

2020 South Dakota Legislature
House Bill 1056

AMENDMENT 1056C FOR THE HOUSE HEALTH AND HUMAN SERVICES BILL

1 **An Act to authorize video monitoring of residents in assisted living centers and**
2 **nursing facilities.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That a NEW SECTION be added:**

5 **34-12I-1. Definitions.**

6 Terms as used in this chapter mean:

7 (1) "Assisted living center," any institution, rest home, boarding home, place, building,
8 or agency, which is maintained and operated to provide personal care and services,
9 beyond food, shelter, and laundry;

10 (2) "Authorized representative," the legal guardian of a resident, acting under a court
11 order that specifically authorizes the guardian to consent to video monitoring of
12 the resident, or the agent of a resident, acting under a durable power of attorney
13 that specifically authorizes the agent to consent to video monitoring of the
14 resident;

15 (3) "Decision-making capacity," the ability to understand, to a reasonable extent, the
16 nature of and the risks and benefits of video monitoring, and to make and
17 communicate, with reasonable accommodation if necessary, a decision regarding
18 video monitoring;

19 (4) "Facility," an assisted living center or a nursing facility;

20 (5) "Nursing facility," any entity that is maintained and operated for the express or
21 implied purpose of providing care to one or more persons, whether for
22 consideration or not, who are not acutely ill but require nursing care and related
23 medical services of such complexity as to require professional nursing care under
24 the direction of a physician, twenty-four hours per day, or an entity that is
25 maintained and operated for the express or implied purpose of providing care to

- 1 one or more persons, whether for consideration or not, who do not require the
2 degree of care and treatment that a hospital is designed to provide, but who
3 because of their mental or physical condition require medical care and health
4 services that can be made available to them only through institutional facilities;
5 (6) "Resident," a person who is at least eighteen years of age and resides in a facility;
6 and
7 (7) "Video monitoring device," a camera or other device, which captures, records or
8 broadcasts video and which is placed in a resident's room and used to monitor the
9 resident or activities in the room.

10 **Section 2. That a NEW SECTION be added:**

11 **34-12I-2. Consent form--Submission to facility.**

12 Before initiating video monitoring, a resident shall complete and submit to the
13 facility a notice and consent form that meets the requirements of § 34-12I-4. If the
14 resident lacks decision-making capacity, as determined by a physician, the form may be
15 completed and submitted by an authorized representative of the resident.

16 **Section 3. That a NEW SECTION be added:**

17 **34-12I-3. Roommate--Consent--Refusal--Restrictions--Relocation.**

18 If a resident has a roommate, the resident may not conduct video monitoring
19 unless the roommate has provided written consent. If the roommate lacks decision-
20 making capacity, as determined by a physician, the consent may be provided by an
21 authorized representative of the roommate.

22 The roommate may refuse or withdraw consent to video monitoring. If consent is
23 refused, the resident may not conduct video monitoring and if consent is withdrawn, the
24 resident shall remove any video monitoring device from the room. If the resident fails to
25 remove the video monitoring device, the facility shall remove the device.

26 The roommate may impose restrictions on the placement and operation of the
27 resident's video monitoring device and on the dissemination and use of any data produced
28 by the device. The restrictions must be included with the resident's notice and consent
29 form, in accordance with § 34-12I-4.

30 The resident shall comply with any restrictions imposed by a roommate. Upon
31 being notified by a roommate and determining that the resident is not in compliance with
32 any such restriction, the facility shall remove the video monitoring device from the room.

1 If the roommate refuses to consent, the facility shall, upon the written request of
2 the resident, relocate the resident to another room, as soon as circumstances permit. The
3 facility is not required to provide the resident with a single room, unless the resident
4 agrees to pay the increased charges.

5 **Section 4. That a NEW SECTION be added:**

6 **34-12I-4. Consent form--Content.**

7 The notice and consent form must include:

- 8 (1) A statement affirming that the resident consents to video monitoring and assumes
9 full responsibility for implementing any restrictions imposed on the placement and
10 use of the video monitoring device and on the dissemination and use of any data
11 produced by the device;
- 12 (2) If the resident has a roommate, a statement affirming that the roommate, subject
13 to any noted restrictions, consents to video monitoring by the resident and to the
14 dissemination and use of any data produced by the device;
- 15 (3) A description of the video monitoring device, including the brand name and model
16 number, and the installation and operating requirements;
- 17 (4) Restrictions that the resident or the roommate impose on the placement and use
18 of the video monitoring device, including:
- 19 (a) Prohibitions on video recording;
- 20 (b) Prohibitions on broadcasting video recordings;
- 21 (c) Requiring that the video monitoring device be turned off or blocked during
22 an examination or procedure by a health care provider;
- 23 (d) Requiring that the video monitoring device be turned off or blocked while
24 dressing, bathing, or personal care is being performed; and
- 25 (e) Requiring that the video monitoring device be turned off or blocked during
26 a visit with an attorney, financial planner, intimate partner, ombudsman,
27 spiritual adviser, or other visitor;
- 28 (5) A statement of the circumstances under which a video recording may be
29 disseminated;
- 30 (6) A section for documenting the withdrawal of consent by the resident or a
31 roommate;
- 32 (7) The signature of the resident and the date of signing; and
- 33 (8) If the resident has a roommate, the signature of the roommate and the date of
34 signing.

1 The resident or a roommate may amend the information contained in the notice
2 and consent form. Any amendment must be dated, signed, and submitted to the facility.

3 If the notice and consent form or an amendment to the form is signed by an
4 authorized representative, it must include a physician's statement verifying that the
5 person, on whose behalf the authorized representative is acting, lacks decision-making
6 capacity, and a copy of the guardianship order or power of attorney granting the
7 authorized representative authority to consent to video monitoring.

8 Upon receiving a completed notice and consent form, or any amendment to the
9 form, the facility shall place the form in the resident's file and provide a copy to the
10 resident or an authorized representative of the resident, and to the resident's roommate
11 or an authorized representative of the roommate.

12 The notice and consent form, or an amendment thereto, is not effective until it has
13 been received by the facility.

14 **Section 5. That a NEW SECTION be added:**

15 **34-12I-5. Cost--Liability.**

16 The resident is liable for any costs associated with the installation, operation,
17 maintenance, and removal of the video monitoring device, except that the facility may not
18 impose a fee on the resident to cover the cost of electricity for operating the device.

19 **Section 6. That a NEW SECTION be added:**

20 **34-12I-6. Connection to internet--Options--Conditions.**

21 A resident may not use a facility's local area network to connect the video
22 monitoring device to the internet, unless the facility provides written consent to the
23 resident. A facility that consents to a resident's use of the network may impose conditions
24 on the use to prevent a data breach and to limit the consumption of available bandwidth.

25 If a facility does not consent to a resident's use of the network, the resident may
26 arrange for access to the internet through an internet service provider. The facility may
27 impose conditions on the installation of any wire, cable, or other technologies, required
28 for internet access to:

- 29 (1) Prevent damage to the facility;
30 (2) Avoid the creation of a safety hazard; or
31 (3) Avoid the violation of any applicable building or electrical code.

32 **Section 7. That a NEW SECTION be added:**

1 **34-12I-7. Video monitoring device--Placement--Conditions.**

2 The resident shall place the video monitoring device in a conspicuously visible
3 location in the resident's room. The facility may impose conditions on the placement of
4 the device to:

- 5 (1) Prevent damage to the facility;
6 (2) Avoid the creation of a safety hazard; or
7 (3) Avoid the violation of any applicable building or electrical code.

8 **Section 8. That a NEW SECTION be added:**

9 **34-12I-8. Audio monitoring device--Use--Penalty.**

10 Any person who places or operates an audio monitoring device in a resident's room
11 is guilty of a Class 1 misdemeanor.

12 A facility is not civilly or criminally liable for any violation of a person's right to
13 privacy arising out of the use of an audio monitoring device, except to the extent the
14 violation was caused by the facility's intentional violation of this Act.

15 For purposes of this section, an "audio monitoring device," means a device that is
16 designed to capture, record, or broadcast audio and when placed in a resident's room is
17 used to monitor the resident's conversations or other sounds in the room.

18 **Section 9. That a NEW SECTION be added:**

19 **34-12I-9. Removal of device--Authority.**

20 A facility may deactivate and remove any video monitoring device that is installed,
21 placed, operated, or used in violation of this Act or in violation of any condition imposed
22 in accordance with this Act.

23 **Section 10. That a NEW SECTION be added:**

24 **34-12I-10. Responsibility of resident--Facility.**

25 A resident is responsible for the installation, operation, maintenance, and removal
26 of the video monitoring device. Except as otherwise provided in this Act, a facility has no
27 duty to perform any act or incur any cost related to the installation, operation,
28 maintenance, or removal of a video monitoring device, or the implementation or
29 enforcement of any restriction imposed by or in accordance with this Act.

30 **Section 11. That a NEW SECTION be added:**

1 **34-12I-11. Notice.**

2 If a resident is conducting video monitoring, the facility shall post conspicuous
3 signage at the entrance to the resident's room indicating that the room is being monitored
4 by means of a video monitoring device.

5 **Section 12. That a NEW SECTION be added:**

6 **34-12I-12. Destruction prohibited--Violation as misdemeanor.**

7 Except as otherwise provided in this Act, a person may not intentionally remove,
8 hamper, obstruct, tamper with, or destroy a video monitoring device or a video recording
9 produced by such device, without the permission of the resident. A violation of this section
10 is a Class 1 misdemeanor.

11 **Section 13. That a NEW SECTION be added:**

12 **34-12I-13. Access and dissemination--Violation as misdemeanor.**

13 Except as otherwise provided in this Act, a person may not access or disseminate
14 a recording produced by a video monitoring device, without the written consent of the
15 resident. A violation of this section is a Class 1 misdemeanor.

16 **Section 14. That a NEW SECTION be added:**

17 **34-12I-14. Allegation of misconduct--Request for video.**

18 A person who ~~possess~~ possesses a video recording created in accordance with this
19 Act shall, upon the facility's written request, provide a copy of the recording to the facility
20 if:

- 21 (1) An allegation of neglect, abuse, or other misconduct has been filed against the
22 facility in a civil, criminal, or administrative action; and
23 (2) The recording contains evidence pertinent to the alleged neglect, abuse, or other
24 misconduct.

25 The facility shall reimburse the person for any reasonable costs incurred in
26 providing the video recording.

27 **Section 15. That a NEW SECTION be added:**

1 **34-12I-15. Evidentiary material.**

2 Subject to applicable rules of evidence and procedure, a video recording produced
3 by a video monitoring device may be admitted into evidence in any civil, criminal, or
4 administrative proceeding, provided:

5 (1) The video monitoring was conducted in accordance with this Act;

6 (2) The recording has not been edited or artificially enhanced; and

7 (3) The recording indicates the date and time that the events occurred.

8 **Section 16. That a NEW SECTION be added:**

9 **34-12I-16. Discrimination--Retaliation--Prohibition.**

10 A facility may not discriminate or retaliate against any resident or roommate for
11 consenting to or refusing to consent to video monitoring.

12 A facility may not discriminate against any potential resident or potential roommate
13 for consenting to or refusing to consent to video monitoring.

14 **Section 17. That a NEW SECTION be added:**

15 **34-12I-17. Liability--Civil--Criminal.**

16 A facility is not civilly or criminally liable for any violation of a person's right to
17 privacy arising out of the use of a video monitoring device, except to the extent the
18 violation was caused by the facility's intentional violation of this Act.

19 **Section 18. That a NEW SECTION be added:**

20 **34-12I-18. Complaint--Adjudication.**

21 Any complaint alleging that a facility has violated this Act must be filed with the
22 secretary of the Department of Health and adjudicated under chapter 1-26. A violation of
23 this Act may not form the basis of any private civil cause of action.