

SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 456

As Amended by Senate Committee on Public
Health and Welfare

Brief*

SB 456, as amended, would allow an adult care home resident, or the resident's guardian or legal representative, to conduct authorized electronic monitoring in the resident's room. Specific bill details follow.

Definitions

The bill would establish the following definitions:

- “Authorized electronic monitoring” would mean the placement of one or more electronic monitoring devices in the room of an adult care home resident and making recordings with such devices after notifying the adult care home of the resident's intent to conduct electronic monitoring; and
- “Electronic monitoring device” would mean 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.

Additionally, the term “adult care home” would have the same meaning as prescribed in KSA 39-923 and amendments thereto.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Requirements of the Resident or Resident's Guardian or Legal Representative

The bill would require a resident to be permitted to conduct authorized electronic monitoring in the resident's room and would establish the guidelines for authorized electronic monitoring.

Notification to the Adult Care Home

The resident or the resident's guardian or legal representative who wishes to conduct authorized electronic monitoring would be required to notify the adult care home on a form prescribed by the Secretary for Aging and Disability Services (Secretary). The form would then be placed in the resident's file at the adult care home and would require the resident, or the resident's guardian or legal representative, to:

- Release the adult care home from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;
- If the electronic monitoring device is a video surveillance camera, choose whether the camera will always be unobstructed or will be obstructed in specified circumstances to protect the dignity of the resident; and
- If the resident resides in a multi-resident room, obtain the consent of other residents in the room on a form prescribed for the purpose by the Secretary.

Payment of Costs

The bill would require a resident or the resident's guardian or legal representative to pay all costs associated

with installing and maintaining the electronic monitoring device.

Requirements Prior to Admission to an Adult Care Home

The bill would require, on or before a person's admission to an adult care home, the person complete and sign a form prescribed by the Secretary, to be maintained in the person's resident file, which states:

- A person who places an electronic monitoring device in a resident's room or discloses a recording made by such device may be civilly liable for any unlawful violation of the privacy rights of another person;
- A resident, or such resident's guardian or legal representative, is entitled to conduct authorized electronic monitoring;
- The basic procedures required to request authorized electronic monitoring;
- Who may request authorized electronic monitoring;
- Who may consent to authorized electronic monitoring;
- Restrictions that a resident may elect to place on electronic monitoring conducted in the resident's room, including, but not limited to, prohibiting video recording; prohibiting audio recording; turning off the device or blocking the visual recording component of the device during an exam or procedure administered by a healthcare professional; turning off the device or blocking the visual recording component of the device while the resident is dressing or bathing; or turning off the device or blocking the visual recording component of the device during a resident's visit with a spiritual

advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor; and

- Any other information related to authorized electronic monitoring the Secretary deems necessary or appropriate to include on the form.

Requirements of the Adult Care Home

An adult care home would be prohibited from discharging or refusing to admit a resident or person or otherwise retaliate against a resident or person based on conducting or consenting to authorized electronic monitoring. The adult care home would be required to post a conspicuous notice at the entrance of the adult care home stating the rooms of some residents may be monitored electronically by or on behalf of the room's resident or residents.

An adult care home would be required to make reasonable physical accommodations for authorized electronic monitoring, including:

- Providing a reasonably secure place to mount the electronic monitoring device;
- Providing access to power sources for the electronic monitoring device;
- Making reasonable accommodations and exhausting all reasonable options if a resident in a multi-resident room wishes to conduct electronic monitoring and the resident or residents with whom the resident shares the room do not consent to the monitoring, including offering to move the resident who wishes to conduct electronic monitoring to another shared room which is available or becomes available; and
- Making reasonable accommodations and exhausting all reasonable options if a resident

wishes to conduct electronic monitoring and another resident begins residing in the multi-resident room who does not consent to the monitoring before moving the resident wishing to conduct electronic monitoring.

Device Requirements

The bill would require any electronic monitoring device installed or operated under the bill to comply with the requirements of the National Fire Protection Association 101 Life Safety Code, or other standards determined by the Secretary as having substantially equivalent requirements.

Penalties for Violations of the Bill

The bill would prohibit a person from knowingly hindering, obstructing, tampering with or destroying, without the consent of the resident or individual who authorized electronic monitoring, an electronic monitoring device installed in a resident's room or a video or audio recording of the device and would make such a violation a class B nonperson misdemeanor. Any violation with the intent to commit or conceal the commission of a misdemeanor offense would be a class A nonperson misdemeanor, and an intent to commit or conceal the commission of a felony offense would be a severity level 4, nonperson felony.

Rules and Regulations

The Secretary would be required to adopt rules and regulations as deemed necessary to administer provisions of the bill.

Background

At the Senate Committee on Public Health and Welfare hearing, a private citizen spoke in favor of the bill, recounting her personal experience with nursing home facilities and her desire for those facilities to allow electronic monitoring in resident rooms. Written proponent testimony was provided by representatives of AARP Kansas and the Alzheimer's Association of Central and Western Kansas.

Opponent testimony was provided by a representative of Kansas Advocates for Better Care, who stated the equipment requirements outlined in the bill would cost residents and their families far more than other less expensive and less intrusive alternatives already available. The representative also noted the bill provides no funds to enable Medicaid participants to purchase and install electronic monitoring devices, and could create civil liability for residents and their families who do not conspicuously post notice of the electronic monitoring device to the resident's room. Written opponent testimony was provided by the Kansas State Long-Term Care Ombudsman.

Neutral testimony was provided by a representative of LeadingAge Kansas, who stated the bill does a fine job of establishing requirements for electronic monitoring in adult care homes, but could go further in protecting resident rights and safety. The representative offered various amendments to maximize the protection of resident rights and safety. Neutral written testimony was provided by the Kansas Department for Aging and Disability Services (KDADS) and a representative of the Kansas Health Care Association and the Kansas Center for Assisted Living.

The Senate Committee amended the bill to update the definitions for "authorized electronic monitoring" and "electronic monitoring device," clarify the requirements of an adult care home and further state the requirements for reasonable physical accommodations for electronic monitoring, clarify conspicuous notice, modify the requirements for the form signed on or before a person's

admission to an adult care home and the disclosures included in the form, state the safety requirements for an electronic monitoring device, and establish penalties for violations.

According to the fiscal note prepared by the Division of the Budget on the original bill, enactment of the bill would require KDADS to develop rules and regulations regarding electronic monitoring and could result in additional complaints to the licensing division's complaint hotline. KDADS estimates the additional workload could be handled by 1.00 Complaint Intake Specialist FTE position. The salary and benefits for the position would total \$69,051 per year, with equipment and supplies estimated at \$4,000 per year. The funding for the new position would include \$14,610 from the State General Fund, \$10,958 from the agency fee funds, and \$47,483 from federal funds. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.