30 **26-21-304**, Utah Code Annotated 1953

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32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **26-21-301** is enacted to read:

34 **Part 3. Assisted Living Facility Surveillance Act**

35 **26-21-301. Title.**

36 This part is known as the "Assisted Living Facility Surveillance Act."

37 Section 2. Section **26-21-302** is enacted to read:

38 **26-21-302. Definitions.**

39 As used in this part:

40 (1) "Facility" means an assisted living facility.

41 (2) "Legal representative" means an individual who is legally authorized to make
42 health care decisions on behalf of another individual.

43 (3) (a) "Monitoring device" means:

44 (i) a video surveillance camera; or

45 (ii) a microphone or other device that captures audio.

46 (b) "Monitoring device" does not include:

47 (i) a device that is specifically intended to intercept wire, electronic, or oral
48 communication without notice to or the consent of a party to the communication; or

49 (ii) a device that is connected to the Internet or that is set up to transmit data via an
50 electronic communication.

51 (4) "Resident" means an individual who receives health care from a facility.

52 (5) "Room" means a resident's private or shared primary living space.

53 (6) "Roommate" means an individual sharing a room with a resident.

54 Section 3. Section **26-21-303** is enacted to read:

55 **26-21-303. Monitoring device -- Installation, notice, and consent.**

56 (1) A resident or the resident's legal representative may operate or install a monitoring

57 device in the resident's room if the resident ~~is~~ **and** ~~the~~ the resident's legal representative
57a ~~is~~ , if any, unless the resident is incapable of informed consent ~~is~~ :
58 (a) notifies the resident's facility in writing ~~is~~ [:
59 ~~(i)] ~~is~~ that the resident or the resident's legal representative, if any:~~
60 ~~is~~ [(A)] (i) ~~is~~ intends to operate or install a monitoring device in the resident's room; and
61 ~~is~~ [(B)] (ii) ~~is~~ consents to a waiver agreement, if required by a facility;
62 ~~is~~ [(ii) of the specific location where the resident or the resident's legal representative will
63 operate or install the monitoring device; and
64 ~~(iii) of the technical specifications and capabilities of the monitoring device;] ~~is~~~~
65 (b) obtains written consent from each of the resident's roommates, and their legal
66 representative, if any, that specifically states the hours when each roommate consents to the
67 resident or the resident's legal representative operating the monitoring device; and
68 (c) assumes all responsibility for any cost related to installing or operating the
69 monitoring device.

70 (2) A facility shall not be civilly or criminally liable to:
71 (a) a resident or resident's roommate for the operation of a monitoring device
72 consistent with this part; and
73 (b) any person other than the resident or resident's roommate for any claims related to
74 the use or operation of a monitoring device consistent with this part, unless the claim is caused
75 by the acts or omissions of an employee or agent of the facility.

76 (3) Notwithstanding any other provision of this part, an individual may not, under this
77 part, operate a monitoring device in a facility without a court order:
78 (a) in secret; or
79 (b) with an intent to intercept a wire, electronic, or oral communication without notice
80 to or the consent of a party to the communication.

81 Section 4. Section **26-21-304** is enacted to read:
82 **26-21-304. Monitoring device -- Facility admission, patient discharge, and posted**
83 **notice.**

84 (1) A facility may not deny an individual admission to the facility for the sole reason
85 that the individual or the individual's legal representative requests to install or operate a
86 monitoring device in the individual's room.
87 (2) A facility may not discharge a resident for the sole reason that the resident or the

88 resident's legal representative requests to install or operate a monitoring device in the
89 individual's room.

90 (3) A facility may require the resident or the resident's legal representative to place a
91 sign near the entrance of the resident's room that states that the room contains a monitoring
92 device.