

- SUBJECT:** Regulating electronic monitoring in assisted living facilities
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 7 ayes — Uresti, Naishtat, Christian, Miller, Olivo, Reyna, Wohlgemuth
0 nays
2 absent — McCall, Villarreal
- WITNESSES:** For — Gary Crouch; Aaryce Hayes, Advocacy, Inc.; (*Registered, but did not testify:*) Candice Carter, AARP; Beth Ferris, Texas Advocacy for Nursing Home Residents
Against — Sid Rich, Texas Association of Residential Care Communities
On — John Willis, Texas Department on Aging Ombudsman Program
- BACKGROUND:** In 2001, the 77th Legislature enacted SB 177 by Madla, which authorized nursing home residents or their guardians to monitor the resident's room by video, audio, or other electronic format. Nursing homes can require that the monitoring device be installed in a safe manner and that the monitoring be conducted in plain view. The legislation also established how requests for monitoring are handled, including consent from roommates, and protected the institution from civil liability from covert placement of an electronic monitoring device in a patient's room. It also established time frames for reporting abuse or neglect viewed on a tape.

Nursing homes and assisted living facilities are residences for people who cannot live in their own homes. Both types of facilities offer help with daily living activities, but nursing homes also offer more extensive medical care. Both nursing homes and assisted living facilities are licensed and regulated by the Texas Department of Human Services. Ch. 242 of the Health and Safety Code regulates nursing homes, and ch. 247 regulates assisted living facilities.
- DIGEST:** CSHB 2266 would extend the authority for residents or their guardians to monitor the resident's room by video, audio, or other electronic format to

people residing in assisted living facilities. The penalties and sanctions that apply to nursing homes would not apply to assisted living facilities, which would be subject to the sanctions authorized in ch. 247 of the Health and Safety Code that otherwise regulates assisted living facilities. The bill would direct the Department of Human Services to adopt rules needed to administer this legislation by January 1, 2004.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2266 would afford residents of assisted living facilities the same protections as residents of nursing homes. The legislation in place ensures that electronic monitoring in nursing homes is conducted in an appropriate manner and protects nursing home operators by offering an impartial record of care. This bill would do the same for residents and operators of assisted living facilities.

Residents of assisted living facilities are vulnerable because they are elderly and sometimes have physical or mental conditions that could prevent them from defending themselves against abuse or neglect or even reporting it after the fact. Even though they might not have the extent of medical needs that their peers in nursing homes do, they still should be protected from harmful care.

Taping is an effective way to prevent abuse or neglect. Because family members cannot supervise residents' care all the time, abuse or neglect can go unreported. The presence of a camera would deter abuse or neglect by employees. Taping also would allow families to obtain the evidence they needed if abuse or neglect had occurred and would protect good caregivers from being falsely accused.

**OPPONENTS
SAY:**

This bill should apply only to frail residents of assisted living facilities. Many residents of assisted living facilities are quite capable of reporting or even defending themselves against neglectful or abusive care. The bill as introduced would have been much more appropriate in applying only to residents with Alzheimer's disease.

Because many *nursing home* residents are so frail, the concerns about video monitoring in that setting are overshadowed by the benefit of having a record of their care. However, concerns about video monitoring become quite important when applied to assisted living facilities. Those concerns include the possibility of significant friction among residents if a roommate refused to sign the consent form, the potential encouragement of frivolous lawsuits based on unfounded conclusions about a patient's care, and debates about whether taping is effective in preventing abuse or neglect of residents.

NOTES:

The bill as introduced differs from the committee substitute in that it would have limited permission for video monitoring to assisted living facility residents who had Alzheimer's disease.

HB 2266 is similar to SB 1012 by West, which passed the Senate on April 25 by 29-0 and is scheduled for a public hearing by the House Human Services Committee on May 5.