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

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

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

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

(c) A resident, the resident's guardian, or the resident's legal representative who wishes to conduct electronic monitoring shall notify the adult residential care home on a form prescribed by the director of health. The form shall be maintained in the resident's file at the adult residential care home and shall require the resident, resident's guardian, or resident's legal representative to:
(1) Release the adult residential care home from civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) Be informed of the proper procedures for reporting complaints as required by the department of health;

(3) Choose whether the camera will always be unobstructed, obstructed, or disabled in specified circumstances to protect the dignity of the resident; and

(4) Obtain the consent of other residents in the room on a form prescribed for this purpose by the director of health if the resident resides in a multi-resident room.

(d) The adult residential care home shall provide a copy of the completed form to the resident, any resident with whom the resident shares a room, and the director of health.

(e) An adult residential care home shall make reasonable accommodations for electronic monitoring, including:

(1) Providing a secure place to mount or install the electronic monitoring device;
(2) Providing a power source for the electronic monitoring device; and

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

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

(g) Consent may be withdrawn by the resident, resident's guardian, resident's legal representative, or any roommate at any time, and the withdrawal of consent shall be documented in the resident's clinical record. If a roommate withdraws consent and the resident conducting the electronic monitoring does not remove or disable the electronic monitoring device, the facility shall turn off the electronic monitoring device.
(h) The resident, resident's guardian, or resident's legal representative shall pay all costs associated with installing and maintaining an electronic monitoring device.

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

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

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

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

(2) That a resident, the resident's guardian, or resident's legal representative, is entitled to conduct electronic monitoring;

(3) The basic procedures required to request electronic monitoring;

(4) Persons who may request electronic monitoring;

(5) Persons who may consent to electronic monitoring;

(6) Restrictions that a resident may elect to place on electronic monitoring conducted in the resident's room include:

(A) Prohibiting video recording;

(B) Prohibiting audio recording; and

(C) Turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device while a healthcare provider or any other person is in the room or during any time; and
(7) Any other information related to electronic monitoring that the director of health deems necessary or appropriate.

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

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

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

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

(n) No person shall knowingly hinder, obstruct, tamper with, or destroy, without the consent of the resident or individual who authorized electronic monitoring, an electronic monitoring device installed or recording made in accordance with this section.
(o) Any person who violates this section shall be guilty of a misdemeanor; provided that any person who violates this section with the intent to commit or conceal the commission of an offense under title 37 shall be guilty of a class C felony.

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

(q) For purposes of this section:

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

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

"Electronic monitoring device" means a surveillance instrument used to broadcast or record activity or sound occurring in a room, including a video surveillance camera or an audio device designed to acquire communications or other sounds.
occurring in the room, but not to intercept wire or electronic communications.

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

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

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

SECTION 3. New statutory material is underscored.

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

INTRODUCED BY:
H.B. NO. 736

[Handwritten signatures]

JAN 22 2019
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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