

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

H. B. No. 461

Representative Brent

Cosponsors: Representatives Robinson, Crawley, Keller, Smith, K., Crossman

A BILL

To amend section 3721.99 and to enact sections 1
3721.60, 3721.61, 3721.62, 3721.63, 3721.64, 2
3721.65, 3721.66, 3721.67, 3721.68, and 3721.69 3
of the Revised Code to permit a resident of a 4
long-term care facility to conduct electronic 5
monitoring of the resident's room, to designate 6
this act as "Esther's Law," and to make an 7
appropriation. 8

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

Section 1. That section 3721.99 be amended and sections 9
3721.60, 3721.61, 3721.62, 3721.63, 3721.64, 3721.65, 3721.66, 10
3721.67, 3721.68, and 3721.69 of the Revised Code be enacted to 11
read as follows: 12

Sec. 3721.60. As used in sections 3721.60 to 3721.69 of 13
the Revised Code: 14

(A) "Electronic monitoring device" means a surveillance 15
instrument with a fixed position video camera or an audio 16
recording device, or a combination thereof, that is installed in 17
a resident's room and broadcasts or records activities or sounds 18

occurring in the room. 19

(B) "Long-term care facility" has the same meaning as in section 3721.21 of the Revised Code. 20
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(C) "Resident" means an individual who resides in a long-term care facility. 22
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(D) "Sponsor" has the same meaning as in section 3721.10 of the Revised Code. 24
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(E) "Two-factor authentication" means authentication through verification of two of the following types of authentication factors: 26
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(1) Knowledge factors, such as a password; 29

(2) Possession factors, such as a token or text message on a mobile phone; 30
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(3) Inherence factors, such as a biometric characteristic. 32

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. 33
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(B) The installation and use of an electronic monitoring device may be authorized only if the following conditions are met: 37
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(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. 40
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(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 43
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removing the device, other than the cost of electricity for the 46
device, is paid for by the resident or the resident's sponsor. 47

(3) The device utilizes two-factor authentication to 48
prevent an individual who has not authorized the installation 49
and use of the device from tampering with the device. 50

(C) A resident who has authorized the installation and use 51
of an electronic monitoring device may withdraw that 52
authorization at any time. 53

Sec. 3721.62. (A) If a resident wishing to conduct 54
authorized electronic monitoring of the resident's room lives 55
with another resident in a long-term care facility, the consent 56
of the other resident or the other resident's sponsor to the 57
installation and use of an electronic monitoring device in the 58
room is required before any installation or use of such a device 59
may occur. The other resident or other resident's sponsor shall 60
consent by completing the relevant part of the form described in 61
section 3721.63 of the Revised Code. 62

(B) (1) If a resident living in a room with another 63
resident wishes to conduct authorized electronic monitoring of 64
the resident's room, but the other resident or other resident's 65
sponsor refuses to consent to the installation and use of an 66
electronic monitoring device, the facility shall make a 67
reasonable attempt to accommodate the resident wishing to 68
conduct authorized electronic monitoring by moving either 69
resident to another available room. 70

(2) In the case of a resident living in a room with 71
another resident, the other resident or other resident's sponsor 72
may place conditions on any consent to the installation and use 73
of an electronic monitoring device, including conditions such as 74

pointing the device away from the other resident or limiting or 75
prohibiting the use of certain devices. If conditions are placed 76
on consent, the device shall be installed and used according to 77
those conditions. 78

(C) A resident whose consent is required under this 79
section may withdraw that consent at any time. 80

Sec. 3721.63. The director of health shall prescribe a 81
form for use by a resident or resident's sponsor seeking to 82
authorize the installation and use of an electronic monitoring 83
device in the resident's room in a long-term care facility. The 84
form shall include all of the following: 85

(A) An explanation of sections 3721.60 to 3721.69 of the 86
Revised Code; 87

(B) An acknowledgment that the resident or resident's 88
sponsor has consented to the installation and use of the device 89
in the resident's room; 90

(C) In the case of a resident who lives in a room with 91
another resident, an acknowledgment that the other resident or 92
other resident's sponsor has consented to the installation and 93
use of the device and a description of any conditions placed on 94
that consent pursuant to division (B)(2) of section 3721.62 of 95
the Revised Code; 96

(D) A section for providing the facility with information 97
regarding the type, function, and use of the device to be 98
installed and used; 99

(E) A section stating that the facility is released from 100
liability in any civil or criminal action or administrative 101
proceeding for a violation of the resident's right to privacy in 102
connection with using the device. 103

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. 104
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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. 108
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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. 114
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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. 118
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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. 123
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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. 128
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Sec. 3721.99. (A) Whoever violates section 3721.021, division (B), (D), or (E) of section 3721.05, division (A), (C), 131
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or (D) of section 3721.051, section 3721.06, division (A) of 133
section 3721.22, division (A) or (B) of section 3721.24, ~~or~~ 134
division (E) or (F) of section 3721.30, or section 3721.67 of 135
the Revised Code shall be fined one hundred dollars for a first 136
offense. For each subsequent offense, the violator shall be 137
fined five hundred dollars. 138

(B) Whoever violates division (A) or (C) of section 139
3721.05 or division (B) of section 3721.051 of the Revised Code 140
shall be fined five thousand dollars for a first offense. For 141
each subsequent offense, the violator shall be fined ten 142
thousand dollars. 143

(C) Whoever violates division (D) of section 3721.031 or 144
division (E) of section 3721.22 of the Revised Code is guilty of 145
registering a false complaint, a misdemeanor of the first 146
degree. 147

(D) Whoever violates section 3721.68 of the Revised Code 148
is guilty of tampering with an electronic monitoring device, a 149
misdemeanor of the first degree. 150

Section 2. That existing section 3721.99 of the Revised 151
Code is hereby repealed. 152

Section 3. This act shall be known as "Esther's Law." 153

Section 4. All items in this section are hereby 154
appropriated as designated out of any moneys in the state 155
treasury to the credit of the designated fund. For all 156
appropriations made in this act, those in the first column are 157
for fiscal year 2020 and those in the second column are for 158
fiscal year 2021. The appropriations made in this act are in 159
addition to any other appropriations made for the FY 2020-FY 160
2021 biennium. 161

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A	DOH DEPARTMENT OF HEALTH				
B	General Revenue Fund				
C	GRF	440531	Electronic Monitoring	\$ 50,000	\$ 50,000
D	TOTAL GRF General Revenue Fund			\$ 50,000	\$ 50,000
E	TOTAL ALL BUDGET FUND GROUPS			\$ 50,000	\$ 50,000

ELECTRONIC MONITORING 163

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. 164
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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. 169
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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. 177
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