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Bill Analysis

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Primary Sponsors: Rep. Brent

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SUMMARY

- Permits a long-term care facility resident or the resident's sponsor to authorize the installation and use of an electronic monitoring device in the resident's room under certain conditions.
- Requires a resident's roommate to fully or conditionally consent to electronic monitoring on a form prescribed by the Director of Health.
- Requires a long-term care facility to make a reasonable attempt to accommodate a resident wishing to use electronic monitoring when the resident's roommate refuses consent.
- Requires a long-term care facility to post a notice stating that an electronic monitoring device is in use in a particular room and submit an annual report to the Department of Health on the number of devices in use.
- Prohibits discrimination or retaliation against a resident who authorizes electronic monitoring and the intentional obstruction, tampering with, or destruction of a device or a recording made by it.
- Requires the Director of Health to establish a financial assistance program for Medicaid-eligible persons to purchase electronic monitoring devices.
- Makes an appropriation.
- Designates the act as "Esther's Law."

DETAILED ANALYSIS

Electronic monitoring in long-term care facilities

The bill permits a long-term care facility resident or the resident's sponsor to authorize the installation and use of an electronic monitoring device in the resident's room in a long-term

care facility under certain conditions.¹ The bill defines “electronic monitoring device” as 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. A “long-term care facility” is a nursing home or a facility or part of a facility that is Medicare- or Medicaid-certified as a skilled nursing facility or nursing facility. A “sponsor” is an adult relative, friend, or guardian of a resident who has an interest or responsibility in the resident’s welfare.²

Conditions

For installation and use of an electronic monitoring device to be authorized, all of the following conditions must be met:³

--The resident or the resident’s sponsor must complete the required form (see “**Form**,” below) and submit it to the facility;

--The cost of the device and of installing, maintaining, and removing the device (other than the cost of electricity for the device) must be paid by the resident or the resident’s sponsor, unless the resident is eligible for financial assistance under the bill (see “**Financial assistance**,” below);

-- The device utilizes two-factor authentication to prevent an individual who has not authorized the installation and use of the device from tampering with it; and

--If the resident lives with another a resident (i.e., has a roommate), the roommate or his or her sponsor must consent to the use of the electronic monitoring device in the room by completing the required form.

A resident who has authorized the installation and use of an electronic monitoring device may withdraw that authorization at any time.⁴ A roommate also may withdraw consent to the monitoring at any time.⁵

Roommate situations

If a resident wishes to use an electronic monitoring device authorized by the bill, but the resident’s roommate or the roommate’s sponsor refuses to consent, the long-term care facility must make a reasonable attempt to accommodate the resident by moving either the resident or the roommate to an available room. The bill also authorizes a roommate or his or her sponsor to place conditions on consent to the installation and use of electronic monitoring, including pointing the device away from the roommate or limiting or prohibiting the use of

¹ R.C. 3721.61(A).

² R.C. 3721.60(B) and (D).

³ R.C. 3721.61 and 3721.62(A).

⁴ R.C. 3721.61(C).

⁵ R.C. 3721.62(C).

certain devices. If conditions are placed on consent, the device must be installed and used according to those conditions.⁶

Form

The Director of Health must prescribe a form for use by a resident or a 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 must include all of the following:⁷

- An explanation of the electronic monitoring provisions enacted by the bill;
- An acknowledgement that the resident or the resident's sponsor has consented to the installation and use of the device in the resident's room;
- In the case of a resident with a roommate, an acknowledgment that the roommate or roommate's sponsor has consented to the installation and use of the device and a description of any conditions placed on that consent;
- A section for providing the facility with information regarding the type, function, and use of the device to be installed and used; and
- 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.

Notice

The bill requires a long-term care facility to post a notice in a conspicuous place at the entrance to a resident's room that contains an electronic device stating that an electronic monitoring device is in use in that room.⁸

Annual report

The bill requires each long-term care facility to submit an annual report to the Department of Health detailing the number of authorized electronic monitoring devices that are in use in residents' rooms at the facility.⁹

Prohibitions

The bill prohibits a person or resident from being denied admission to, or being discharged from, a long-term care facility or otherwise being discriminated or retaliated against because of the decision to authorize the installation and use of an electronic monitoring device

⁶ R.C. 3721.62(B).

⁷ R.C. 3721.63.

⁸ R.C. 3721.64.

⁹ R.C. 3721.66.

in a resident's room in the facility.¹⁰ A person who violates this prohibition must be fined \$100 for a first offense and \$500 for each subsequent offense.¹¹

The bill also prohibits any 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 from intentionally obstructing, tampering with, or destroying the device or a recording made by the device.¹² A person who violates this prohibition is guilty of tampering with an electronic monitoring device, a misdemeanor of the first degree.¹³

Rules

The bill requires the Director of Health to adopt rules as necessary to implement the bill's provisions. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).¹⁴

Financial assistance for Medicaid-eligible residents

Under the bill, the Director of Health is required to establish a program to assist long-term care facility residents who are eligible for Medicaid with purchasing electronic monitoring devices. An eligible resident must apply to the Department of Health for assistance in the manner prescribed by the Department.¹⁵

The bill appropriates \$50,000 in both fiscal year (FY) 2020 and FY 2021 in GRF appropriation item 440531, Electronic Monitoring, within the Department of Health's budget. The funds must be used for the purchase and installation of authorized electronic monitoring devices for Medicaid-eligible residents of long-term care facilities.¹⁶

Designation

The act is designated as "Esther's Law."¹⁷

¹⁰ R.C. 3721.67.

¹¹ R.C. 3721.99(A).

¹² R.C. 3721.68.

¹³ R.C. 3721.99(D).

¹⁴ R.C. 3721.69.

¹⁵ R.C. 3721.65.

¹⁶ Sections 4 and 5.

¹⁷ Section 3.

HISTORY

Action	Date
Introduced	12-27-19
