

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 465

(The President)(By Request - Office of the Attorney
General)

Finance

Health Care Facilities - Nursing Homes and Assisted Living Programs - Video Recordings

This bill requires licensed nursing homes and assisted living programs to install, operate, and maintain video surveillance equipment in a “common area” of the facility for the purpose of detecting the abuse, neglect, or exploitation of residents. Nursing homes and assisted living programs must ensure that the video surveillance is continuous and without interruption, does not capture images within a “private space,” and complies with the Federal Electronic Communications Privacy Act (ECPA) of 1986 and the Maryland Wiretap Act. The Maryland Department of Health (MDH) may adopt regulations to carry out the bill.

Fiscal Summary

State Effect: MDH can adopt regulations with existing budgeted resources. To the extent that the Office of Health Care Quality (OHCQ) must enforce compliance with the bill’s requirements during annual surveys of licensed nursing homes and assisted living programs, additional personnel are need, as discussed below.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Common area” means a place of shared access available to residents where there is no reasonable expectation of privacy. “Common area” includes a dining area, meeting room, hallway, facility entrance, activity room, and living room.

“Private space” means a place within a nursing home in which a resident has reasonable expectation of privacy. “Private space” includes a bedroom, bathroom, place where a resident receives medical care or nursing services, and place where a resident meets privately with visitors.

Nursing homes and assisted living programs must store recorded video for a period of 120 days after the day on which the video was recorded and in a common and accessible format. On request, nursing homes and assisted living programs must make available any recorded stored video data to law enforcement and State personnel that is necessary in the course of performing their official duties.

Current Law:

Assisted Living Programs and Nursing Homes

An assisted living program is a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of such services that meets the needs of individuals who need assistance with the activities of daily living.

A nursing home is a facility that offers nonacute care to patients suffering from a disease, chronic illness, condition, disability of advanced age, or terminal disease requiring maximal nursing care without continuous hospital services.

Office of Health Care Quality

OHCQ within MDH oversees and licenses health care facilities in the State, including assisted living programs and nursing homes. OHCQ generally makes an unannounced site visit and conducts a full survey of each licensed nursing home at least once per year. After a nursing home complaint alleging actual harm, OHCQ must initiate an investigation within 10 business days. If MDH receives a complaint alleging immediate jeopardy to a resident, it must make every effort to investigate the complaint within 24 hours, and no later than 48 hours, after receiving the complaint. OHCQ must conduct an annual unannounced on-site inspection of each assisted living facility.

Federal Electronic Communications Privacy Act of 1986

The Electronic Communications Privacy Act and the Stored Wire Electronic Communications Act are commonly referred together as ECPA of 1986. ECPA updated the Federal Wiretap Act of 1968, which addressed interception of conversations using “hard” telephone lines, but did not apply to interception of computer and other digital and electronic communications. ECPA, as amended, protects wire, oral, and electronic communications while those communications are being made, are in transit, and when they are stored on computers. ECPA applies to email, telephone conversations, and data stored electronically.

Maryland Wiretap Act

Under Maryland’s Wiretap Act, it is unlawful to willfully intercept any wire, oral, or electronic communication. “Intercept” is defined, in part, as “the... acquisition of the contents of any... oral communication through the use of any... device.” Therefore, the Wiretap Act does not regulate a video recording that does not contain an audio component. The statute does authorize the interception of an oral communication if all participants have given prior consent (sometimes called “two-party consent”). Maryland is 1 of 12 two-party consent states, most of which spell out clearly that the consent is required only in circumstances where there is a “reasonable expectation of privacy.”

Background: According to the Office of the Attorney General (OAG), many seniors and vulnerable adults are the targets of patient abuse in nursing home and other facilities. The Medicaid Fraud Control Division of OAG prosecutes dozens of cases of patient abuse each year, ranging from sexual assaults to neglect resulting in injury and even death.

State Fiscal Effect: The bill authorizes MDH to adopt regulations to implement the bill. MDH can promulgate such regulations if desired with existing budgeted resources. The bill does not specifically direct OHCQ to enforce the bill’s requirements; however, MDH advises that additional staff are necessary to ensure licensed nursing homes and assisted living programs comply with the bill’s requirements.

According to MDH, there are 222 licensed nursing homes and 1,650 licensed assisted living programs in the State. To the extent additional personnel are needed to ensure that each of these 1,872 facilities comply with the bill, as well as respond to any resulting complaint investigations, OHCQ general fund expenditures increase by an estimated \$728,832 in fiscal 2026 for eight additional health care facility surveyors, increasing to approximately \$977,000 in fiscal 2030.

Small Business Effect: Assisted living programs, the vast majority of which are small businesses, must install, operate, and maintain video surveillance equipment in the common area of the facility as well as store recorded video for 120 days.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 576 (The Speaker)(By Request - Office of the Attorney General) - Health and Government Operations.

Information Source(s): Office of the Attorney General; Maryland State's Attorneys' Association; Maryland Department of Health; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2025
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