



2020 South Dakota Legislature  
**House Bill 1056**  
**ENROLLED**

AN ACT

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

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

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

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

Terms as used in this chapter mean:

- (1) "Assisted living center," any institution, rest home, boarding home, place, building, or agency, which is maintained and operated to provide personal care and services, beyond food, shelter, and laundry;
- (2) "Authorized representative," the legal guardian of a resident, acting under a court order that specifically authorizes the guardian to consent to video monitoring of the resident, or the agent of a resident, acting under a durable power of attorney that specifically authorizes the agent to consent to video monitoring of the resident;
- (3) "Decision-making capacity," the ability to understand, to a reasonable extent, the nature of and the risks and benefits of video monitoring, and to make and communicate, with reasonable accommodation if necessary, a decision regarding video monitoring;
- (4) "Facility," an assisted living center or a nursing facility;
- (5) "Nursing facility," any entity that is maintained and operated for the express or implied purpose of providing care to one or more persons, whether for consideration or not, who are not acutely ill but require nursing care and related medical services of such complexity as to require professional nursing care under the direction of a physician, twenty-four hours per day, or an entity that is maintained and operated for the express or implied purpose of providing care to one or more persons, whether for consideration or not, who do not require the

- degree of care and treatment that a hospital is designed to provide, but who because of their mental or physical condition require medical care and health services that can be made available to them only through institutional facilities;
- (6) "Resident," a person who is at least eighteen years of age and resides in a facility; and
- (7) "Video monitoring device," a camera or other device, which captures, records or broadcasts video and which is placed in a resident's room and used to monitor the resident or activities in the room.

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

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

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

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

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

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

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

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

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

If the roommate refuses to consent, the facility shall, upon the written request of the resident, relocate the resident to another room, as soon as circumstances permit. The

facility is not required to provide the resident with a single room, unless the resident agrees to pay the increased charges.

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

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

The notice and consent form must include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 8. That a NEW SECTION be added:****34-12I-8. Audio monitoring device--Use--Violation as misdemeanor.**

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

A facility is not civilly or criminally liable for any violation of a person's right to privacy arising out of the use of an audio monitoring device, except to the extent the violation was caused by the facility's intentional violation of §§ 34-12I-2 through 34-12I-18.

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

**Section 9. That a NEW SECTION be added:****34-12I-9. Removal of device--Authority.**

A facility may deactivate and remove any video monitoring device that is installed, placed, operated, or used in violation of §§ 34-12I-2 through 34-12I-18 or in violation of any condition imposed in accordance with §§ 34-12I-2 through 34-12I-18.

**Section 10. That a NEW SECTION be added:****34-12I-10. Responsibility of resident--Facility.**

A resident is responsible for the installation, operation, maintenance, and removal of the video monitoring device. Except as otherwise provided in §§ 34-12I-2 through 34-12I-18, a facility has no duty to perform any act or incur any cost related to the installation, operation, maintenance, or removal of a video monitoring device, or the implementation or enforcement of any restriction imposed by or in accordance with §§ 34-12I-2 through 34-12I-18.

**Section 11. That a NEW SECTION be added:****34-12I-11. Notice.**

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

**Section 12. That a NEW SECTION be added:****34-12I-12. Destruction prohibited--Violation as misdemeanor.**

Except as otherwise provided in §§ 34-12I-2 through 34-12I-18, a person may not intentionally remove, hamper, obstruct, tamper with, or destroy a video monitoring device or a video recording produced by such device, without the permission of the resident. A violation of this section is a Class 1 misdemeanor.

**Section 13. That a NEW SECTION be added:****34-12I-13. Access and dissemination--Violation as misdemeanor.**

Except as otherwise provided in §§ 34-12I-2 through 34-12I-18, a person may not access or disseminate a recording produced by a video monitoring device, without the written consent of the resident. A violation of this section is a Class 1 misdemeanor.

**Section 14. That a NEW SECTION be added:****34-12I-14. Allegation of misconduct--Request for video.**

A person who possesses a video recording created in accordance with §§ 34-12I-2 through 34-12I-18 shall, upon the facility's written request, provide a copy of the recording to the facility if:

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

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

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

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

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

- (1) The video monitoring was conducted in accordance with §§ 34-12I-2 through 34-12I-18;
- (2) The recording has not been edited or artificially enhanced; and
- (3) The recording indicates the date and time that the events occurred.

**Section 16. That a NEW SECTION be added:****34-12I-16. Discrimination--Retaliation--Prohibition.**

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

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

**Section 17. That a NEW SECTION be added:****34-12I-17. Liability--Civil--Criminal.**

A facility is not civilly or criminally liable for any violation of a person's right to privacy arising out of the use of a video monitoring device, except to the extent the violation was caused by the facility's intentional violation of §§ 34-12I-2 through 34-12I-18.

**Section 18. That a NEW SECTION be added:****34-12I-18. Complaint--Adjudication.**

Any complaint alleging that a facility has violated §§ 34-12I-2 through 34-12I-18 must be filed with the secretary of the Department of Health and adjudicated under chapter 1-26. A violation of §§ 34-12I-2 through 34-12I-18 may not form the basis of any private civil cause of action.

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

\_\_\_\_\_  
I certify that the attached Act originated in  
the:  
House as Bill No. 1056

\_\_\_\_\_  
Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_,  
2020 at \_\_\_\_\_ M.

\_\_\_\_\_  
Chief Clerk

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_  
Speaker of the House

The attached Act is hereby  
approved this \_\_\_\_ day of  
\_\_\_\_\_, A.D., 2020

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
President of the Senate

Attest:

Filed \_\_\_\_\_, 2020  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Secretary of State

House Bill No. 1056  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State