A BILL

To amend section 3721.99 and to enact sections 3721.60, 3721.61, 3721.62, 3721.63, 3721.64, 3721.65, 3721.66, 3721.67, 3721.68, and 3721.69 of the Revised Code to permit a resident of a long-term care facility to conduct electronic monitoring of the resident's room, to designate this act as "Esther's Law," and to make an appropriation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3721.99 be amended and sections 3721.60, 3721.61, 3721.62, 3721.63, 3721.64, 3721.65, 3721.66, 3721.67, 3721.68, and 3721.69 of the Revised Code be enacted to read as follows:

Sec. 3721.60. As used in sections 3721.60 to 3721.69 of the Revised Code:

(A) "Electronic monitoring device" means a surveillance instrument with a fixed position video camera or an audio recording device, or a combination thereof, that is installed in a resident's room and broadcasts or records activities or sounds.
occurring in the room.

(B) "Long-term care facility" has the same meaning as in section 3721.21 of the Revised Code.

(C) "Resident" means an individual who resides in a long-term care facility.

(D) "Sponsor" has the same meaning as in section 3721.10 of the Revised Code.

(E) "Two-factor authentication" means authentication through verification of two of the following types of authentication factors:

(1) Knowledge factors, such as a password;

(2) Possession factors, such as a token or text message on a mobile phone;

(3) Inherence factors, such as a biometric characteristic.

Sec. 3721.61. (A) Subject to section 3721.62 of the Revised Code, a resident or a resident's sponsor may authorize the installation and use of an electronic monitoring device in the resident's room in a long-term care facility.

(B) The installation and use of an electronic monitoring device may be authorized only if the following conditions are met:

(1) The resident or resident's sponsor completes the form described in section 3721.63 of the Revised Code and submits it to the facility.

(2) Unless a resident is eligible to receive financial assistance under section 3721.65 of the Revised Code, the cost of the device and the cost of installing, maintaining, and
removing the device, other than the cost of electricity for the
device, is paid for by the resident or the resident's sponsor.

(3) The device utilizes two-factor authentication to
prevent an individual who has not authorized the installation
and use of the device from tampering with the device.

(C) A resident who has authorized the installation and use
of an electronic monitoring device may withdraw that
authorization at any time.

Sec. 3721.62. (A) If a resident wishing to conduct
authorized electronic monitoring of the resident's room lives
with another resident in a long-term care facility, the consent
of the other resident or the resident's sponsor to the
installation and use of an electronic monitoring device in the
room is required before any installation or use of such a device
may occur. The other resident or other resident's sponsor shall
consent by completing the relevant part of the form described in
section 3721.63 of the Revised Code.

(B)(1) If a resident living in a room with another
resident wishes to conduct authorized electronic monitoring of
the resident's room, but the other resident or other resident's
sponsor refuses to consent to the installation and use of an
electronic monitoring device, the facility shall make a
reasonable attempt to accommodate the resident wishing to
conduct authorized electronic monitoring by moving either
resident to another available room.

(2) In the case of a resident living in a room with
another resident, the other resident or other resident's sponsor
may place conditions on any consent to the installation and use
of an electronic monitoring device, including conditions such as
pointing the device away from the other resident or limiting or prohibiting the use of certain devices. If conditions are placed on consent, the device shall be installed and used according to those conditions.

(C) A resident whose consent is required under this section may withdraw that consent at any time.

Sec. 3721.63. The director of health shall prescribe a form for use by a resident or resident's sponsor seeking to authorize the installation and use of an electronic monitoring device in the resident's room in a long-term care facility. The form shall include all of the following:

(A) An explanation of sections 3721.60 to 3721.69 of the Revised Code;

(B) An acknowledgment that the resident or resident's sponsor has consented to the installation and use of the device in the resident's room;

(C) In the case of a resident who lives in a room with another resident, an acknowledgment that the other resident or other resident's sponsor has consented to the installation and use of the device and a description of any conditions placed on that consent pursuant to division (B)(2) of section 3721.62 of the Revised Code;

(D) A section for providing the facility with information regarding the type, function, and use of the device to be installed and used;

(E) A section stating that the facility is released from liability in any civil or criminal action or administrative proceeding for a violation of the resident's right to privacy in connection with using the device.
Sec. 3721.64. A long-term care facility shall post a notice in a conspicuous place at the entrance to a resident's room with an electronic monitoring device stating that an electronic monitoring device is in use in that room.

Sec. 3721.65. The director of health shall establish a program to assist residents of long-term care facilities who are eligible for medicaid with purchasing electronic monitoring devices. Eligible residents shall apply to the department of health for assistance with purchasing and installing electronic monitoring devices in the manner prescribed by the department.

Sec. 3721.66. Each long-term care facility shall submit an annual report to the department of health detailing the number of authorized electronic monitoring devices that are in use in resident's rooms at the facility.

Sec. 3721.67. No person or resident shall be denied admission to or discharged from a long-term care facility or otherwise discriminated or retaliated against because of the decision to authorize the installation and use of an electronic monitoring device in a resident's room in the facility.

Sec. 3721.68. No person other than the resident or resident's sponsor who authorized the installation and use of an electronic monitoring device in the resident's room in a long-term care facility shall intentionally obstruct, tamper with, or destroy the device or a recording made by the device.

Sec. 3721.69. The director of health shall adopt rules in accordance with Chapter 119. of the Revised Code as necessary to implement sections 3721.60 to 3721.68 of the Revised Code.

Sec. 3721.99. (A) Whoever violates section 3721.021, division (B), (D), or (E) of section 3721.05, division (A), (C),
or (D) of section 3721.051, section 3721.06, division (A) of 
section 3721.22, division (A) or (B) of section 3721.24, or 
division (E) or (F) of section 3721.30, or section 3721.67 of 
the Revised Code shall be fined one hundred dollars for a first 
offense. For each subsequent offense, the violator shall be 
fined five hundred dollars.

    (B) Whoever violates division (A) or (C) of section 
3721.05 or division (B) of section 3721.051 of the Revised Code 
shall be fined five thousand dollars for a first offense. For 
each subsequent offense, the violator shall be fined ten 
thousand dollars.

    (C) Whoever violates division (D) of section 3721.031 or 
division (E) of section 3721.22 of the Revised Code is guilty of 
registering a false complaint, a misdemeanor of the first 
degree.

    (D) Whoever violates section 3721.68 of the Revised Code 
is guilty of tampering with an electronic monitoring device, a 
misdemeanor of the first degree.

Section 2. That existing section 3721.99 of the Revised 
Code is hereby repealed.

Section 3. This act shall be known as "Esther's Law."

Section 4. All items in this section are hereby 
appropriated as designated out of any moneys in the state 
treasury to the credit of the designated fund. For all 
appropriations made in this act, those in the first column are 
for fiscal year 2020 and those in the second column are for 
fiscal year 2021. The appropriations made in this act are in 
addition to any other appropriations made for the FY 2020-FY 
2021 biennium.
The foregoing appropriation item 440531, Electronic Monitoring, shall be used for the purchase and installation of authorized electronic monitoring devices for residents of long-term care facilities who are eligible for Medicaid, in accordance with section 3721.65 of the Revised Code.

**Section 5.** Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in this act, and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from appropriations contained in this act shall be accounted for as though made in Am. Sub. H.B. 166 of the 133rd General Assembly.

The appropriations made in this act are subject to all provisions of Am. Sub. H.B. 166 of the 133rd General Assembly that are generally applicable to such appropriations.