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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 58  
134<sup>th</sup> General Assembly

## Final Analysis

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**Version:** As Passed by the General Assembly

**Primary Sponsors:** Sens. Antonio and Brenner

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### SUMMARY

- Permits a resident of a long-term care facility (nursing home, skilled nursing facility, or nursing facility) or the resident's guardian or attorney in fact 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 consent to electronic monitoring.
- 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 by moving either the resident or the roommate to an available room.
- Permits a long-term care facility to post a notice stating that an electronic monitoring device is in use in a particular room.
- Prohibits discrimination or retaliation against a resident who authorizes electronic monitoring, tampering with a device or a recording, and unauthorized viewing or listening to a recording.
- Designates the act as "Esther's Law."

### DETAILED ANALYSIS

#### Electronic monitoring in long-term care facilities

The act permits a long-term care facility resident or the resident's guardian or attorney in fact 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.<sup>1</sup> The act 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 either 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 “guardian” is any person, association, or corporation appointed by the probate court to have the care and management of a person. An “attorney in fact” is someone who has been designated as such by a durable power of attorney for health care under Ohio law.<sup>2</sup>

## Conditions

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

- The resident or the resident’s guardian or attorney in fact must complete a form (see “**Form**,” below) and submit it to the facility, if required by 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 guardian or attorney in fact; and
- If the resident lives with another a resident (i.e., has a roommate), the roommate or roommate’s guardian or attorney in fact must consent to the use of the electronic monitoring device in the room by completing the specified portion of a form, if such a form is required by the facility.

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

## Roommate situations

If a resident wishes to use an electronic monitoring device, but the resident’s roommate or the roommate’s guardian or attorney in fact 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 act also authorizes a roommate or his or her guardian or attorney in fact to place conditions on consent, including pointing the device away

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<sup>1</sup> R.C. 3721.61(A).

<sup>2</sup> R.C. 3721.60; See R.C. 1337.11 to 1337.17 and 2111.01(A), not in the act.

<sup>3</sup> R.C. 3721.61 and 3721.62(A).

<sup>4</sup> R.C. 3721.62(C).

from the roommate or limiting or prohibiting the use of certain devices. If conditions are placed on consent, the device must be installed and used according to those conditions.<sup>5</sup>

### **Form**

A long-term care facility may prescribe a form for use by a resident or a resident's guardian or attorney in fact seeking to authorize the installation and use of an electronic monitoring device. If the facility prescribes a form, it must, at a minimum, include all of the following:<sup>6</sup>

- An explanation of the act's provisions;
- An acknowledgement that the resident or the resident's guardian or attorney in fact has consented to the installation and use of the device in the resident's room;
- If the resident has a roommate, an acknowledgment that the roommate or roommate's guardian or attorney in fact 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 act permits a long-term care facility to post a notice in a conspicuous place at the entrance to a resident's room stating that an electronic monitoring device is in use in that room.<sup>7</sup>

### **Law enforcement exemption**

The act's provisions regarding the installation and use of an electronic monitoring device do not apply if an electronic monitoring device is installed by a law enforcement agency and used solely for a legitimate law enforcement purpose.<sup>8</sup>

### **Prohibitions**

The act 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

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<sup>5</sup> R.C. 3721.62(B).

<sup>6</sup> R.C. 3721.63.

<sup>7</sup> R.C. 3721.64.

<sup>8</sup> R.C. 3721.68.

in a resident's room. The penalty for a violation of this prohibition is a fine of \$100 for a first offense and \$500 for each subsequent offense.<sup>9</sup>

The act also prohibits any person other than the resident or resident's guardian or attorney in fact who authorized the installation and use of an electronic monitoring device from intentionally obstructing, tampering with, or destroying the device or a recording made by the device. A person who violates this prohibition is guilty of tampering with an electronic monitoring device, a misdemeanor of the first degree.<sup>10</sup>

Further, the act prohibits any person other than the resident, the resident's guardian or attorney in fact, or law enforcement personnel from intentionally viewing or listening to the images displayed or sounds recorded by an electronic monitoring device, unless the person has been authorized to do so by the resident or the resident's guardian or attorney in fact.<sup>11</sup>

## Rules

The act permits the Director of Health to adopt rules as necessary to implement its provisions. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).<sup>12</sup>

## Designation

The act is designated as "Esther's Law."<sup>13</sup>

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## HISTORY

Action	Date
Introduced	02-09-21
Reported, S. Health	05-19-21
Passed Senate (32-0)	05-19-21
Reported, H. Families, Aging, & Human Services	11-01-21
Passed House (87-0)	11-18-21
Senate concurred in House amendments (33-0)	12-08-21

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<sup>9</sup> R.C. 3721.65 and 3721.99(A).

<sup>10</sup> R.C. 3721.66(A) and 3721.99(D).

<sup>11</sup> R.C. 3721.66(B) and (C).

<sup>12</sup> R.C. 3721.67.

<sup>13</sup> Section 3.