
**Health Care & Wellness
Committee**

HB 2173

Brief Description: Authorizing residents to install electronic monitoring.

Sponsors: Representatives Schual-Berke and Moeller.

Brief Summary of Bill

- Authorizes residents of long-term care facilities to install and use an electronic monitoring device in their sleeping quarters, at their own expense.
- Requires residents to provide notice to facilities and obtain consent of roommates.
- Requires facilities to post notices and provide reasonable accommodation to residents.
- Authorizes the Department of Social and Health Services to assess administrative penalties.

Hearing Date: 2/26/07

Staff: Jasmine Vasavada (786-5793); and Dave Knutson (786-7146).

Background:

A resident of a long-term care facility such as a nursing home may seek to install video cameras or other means of electronic surveillance in his or her sleeping quarters, to help monitor the quality of care the resident is receiving. In Washington, there is no state statute allowing for the audio or video monitoring of a resident's room in a long-term care facility. In most cases, no state or federal privacy law would operate to prohibit such monitoring. However, as a matter of policy, some long-term care facilities may seek to prohibit residents from installing surveillance devices. At least two states, Texas and New Mexico, have enacted statutes explicitly authorizing nursing home residents seeking to install electronic monitoring.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the Department of Social and Health Services' (DSHS) broad authority to regulate the facilities it licenses, the DSHS has adopted regulations that require boarding homes to ensure that resident-initiated monitoring complies with certain limitations. These regulations require a boarding home resident initiating such monitoring to: (1) obtain written consent of any roommates; (2) comply with state Privacy Act limitations; (3) identify a threat to his or her safety or health, or the safety of his or her possessions; and (4) agree with the facility on a specific duration of time in which the monitoring may take place. As a matter of practice, the DSHS has extended these requirements to nursing homes and adult family homes as well.

Washington law would not directly prohibit overt surveillance conducted by a resident in a long-term care facility. The state Privacy Act generally prohibits the interception or recording of any private communication or conversation without the consent of all parties to the communication or conversation. If both parties have notice that the communication is being recorded or intercepted, the recording or interception would not be considered private and would not be prohibited by the Privacy Act (Act).

The Act does not regulate the interception or recording of silent video images without an audio or other communication component. However, in certain instances such a recording would be prohibited under the Washington voyeurism law, which establishes felony criminal liability for those who photograph, for the purpose of arousing or gratifying sexual desire, a person in a location where that person has a "reasonable expectation of privacy." The Washington courts have interpreted this to criminalize videotaping of a clothed person, even in a public place, if it is for voyeuristic purposes. Thus, monitoring for voyeuristic purposes would be prohibited anywhere, including in a long-term care facility.

Even where the Act does not apply, the Washington courts may find certain monitoring is illegal when it invades a person's privacy. The legal test for determining whether an invasion of privacy has occurred is whether the intrusion results in a disclosure of intimate details of a person's life that are of the kind one normally keeps entirely private or at most reveals only to family and close personal friends. Thus, secretly videotaping a person's activities in his or her own home may give rise to a legal claim for invasion of privacy. A Washington court, discussing a voyeurism case, has found that a nursing home serves as a home to its residents, who may reasonably expect to be safe from casual or hostile intrusion in their homes. Although a court will consider the specific circumstances of a case, many activities occurring in common areas or semi-private areas of an institution would fail the test for an invasion of privacy, because they occur in plain view of acquaintances or strangers.

Summary of Bill:

"Electronic monitoring" is defined as the recording or transmission of a series of photographs, a motion picture film, a videotape, a series of digital images, or any other recording or transmission of images, whether or not it includes an audio component, but does not include images captured by a still camera.

Residents of nursing homes, boarding homes, and adult family homes are authorized to install and conduct electronic monitoring. If a resident is incompetent, the resident's attorney in fact, guardian, or other legal representative may authorize electronic monitoring on behalf of the resident.

A resident seeking to conduct authorized electronic monitoring must follow certain procedures. The resident must obtain consent in writing from any roommate who shares the same sleeping quarters and must limit monitoring to any conditions made by a roommate. The resident must provide written notice to the facility, and pay for all maintenance and installation costs of the monitoring.

The long-term care facility must permit a resident to install such monitoring and provide reasonable physical accommodation to facilitate the installation and use of the electronic monitoring device. Facilities must inform new residents and current residents of their right to conduct electronic monitoring with a form developed by the DSHS. A facility may not discriminate against residents who seek to install monitoring by refusing to admit them into residency or removing them from residency in retaliation for a request to install or actual implementation of monitoring. Facilities must provide notice to visitors that monitoring may be conducted on the premises, at both the main entrance and outside individual rooms where monitoring is being conducted. Failure to comply with these provisions may subject the facility to an administrative penalty, assessed by the DSHS.

A tape or other recording created in compliance with these provisions is admissible as evidence in a civil or criminal court action or administrative proceeding.

Electronic monitoring conducted in compliance with these provisions is exempted from Privacy Act restrictions.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.