
A BILL FOR AN ACT

RELATING TO ADULT CARE HOMES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 321, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:

4 "§321- Adult residential care homes; expanded adult
5 residential care homes; electronic monitoring. (a) A resident
6 of an adult residential care home may use electronic monitoring
7 in the resident's room pursuant to this section.

8 (b) An adult residential care home shall not discharge a
9 resident, retaliate against a resident, or refuse to admit a
10 person based on a request to conduct electronic monitoring.

11 (c) A resident, the resident's guardian, or the resident's
12 legal representative who wishes to conduct electronic monitoring
13 shall notify the adult residential care home on a form
14 prescribed by the director of health. The form shall be
15 maintained in the resident's file at the adult residential care
16 home and shall require the resident, resident's guardian, or
17 resident's legal representative to:



- 1 (1) Release the adult residential care home from civil
2 liability for a violation of the resident's privacy
3 rights in connection with the use of the electronic
4 monitoring device;
- 5 (2) Be informed of the proper procedures for reporting
6 complaints as required by the department of health;
- 7 (3) Choose whether the camera will always be unobstructed,
8 obstructed, or disabled in specified circumstances to
9 protect the dignity of the resident; and
- 10 (4) Obtain the consent of other residents in the room on a
11 form prescribed for this purpose by the director of
12 health if the resident resides in a multi-resident
13 room.
- 14 (d) The adult residential care home shall provide a copy
15 of the completed form to the resident, any resident with whom
16 the resident shares a room, and the director of health.
- 17 (e) An adult residential care home shall make reasonable
18 accommodations for electronic monitoring, including:
- 19 (1) Providing a secure place to mount or install the
20 electronic monitoring device;



1 (2) Providing a power source for the electronic monitoring
2 device; and

3 (3) Offering to move residents to other rooms if all
4 residents in a room do not consent to the electronic
5 monitoring.

6 (f) Any resident who has previously conducted electronic
7 monitoring shall obtain consent from any new roommate before the
8 resident may continue electronic monitoring. If any new
9 roommate does not consent to electronic monitoring and the
10 resident conducting the electronic monitoring does not remove or
11 disable the electronic monitoring device, the adult residential
12 care home shall turn off the electronic monitoring device.

13 (g) Consent may be withdrawn by the resident, resident's
14 guardian, resident's legal representative, or any roommate at
15 any time, and the withdrawal of consent shall be documented in
16 the resident's clinical record. If a roommate withdraws consent
17 and the resident conducting the electronic monitoring does not
18 remove or disable the electronic monitoring device, the facility
19 shall turn off the electronic monitoring device.



1 (h) The resident, resident's guardian, or resident's legal
2 representative shall pay all costs associated with installing
3 and maintaining an electronic monitoring device.

4 (i) Each adult residential care home that has at least one
5 active electronic monitoring device shall post a conspicuous
6 notice at the entrance to the adult residential care home and
7 the entrance of each resident's room that has an active
8 electronic monitoring device. The notice shall state that
9 electronic monitoring is in effect by or on behalf of one or
10 more residents.

11 (j) The adult residential care home may require that all
12 electronic monitoring be conducted in plain view.

13 (k) On or before a person's admission to an adult
14 residential care home, the person shall complete and sign a form
15 prescribed by the director of health regarding electronic
16 monitoring. The form shall be maintained in the person's
17 resident file at the adult residential care home and shall state
18 the following:

19 (1) That a person who places an electronic monitoring
20 device in a resident's room or discloses a recording
21 made by the electronic monitoring device may be



- 1 civilly liable for any unlawful violation of the
2 privacy rights of another person;
- 3 (2) That a resident, the resident's guardian, or
4 resident's legal representative, is entitled to
5 conduct electronic monitoring;
- 6 (3) The basic procedures required to request electronic
7 monitoring;
- 8 (4) Persons who may request electronic monitoring;
- 9 (5) Persons who may consent to electronic monitoring;
- 10 (6) Restrictions that a resident may elect to place on
11 electronic monitoring conducted in the resident's room
12 include:
- 13 (A) Prohibiting video recording;
- 14 (B) Prohibiting audio recording; and
- 15 (C) Turning off the electronic monitoring device or
16 blocking the visual recording component of the
17 electronic monitoring device while a healthcare
18 provider or any other person is in the room or
19 during any time; and



1 (7) Any other information related to electronic monitoring
2 that the director of health deems necessary or
3 appropriate.

4 (1) Any electronic monitoring device installed or operated
5 pursuant to this section shall comply with the requirements of
6 the National Fire Protection Association 101 Life Safety Code,
7 or other standard determined by the director of health as having
8 substantially equivalent requirements.

9 (m) No court or state agency shall admit into evidence,
10 consider during any proceeding, or take or authorize any action
11 based on a recording created pursuant to this section unless:

12 (1) The recording shows the time and date when the events
13 shown on the recording occurred, if the recording is a
14 video recording; and

15 (2) The contents of the recording have not been edited or
16 artificially enhanced.

17 (n) No person shall knowingly hinder, obstruct, tamper
18 with, or destroy, without the consent of the resident or
19 individual who authorized electronic monitoring, an electronic
20 monitoring device installed or recording made in accordance with
21 this section.



1 (o) Any person who violates this section shall be guilty
2 of a misdemeanor; provided that any person who violates this
3 section with the intent to commit or conceal the commission of
4 an offense under title 37 shall be guilty of a class C felony.

5 (p) The department may adopt rules in accordance with
6 chapter 91 to implement this section.

7 (q) For purposes of this section:

8 "Adult residential care home" shall include any adult
9 residential care home licensed pursuant to section 321-15.6 and
10 any expanded adult residential care homes licensed pursuant to
11 section 321-15.62.

12 "Electronic monitoring" means the authorized placement of
13 one or more electronic monitoring devices in the room of an
14 adult residential care home resident and making recordings with
15 the electronic monitoring devices after notifying the adult
16 residential care home of the resident's intent to conduct
17 electronic monitoring.

18 "Electronic monitoring device" means a surveillance
19 instrument used to broadcast or record activity or sound
20 occurring in a room, including a video surveillance camera or an
21 audio device designed to acquire communications or other sounds



1 occurring in the room, but not to intercept wire or electronic
2 communications.

3 "Resident" means a person residing in an adult residential
4 care home.

5 "Resident's room" means a room in an adult residential care
6 home that is used as a resident's private living quarters."

7 SECTION 2. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 3. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.

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H.B. NO. 736

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By the

Speaker

Re: McT...

JAN 22 2019



H.B. NO. 736

Report Title:

Adult Residential Care Home; Expanded Adult Residential Care Home; Electronic Monitoring

Description:

Authorizes residents of adult residential care homes and expanded adult residential care home to install electronic monitoring of their own rooms.

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