

SENATE, No. 1897

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MARCH 3, 2022

Sponsored by:

Senator EDWARD DURR

District 3 (Cumberland, Gloucester and Salem)

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

Co-Sponsored by:

**Senators Corrado, Codey, Gopal, Cryan, Diegnan, Stanfield, A.M.Bucco,
Thompson, Bramnick, Holzapfel, Pennacchio and Burgess**

SYNOPSIS

Requires certain group homes to install electronic monitoring devices in common areas, upon request and with uniform resident consent, and to permit consensual use of such devices in private rooms.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/27/2023)

1 AN ACT concerning the installation and use of electronic
2 monitoring devices at group homes for individuals with
3 developmental disabilities, and supplementing Title 30 of the
4 Revised Statutes.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. The Legislature finds and declares the following:

10 a. Individuals with developmental disabilities are particularly
11 vulnerable to abuse, neglect, and exploitation by caregivers,
12 guardians, and other persons.

13 b. Group homes for individuals with developmental disabilities
14 admirably enable these individuals to live more independently
15 within a non-institutional setting; however, the lack of institutional
16 controls and oversight at these homes ultimately makes it harder for
17 the State, for individual group home operators, and for concerned
18 family members to promptly identify and respond to wrongdoing
19 that may be committed by caregivers, guardians, group home
20 employees, and other persons at the home.

21 c. The safety and quality of life of individuals with
22 developmental disabilities who receive care from group homes is of
23 paramount concern, and the use of video monitoring is a reasonable
24 means by which the State and concerned family members can better
25 ensure the prevention of, and the institution of a more proactive
26 response to, the abuse, neglect, and exploitation of group home
27 residents.

28 d. The rights of individuals with developmental disabilities,
29 including the right to privacy, should be respected and preserved at
30 all times, to the greatest extent practicable; however, just as is true
31 of all citizens, an individual with a developmental disability or the
32 individual's authorized representative, as the case may be, may
33 consent to the waiver or limitation of the individual's rights,
34 particularly the individual's rights to privacy, by knowingly
35 agreeing to video surveillance, as deemed by the individual or the
36 authorized representative to be appropriate.

37 e. It is in the public interest for the State to provide for the
38 enhanced protection of individuals with developmental disabilities
39 who reside at group homes by enabling group home residents, or
40 their authorized representatives, to cooperatively and collectively
41 decide whether to allow for the installation and use of video
42 monitoring devices in the common areas of the group homes, and to
43 individually decide whether to allow for the installation and use of
44 video monitoring devices in the private residential room of each
45 such resident, so that the treatment of such residents can be
46 recorded and instances of abuse, neglect, or exploitation
47 documented with video evidence.

1 f. The State recognizes that each individual with
2 developmental disabilities is unique and has differing needs and
3 preferences, and that, while some group home residents and their
4 authorized representatives may consent to the use of video
5 surveillance to better ensure the residents' safety, others may refuse
6 to consent to such video surveillance.

7 g. Through the enactment of this act, it is the intent of the
8 Legislature to make video monitoring technology more readily
9 available in group home settings, while taking great care to strike
10 the important and delicate balance between protecting the privacy
11 rights and protecting the overall well-being of group home
12 residents.

13 h. This act is dedicated to William "Billy" Cray, a 33-year-old
14 with developmental disabilities who, on a Sunday morning in
15 January 2017, was inexplicably found dead on the floor of his
16 bedroom in a West Deptford group home, operated by Devereux
17 Advanced Behavioral Health New Jersey, where he resided. Billy
18 Cray, who had suffered from institutional abuse since he was a
19 child, was the son of Martha Cray, a dedicated and long-time
20 advocate for persons with developmental disabilities. For many
21 years, both preceding and following her son's death, Martha Cray
22 has continued to work tirelessly to advance legislation protecting
23 the rights and safety of individuals with developmental disabilities,
24 particularly those residing in group homes. She was particularly
25 instrumental in facilitating the passage of "Stephen Komminos'
26 Law," P.L.2017, c.238 (C.30:6D-9.1), which provides for the
27 heightened scrutiny of group homes by requiring more frequent,
28 unannounced oversight visits, and which requires group homes to
29 provide prompt notice of injury to the parent or guardian of an
30 injured resident.

31 i. Billy Cray's death is yet another reminder of why the State
32 needs to continue its work both to strengthen oversight of group
33 homes for individuals with developmental disabilities and to further
34 facilitate and enhance the ability of group home residents and their
35 family members or guardians, as the case may be, to take
36 affirmative steps to protect the rights and safety of residents and
37 promptly and appropriately respond to resident injuries and other
38 concerning incidents occurring in the group homes. By enabling
39 group home residents with developmental disabilities and their
40 authorized representatives to use video-based electronic monitoring
41 to protect against, provide documentary evidence of, and ensure a
42 prompt and adequate response to, any abuse, neglect, and
43 exploitation occurring in the group home, the Legislature can
44 further preserve the rights and safety of group home residents and
45 facilitate the proactive prevention of deaths like Billy Cray's.

46

47 2. As used in this act:

1 “Authorized representative” means a group home resident’s
2 court-appointed guardian of the person or, if there is no guardian of
3 the person, the person who holds a valid power of attorney or is
4 otherwise legally authorized to act as the representative of the group
5 home resident for the purposes of making decisions related to the
6 resident’s care and living arrangements. “Authorized
7 representative” does not include a caregiver or any other person
8 who is employed or contracted, on a paid or unpaid basis, by the
9 group home licensee.

10 “Common areas” means the living areas, dining areas, entrances,
11 outdoor areas, stairwells, and any other areas within a group home,
12 except bathrooms, which are commonly and communally accessible
13 to all residents, and are not dedicated for private use by a particular
14 resident.

15 “Division” means the Division of Developmental Disabilities in
16 the Department of Human Services.

17 “Electronic monitoring device” means a camera or other
18 electronic device that uses video, but not audio, recording
19 capabilities to monitor the activities taking place in the area where
20 the device is installed.

21 “Group home” means a living arrangement that is licensed by the
22 division and is operated in a residence or residences leased or
23 owned by a licensee; which living arrangement either provides the
24 opportunity for multiple adults with developmental disabilities to
25 live together in a home, sharing in chores and the overall
26 management of the residence, or provides the opportunity for a
27 single adult with developmental disabilities and extreme behavioral
28 difficulties to live more independently while receiving full-time
29 care, and in which on-site staff provides supervision, training, or
30 assistance, in a variety of forms and intensity, as required to assist
31 the individual or individuals as they move toward independence.
32 “Group home” does not include a living arrangement that is
33 dedicated for use by children with developmental disabilities.

34 “Licensee” means an individual, partnership, or corporation that
35 is licensed by the division, and is responsible for providing services
36 associated with the operation of a group home.

37 “Private room” means the private bedroom of a group home
38 resident.

39 “Private single occupancy room” means a private room that is
40 occupied by only a single group home resident.

41 “Private double occupancy room” means a private room that is
42 occupied by two or more group home residents.

43

44 3. a. A group home that does not have electronic monitoring
45 devices already installed in the group home’s common areas shall
46 be required to install electronic monitoring devices in those
47 common areas, upon the collective request of the residents and the
48 residents’ authorized representatives, if all of the residents of the

1 group home and their authorized representatives agree to have such
2 electronic monitoring devices installed and expressly consent to the
3 installation and use of such devices. A licensee shall not require
4 current residents to consent to the installation and use of electronic
5 monitoring devices in the common areas as a condition of their
6 continued residency in the group home. Each licensee operating a
7 group home that does not have electronic monitoring devices
8 already installed in the common areas shall:

9 (1) within six months after the group home adopts an internal
10 electronic monitoring policy pursuant to section 5 of this act, take
11 affirmative action to determine whether the residents of the group
12 home and their authorized representatives want and consent to have
13 electronic monitoring devices installed and used in the group
14 home's common areas pursuant to this section;

15 (2) ensure that all new residents or their authorized
16 representatives express written consent to the use of the electronic
17 monitoring devices in the group home's common areas prior to their
18 residency in the group home; and

19 (3) annually provide written notice to all residents and their
20 authorized representatives informing them of their right to request
21 the installation and use of electronic monitoring devices in the
22 group home's common areas, as provided by this section.

23 b. A group home that installs and uses electronic monitoring
24 devices in its common areas pursuant to the agreement, request, and
25 consent of the residents, as provided by this section, shall:

26 (1) require each person employed by the group home to provide
27 express written consent to the use of the electronic monitoring
28 devices in the group home's common areas, as a condition of the
29 person's employment;

30 (2) ensure that a prominent written notice is posted at the
31 entrance and exit doors to the home informing visitors that they will
32 be subject to electronic video monitoring while present in the home;
33 and

34 (3) ensure that the group home allows those individuals who
35 consent to the ongoing use of electronic monitoring devices in the
36 group home's common areas or their authorized representatives to
37 change their minds and withdraw their consent to the use of
38 electronic devices in a group home's common areas at any time
39 after expressing written consent to the use of such electronic
40 monitoring devices.

41 c. An individual's refusal to agree and consent to the use of
42 electronic monitoring devices in a group home's common areas or
43 the withdrawal of their agreement and consent pursuant to
44 paragraph (3) of subsection b. of this section shall not be used as a
45 basis to prevent the timely placement of the individual in
46 appropriate housing without surveillance.

47 d. (1) Any electronic monitoring devices installed pursuant to
48 this section shall be unobstructed and recording at all times, and any

1 recordings produced by the devices shall be retained by the program
2 for a period of 90 days. Each licensee shall inspect the devices, and
3 shall document the results of each inspection, on a weekly basis.

4 (2) A resident or the resident's authorized representative shall
5 be authorized, upon request submitted to the licensee, to access and
6 review any footage that is recorded by an electronic monitoring
7 device in the common areas of the group home.

8 e. The Department of Human Services shall annually conduct
9 an on-site device inspection at each group home, in order to ensure
10 that any electronic monitoring devices installed in the common
11 areas are functioning properly, as required by subsection d. of this
12 section. The department may elect to conduct the on-site device
13 inspection required by this subsection as part of the broader
14 inspection of each group home that it is required to perform under
15 section 8 of P.L.2017, c.328 (C.30:11B-4.3).

16 f. Nothing in this section shall be deemed to prohibit a group
17 home licensee from installing and utilizing electronic monitoring
18 devices in the group home's common areas, pursuant to the group
19 home's internal policies, in cases where the group home's residents
20 have not submitted a collective request for such monitoring.

21
22 4. a. A group home for individuals with developmental
23 disabilities shall permit electronic monitoring devices to be
24 installed and used in a resident's private room, as provided by this
25 section, for the purposes of monitoring the resident's in-room care,
26 treatment, and living conditions. Each licensee shall:

27 (1) within six months after the effective date of this act, and
28 annually thereafter, provide written notice to all residents, and to
29 their authorized representatives, informing them of their right to
30 install and use electronic monitoring devices in the residents'
31 private rooms, as provided by this section, and articulating the
32 notice requirements that are to be satisfied, pursuant to subsection
33 b. of this section, before an electronic monitoring device may be
34 installed and used in a private single occupancy room, and the
35 consent requirements that are to be satisfied, pursuant to subsection
36 c. of this section, before an electronic monitoring device may be
37 installed and used in a private double occupancy room;

38 (2) ensure that reasonable accommodations are made, as
39 necessary, to enable the authorized use of electronic monitoring
40 devices in private rooms, as provided by this section; and

41 (3) whenever a resident or the resident's authorized
42 representative seeks to install an electronic monitoring device in the
43 resident's private room, provide the resident or the resident's
44 authorized representative, as appropriate, with written notice of any
45 applicable installation or building construction requirements or
46 restrictions with which the resident must comply when installing
47 and using an electronic monitoring device in the private room.
48 Such notice shall be provided within 10 days after the licensee

1 receives notice of the resident's intent to install electronic
2 monitoring devices in a single occupancy room under subsection b.
3 of this section or within 10 days after the licensee receives a
4 resident's request for electronic monitoring of a double occupancy
5 room under subsection c. of this section.

6 b. (1) The installation and use of electronic monitoring devices
7 in a private single occupancy room: (a) shall be noncompulsory;
8 and (b) may be done by the resident or the resident's authorized
9 representative, at any time, following the resident's provision of
10 notice to the licensee pursuant to paragraph (2) of this subsection.

11 (2) Any person who wishes to install and utilize electronic
12 monitoring devices in a resident's private single occupancy room
13 shall provide the licensee with a written notice of intent at least 15
14 days prior to installation of the devices, and shall comply with any
15 installation or building construction constraints that are identified
16 by the licensee in the notice that is provided to the resident pursuant
17 to paragraph (3) of subsection a. of this section.

18 (3) Any resident who provides a notice of intent to install
19 electronic monitoring devices in a private single occupancy room,
20 or who so installs such devices, shall be deemed to have implicitly
21 consented to electronic monitoring in the private room.

22 c. (1) The installation and use of electronic monitoring devices
23 in a private double occupancy room shall: (a) be noncompulsory;
24 (b) be conditioned upon the licensee's receipt of written consent to
25 such monitoring from all roommates of the resident who is
26 requesting the monitoring, or from the roommates' authorized
27 representative, as appropriate; and (c) to the extent practicable,
28 protect the privacy rights of all roommates of the resident who is
29 requesting the monitoring.

30 (2) The roommate of a resident who requests electronic
31 monitoring of a double occupancy room, or the roommate's
32 authorized representative, may place conditions on his or her
33 consent to the use of electronic monitoring devices within the
34 private double occupancy room, including conditions that require
35 the electronic monitoring devices to be pointed away from the
36 consenting roommate at all times during operation, or at certain
37 specified times. The roommate's consent to electronic monitoring,
38 and any conditions on a roommate's consent that are established
39 pursuant to this paragraph, shall be memorialized in an electronic
40 monitoring agreement that is executed between the consenting
41 roommate and the resident who requested the monitoring, or
42 between their authorized representatives, as appropriate. The
43 licensee, either through its own activities, or through the activities
44 of a third party, shall ensure that the conditions established in the
45 agreement are followed.

46 (3) Each resident, or the authorized representative thereof, who
47 wishes to install and use an electronic monitoring device in a
48 double occupancy private room, shall file with the licensee: (a) a

1 signed form, developed by the division, formally requesting and
2 giving the resident's express consent for the installation and use of
3 one or more electronic monitoring devices in the double occupancy
4 room; and (b) a copy of the electronic monitoring agreement that
5 has been executed between the resident and the resident's roommate
6 pursuant to paragraph (2) of this subsection, or, if the roommate or
7 the roommate's authorized representative has refused to consent to
8 electronic monitoring of the private room, a copy of the consent
9 declination form that has been signed by the roommate or the
10 roommate's authorized representative.

11 (4) The installation and use of electronic monitoring devices in a
12 private double occupancy room shall be done in compliance with
13 any installation or building construction constraints that are
14 identified by the licensee in the notice that is provided to the
15 resident pursuant to paragraph (3) of subsection a. of this section.

16 d. If a resident's roommate or the roommate's authorized
17 representative, as appropriate, refuses to consent to the installation
18 and use of an electronic monitoring device in a private double
19 occupancy room, or if a resident, the roommate, or the resident's or
20 roommate's authorized representative withdraws consent to the
21 installation and use of an electronic monitoring device in a private
22 double occupancy room, or if the licensee is unable to ensure
23 compliance with the conditions on such installation and use that are
24 imposed by a consenting roommate or the roommate's authorized
25 representative in the agreement executed pursuant to paragraph (2)
26 of subsection c. of this section, the licensee shall, within a
27 reasonable period of time, and to the extent practicable, transfer the
28 resident or the roommate requesting the installation of the device to
29 a different private room in order to accommodate the resident's
30 request for private monitoring. If a request for private monitoring
31 cannot be accommodated, the resident or the resident's authorized
32 representative may notify the division, in which case, the division
33 shall make every reasonable attempt to timely transfer the resident
34 to a group home that can accommodate the request.

35 e. A licensee shall not refuse to admit an individual to a group
36 home, and shall not transfer or remove an individual from a group
37 home, except as otherwise provided by subsection d. of this section,
38 on the basis that the individual, or the individual's authorized
39 representative, has requested electronic monitoring of the
40 individual's private room, as authorized by this section.

41 f. A licensee shall ensure that a prominent written notice is
42 posted on the entry door to any private room wherein electronic
43 monitoring devices are installed and used pursuant to this section.
44 The notice shall indicate that an electronic monitoring device has
45 been installed in the room, and that visitors will be subject to
46 electronic video monitoring while present therein.

47 g. All of the costs associated with installation and maintenance
48 of an electronic monitoring device in the private room of a resident

1 shall be paid by the resident who requested the monitoring, or by
2 the authorized representative thereof.

3 h. (1) Any recordings produced by an electronic monitoring
4 device that has been installed in a private room, pursuant to this
5 section, shall remain the property, and shall be retained in the
6 possession, of the resident or the authorized representative who
7 installed the electronic monitoring device in the private room.

8 (2) A licensee shall not be authorized to require a resident or the
9 resident's authorized representative, as a condition of installing or
10 using an electronic monitoring device in the resident's private
11 room, to turn over to the licensee, or to otherwise allow the licensee
12 to access or review, any recordings that are produced by the
13 electronic monitoring device in the private room.

14 (3) Whenever an electronic monitoring device is proposed to be
15 installed in a private double occupancy room, pursuant to this
16 section, the consenting roommate or authorized representative
17 thereof, as the case may be, may elect to provide that, as a condition
18 of the installation and ongoing use of the device in the room, the
19 roommate and the roommate's authorized representative shall have
20 the right and ability to access and review any recordings that are
21 produced by the device, upon request submitted to the resident or
22 authorized representative who owns the device. This condition on
23 the installation and use of an electronic monitoring device in a
24 private double occupancy room, if elected by a consenting
25 roommate or the roommate's authorized representative, shall be
26 memorialized in the electronic monitoring agreement that is
27 executed pursuant to paragraph (2) of subsection c. of this section.
28 Any such electronic monitoring agreement shall also describe the
29 procedures or protocols that are to be used by the owner of the
30 device to ensure that the consenting roommate or the authorized
31 representative thereof, as the case may be, is provided with timely
32 access to all relevant footage recorded by the device, upon
33 submission of a request therefor.

34
35 5. a. (1) Within 90 days after the effective date of this act, the
36 division, in consultation with the Ombudsman for Individuals with
37 Intellectual or Developmental Disabilities and Their Families, the
38 New Jersey Council on Developmental Disabilities, and the group
39 home provider community, shall establish and publish guidelines
40 for the development of internal policies pursuant to this section.

41 (2) Within 180 days after the publication of guidelines pursuant
42 to paragraph (1) of this subsection, each licensee shall develop and
43 submit to the division a written internal policy specifying the
44 procedures and protocols that are to be used by facility staff when
45 installing and utilizing electronic monitoring devices as provided by
46 this act.

47 b. An internal electronic monitoring policy established
48 pursuant to this section shall:

1 (1) describe the procedures and protocols that are to be used:
2 (a) when obtaining consent from residents and facility staff for the
3 use of electronic monitoring devices in a group home's common
4 areas, as provided by section 3 of this act; and (b) when obtaining
5 consent from residents and roommates for the use of electronic
6 monitoring devices in private double occupancy rooms, as provided
7 by subsection c. of section 4 of this act;

8 (2) describe the procedures and protocols that are to be used
9 when a resident or the resident's authorized representative express,
10 in writing, their wish to withdraw their consent for the use of
11 electronic monitoring devices in a group home's common areas, as
12 provided by section 3 of this act or in private double occupancy
13 rooms, as provided by section 4 of this act;

14 (3) describe the procedures and protocols that are to be used in
15 the review of footage recorded by electronic monitoring devices in
16 the group home's common areas. The procedures and protocols
17 adopted pursuant to this paragraph shall, at a minimum, reflect the
18 requirements of subsection c. of this section; and

19 (4) identify the persons who will have access to footage
20 recorded by electronic monitoring devices installed in the group
21 home's common areas and private rooms, and the circumstances
22 under which recorded footage will be subject to review by such
23 persons.

24 c. Whenever a licensee receives notice about a complaint,
25 allegation, or reported incident of abuse, neglect, or exploitation
26 occurring within the group home, the licensee shall forward to the
27 division, for appropriate review, any and all potentially relevant
28 footage recorded by electronic monitoring devices in the group
29 home's common areas.

30

31 6. a. The division shall:

32 (1) develop, and provide to each licensee, consent forms that are
33 to be filled out and signed by individuals who consent to, or
34 request, electronic monitoring under section 3 or subsection c. of
35 section 4 of this act, consent declination, or withdrawal of consent
36 forms that are to be filled out and signed by individuals who refuse
37 to consent to such electronic monitoring; and

38 (2) develop, and post on its Internet website, standardized notice
39 of intent forms that a group home resident and the resident's
40 authorized representative may elect to use when providing a
41 licensee with a notice of intent to engage in electronic monitoring
42 of a private single occupancy room, as required by subsection b. of
43 section 4 of this act.

44 b. Consent forms, consent declination, or withdrawal of
45 consent forms filed under section 3 or subsection c. of section 4 of
46 this act, and notices of intent filed under subsection b. of section 4
47 of this act, shall be retained by the licensee for a period of time to
48 be determined by the division.

1 c. When seeking to obtain consent from residents for electronic
2 monitoring, as required by this act, a licensee shall comply with
3 best practices that apply to professional interactions or
4 communications being undertaken with persons with developmental
5 disabilities, and particularly, with those persons who have difficulty
6 with communication or understanding.

7 d. The division may establish additional consent, consent
8 declination, or withdrawal of consent requirements, for the purposes
9 of this act, as deemed by the division to be necessary.

10
11 7. Notwithstanding the provisions of this act to the contrary, if,
12 as of the effective date of this act, a licensee has already installed
13 and is utilizing electronic monitoring devices in a group home's
14 common areas or private rooms, the licensee may continue to utilize
15 the devices so installed, in accordance with the licensee's written
16 internal policies; shall not be required to remove the devices from
17 service; and shall not be required to comply with the provisions of
18 this act in order to continue utilizing the previously-installed
19 devices. However, to the extent that a group home's common areas
20 or private rooms do not contain electronic monitoring devices on
21 the effective date of this act, the licensee shall comply with the
22 provisions of section 3 and 4 of this act, as applicable, when
23 installing and utilizing new electronic monitoring devices in such
24 unmonitored areas.

25
26 8. a. Any licensee that fails to comply with the provisions of
27 this act shall be subject to a penalty of \$5,000 for the first offense,
28 and a penalty of \$10,000 for the second or subsequent offense, to be
29 collected with costs in a summary proceeding, pursuant to the
30 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
31 et seq.), as well as an appropriate administrative penalty, the
32 amount of which shall be determined by the division.

33 b. A group home licensee shall not be subject to penalties
34 under this section, or to any other disciplinary action, for failing to
35 comply with the requirements of section 3 or 4 of this act, as
36 applicable, if the group home licensee establishes, through
37 documentation or otherwise, that electronic monitoring devices
38 were installed and being utilized in the group home's common areas
39 or private rooms, or both, as of the effective date of this act, as
40 provided by section 7 of this act, and that the group home is,
41 therefore, exempt from compliance with the requirements of section
42 3 or section 4 of this act, as appropriate.

43
44 9. a. Within five years after the effective date of this act, the
45 division shall prepare and submit to the Governor, and, pursuant to
46 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a
47 written report that:

- 1 (1) identifies best practices for the installation and use of
- 2 electronic monitoring devices under this act;
- 3 (2) identifies best practices and provides recommendations
- 4 regarding the obtaining of informed consent for electronic
- 5 monitoring, as provided by this act; and
- 6 (3) provides recommendations for the implementation of new
- 7 legislation, policies, protocols, and procedures related to the use of
- 8 electronic monitoring devices in group homes.
- 9 b. The Commissioner of Human Services, in consultation with
- 10 the assistant commissioner of the division, shall:
- 11 (1) annually prepare and submit to the Governor and, pursuant
- 12 to section 2 of P.L.1991, c.164 (C.52:14-19.1 et seq.), to the
- 13 Legislature, a written report describing how this act has been
- 14 implemented in the State. Each annual report shall include, at a
- 15 minimum:
- 16 (a) a list of group homes that are currently using electronic
- 17 monitoring devices in the common areas;
- 18 (b) a list of group homes that have not installed electronic
- 19 monitoring devices in the common areas;
- 20 (c) to the extent known, a list of group homes that have failed to
- 21 install and use electronic monitoring devices in the common areas
- 22 upon the request of the residents, as provided by section 3 of this
- 23 act, despite the licensee's receipt of uniform resident consent
- 24 authorizing such monitoring, and an indication of the penalties that
- 25 were imposed under section 8 of this act in response to such
- 26 failures;
- 27 (d) a list of group homes that are exempt from compliance with
- 28 the provisions of section 3 or 4 of this act, as provided by section 7
- 29 of this act;
- 30 (e) a list of group homes that have authorized the use of
- 31 electronic monitoring devices in the private rooms of one or more
- 32 residents, and an indication of the number and percentage of private
- 33 single occupancy rooms and private double occupancy rooms in
- 34 each such facility where electronic monitoring devices are installed
- 35 and being used, as provided by subsections b. and c. of section 4 of
- 36 this act; and
- 37 (f) recommendations for legislative, executive, or other action
- 38 that can be taken to improve compliance with the act's provisions,
- 39 or to otherwise expand the consensual use of electronic monitoring
- 40 devices in group homes; and
- 41 (2) post, at a publicly accessible location on the Department of
- 42 Human Services' Internet website, the various lists of group homes
- 43 produced under paragraph (1) of this subsection, and annually
- 44 update the website to ensure that each list contains the most current
- 45 data reported pursuant to this subsection. Each list posted online
- 46 shall be searchable by location and by name of group home.
- 47 c. The Ombudsman for Individuals with Intellectual or
- 48 Developmental Disabilities and Their Families shall include, in

1 each of the ombudsman’s annual reports prepared pursuant to
2 section 3 of P.L.2017, c.269 (C.30:1AA-9.3), a section evaluating
3 the implementation of this act and providing recommendations for
4 improvement.

5
6 10. The Commissioner of Human Services, in consultation with
7 the assistant commissioner of the division, shall adopt rules and
8 regulations, pursuant to the “Administrative Procedure Act,”
9 P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to
10 effectuate the provisions of this act.

11
12 11. This act shall take effect on the first day of the third month
13 next following the date of enactment.

14
15
16 STATEMENT

17
18 This bill provides certain requirements in association with the
19 use of electronic monitoring devices (EMDs) at group homes for
20 individuals with developmental disabilities. An “EMD” is a camera
21 or other electronic device that uses video, but not audio, recording
22 capabilities to monitor the activities taking place in the area where
23 the device is installed. The safety and quality of life of individuals
24 with developmental disabilities who receive care from group homes
25 is of paramount concern, and the use of video monitoring is one
26 way in which the State can better ensure the prevention of, and the
27 institution of a more proactive response to, the abuse, neglect, and
28 exploitation of group home residents.

29 This bill would make video monitoring technology more readily
30 available in group home settings, while taking great care to strike
31 the important and delicate balance between protecting the privacy
32 rights and protecting the overall well-being of group home
33 residents. Specifically, the bill would enable, but not require, group
34 home residents or their authorized representatives, as the case may
35 be, to cooperatively and collectively decide whether to allow for the
36 installation and use of EMDs in the common areas of the group
37 homes, and to individually decide whether to allow for the
38 installation and use of EMDs in the private residential room of each
39 such resident, so that the treatment of such residents can be
40 recorded and instances of abuse, neglect, or exploitation
41 documented with video evidence. In providing these authorizations,
42 the bill respects the rights of all individuals with developmental
43 disabilities, places a premium on their individuality, and recognizes
44 that different people have different needs and preferences with
45 respect to the use of video surveillance.

46
47 *Scope of Bill*

1 The term “group home” is defined more broadly in this bill than
2 it is in other laws. Specifically, the term is defined to mean a living
3 arrangement that is licensed by the Division of Developmental
4 Disabilities (DDD) in the Department of Human Services (DHS)
5 and is operated in a residence or residences leased or owned by a
6 licensee; which living arrangement either provides the opportunity
7 for multiple adults with developmental disabilities to live together
8 in a home, sharing in chores and the overall management of the
9 residence, or provides the opportunity for a single adult with
10 developmental disabilities and extreme behavioral difficulties to
11 live more independently while receiving full-time care, and in
12 which on-site staff provides supervision, training, or assistance, in a
13 variety of forms and intensity, as required to assist the individual or
14 individuals as they move toward independence. “Group home”
15 does not include a living arrangement that is dedicated for use by
16 children with developmental disabilities. The revised definition
17 used in the bill makes it clear that this term not only includes
18 facilities that house multiple persons with developmental
19 disabilities, but also includes facilities that, while commonly
20 referred to as supervised apartments, provide group home-style
21 living for a single person who has developmental disabilities and
22 particularly severe behavioral difficulties that prevent them from
23 being housed in a group home with other disabled persons.

24 The bill would require group homes, as defined thereunder, to
25 install EMDs in the common areas, upon the agreement, request,
26 and uniform consent of all residents. “Common areas” is defined to
27 include entrances, living areas, dining areas, stairwells, and outdoor
28 areas, but not bathroom areas. The bill would additionally require
29 group homes to permit the installation and use of EMDs in the
30 private rooms of group home residents.

31 The bill is not intended to impose new requirements on those
32 group home providers who already engage in electronic monitoring
33 pursuant to an internal organizational policy. As a result, the bill
34 includes a provision that grandfathers-in and exempts from the
35 bill’s provisions those group homes that have already installed, and
36 are utilizing, EMDs as of the bill’s effective date. Specifically, the
37 bill provides that any such group home: 1) may continue to use
38 previously installed EMDs in accordance with the organization’s
39 written policies; 2) will not be required to remove the devices from
40 service; and 3) will not be required to comply with the bill’s
41 consent requirements in order to continue utilizing the devices.
42 However, to the extent that a group home’s common areas or
43 private rooms do not contain EMDs on the bill’s effective date, the
44 licensee will be required to comply with the bill when installing
45 new EMDs in such unmonitored areas. The bill is intended to give
46 residents – particularly those with severe behavioral difficulties –
47 the right to request electronic monitoring in the group home, as
48 necessary to ensure their safe care. The bill is not intended to

1 impose new electronic monitoring requirements on providers that
2 already engage in electronic monitoring; and it is not intended to
3 require other group home providers to commence electronic
4 monitoring, except in those cases where the residents have
5 requested and agreed to such monitoring.

6

7 *Installation and Use of EMDs in Common Areas*

8 Under the bill's provisions, any group home that does not have
9 EMDs already installed in the group home's common areas will be
10 required to install EMDs in those common areas, upon the
11 collective request of the residents and the residents' authorized
12 representatives, if all of the residents of the group home and their
13 authorized representatives agree to have EMDs installed and
14 expressly consent to the installation and use of such devices. A
15 licensee will be prohibited from requiring the group home's current
16 residents to consent to the installation and use of EMDs in the
17 common areas as a condition of their continued residency in the
18 group home.

19 A licensee operating a group home that does not have EMDs
20 already installed in the common areas will be required: 1) within
21 six months after the group home adopts an internal electronic
22 monitoring policy pursuant to the bill's provisions, to take
23 affirmative action to determine whether the residents of the group
24 home and their authorized representatives want and consent to have
25 EMDs installed and used in the group home's common areas; (2)
26 ensure that all new residents or their authorized representatives
27 express written consent to the use of the electronic monitoring
28 devices in the group home's common areas prior to their residency
29 in the group home; and 3) annually provide written notice to all
30 residents and their authorized representatives informing them of
31 their right to request the installation and use of EMDs in the group
32 home's common areas.

33 The bill would require any group home that installs and uses
34 EMDs in its common areas, pursuant to the agreement, request, and
35 consent of the residents, to: 1) require each person employed by the
36 group home to provide express written consent to the use of the
37 EMDs in the group home's common areas, as a condition of the
38 person's employment; 2) ensure that a prominent written notice is
39 posted at the entrance and exit doors to the home informing visitors
40 that they will be subject to electronic video monitoring while
41 present in the home; and 3) ensure that the group home allows those
42 individuals who consent to the ongoing use of electronic monitoring
43 devices in the group home's common areas or their authorized
44 representatives to change their minds and withdraw their consent to
45 the use of electronic devices in a group home's common areas at
46 any time after expressing written consent to the use of such
47 electronic monitoring devices.

1 The EMDs installed in a group home's common areas are to be
2 unobstructed and recording at all times. Each licensee will be
3 required to inspect the devices, and document the results of each
4 inspection, on a weekly basis. The DHS will further be required to
5 annually conduct an on-site device inspection, as part of its broader
6 group home inspection authority, in order to ensure that the EMDs
7 installed in a group home's common areas are functioning properly,
8 as required by the bill. A resident or the resident's authorized
9 representative will be authorized, upon request submitted to the
10 licensee, to access and review any footage that is recorded by an
11 EMD in the common areas of the group home.

12 The bill would specify that an individual's refusal or their
13 withdrawal of their agreement to consent to the use of EMDs in a
14 group home's common areas may not be used as a basis to prevent
15 the timely placement of the individual in appropriate housing
16 without surveillance.

17 The bill would further provide that nothing in the provisions of
18 section 3, regarding the installation of EMDs in a group home's
19 common areas, may be deemed to prohibit a group home licensee
20 from installing and utilizing EMDs in the group home's common
21 areas, pursuant to the group home's internal policies, in cases where
22 the group home's residents have not submitted a collective request
23 for such monitoring. This bill is intended to require the placement
24 of EMDs in common areas only in cases where group home
25 residents have collectively requested the electronic monitoring of
26 such common areas. It is not intended to limit a licensee's
27 discretionary ability to install and utilize EMDs in the common
28 areas, in accordance with the group home's internal policies, in the
29 absence of a collective resident request.

30

31 *Installation and Use of EMDs in Private Rooms*

32 The bill would further require all group homes to permit EMDs
33 to be installed and used, on a voluntary and noncompulsory basis, in
34 the private rooms of residents.

35 The installation and use of EMDs in a private single occupancy
36 room may be done by the resident or the resident's authorized
37 representative, at any time, following the resident's provision of
38 written notice to the licensee of the resident's intent to engage in
39 electronic monitoring of the private room. Such written notice is to
40 be submitted to the licensee at least 15 days prior to installation of
41 the devices in the private single occupancy room. Any resident, or
42 the authorized representative thereof, who provides such a notice of
43 intent to install EMDs in a private single occupancy room, or who
44 so installs such devices, will be deemed to have implicitly
45 consented to electronic monitoring of the private room.

46 The installation and use of EMDs in a private double occupancy
47 room may be effectuated only with the express written consent of
48 the roommates of the resident who requested the monitoring, or of

1 the roommates' authorized representatives, as the case may be. A
2 roommate may place conditions on his or her consent to the use of
3 EMDs within the double occupancy room, including conditions that
4 require the EMDs to be pointed away from the consenting
5 roommate at all times during operation, or at certain specified
6 times. The roommate's consent to electronic monitoring, and any
7 conditions on the roommate's consent, are to be memorialized in a
8 formal electronic monitoring agreement that is executed between
9 the consenting roommate and the resident who requested the
10 monitoring, or between their authorized representatives, as
11 appropriate. The licensee, either through its own activities or
12 through a third-party's activities, will be required to ensure that the
13 conditions established in the agreement are followed.

14 If a resident's roommate or the roommate's authorized
15 representative, as appropriate, refuses to consent to the installation
16 and use of an EMD in a private double occupancy room, or if a
17 resident, the roommate, or the resident's or roommate's authorized
18 representative, as appropriate, withdraws consent to the installation
19 and use of an electronic monitoring device in a private double
20 occupancy room, or if the licensee is unable to ensure compliance
21 with the conditions on such installation and use that are imposed by
22 a consenting roommate or the roommate's authorized
23 representative, the licensee will be required, within a reasonable
24 period of time, and to the extent practicable, to transfer the resident
25 requesting the installation of the device to a different private room,
26 in order to accommodate the resident's request for private
27 monitoring. If a request for private monitoring cannot be
28 accommodated, the resident or resident's authorized representative
29 may notify the DDD, which will be required to make every
30 reasonable attempt to timely transfer the resident to a group home
31 that can accommodate the request.

32 All of the costs associated with installation and maintenance of
33 an EMD in a private room are to be paid by the resident who
34 requested the monitoring, or by the authorized representative
35 thereof.

36 Any recordings produced by an EMD installed in a private room
37 will remain the property, and are to be retained in the possession, of
38 the resident or the authorized representative who installed the EMD
39 in the private room. The bill would specify that a licensee may not
40 require a resident or the resident's authorized representative, as a
41 condition of installing or using an EMD in the resident's private
42 room, to turn over to the licensee, or to otherwise allow the licensee
43 to access or review, any recordings that are produced by the EMD
44 in the private room. Whenever an EMD is proposed to be installed
45 in a private double occupancy room, the consenting roommate or
46 authorized representative thereof, as the case may be, may elect to
47 provide that, as a condition of the installation and ongoing use of
48 the device in the room, the roommate and the roommate's
49 authorized representative shall have the right and ability to access

1 and review any recordings that are produced by the EMD, upon
2 request submitted to the resident or authorized representative who
3 owns the device. This condition, if elected by a consenting
4 roommate or the roommate's authorized representative, is to be
5 memorialized in the electronic monitoring agreement that is
6 executed pursuant to bill's provisions. Any such electronic
7 monitoring agreement will also be required to describe the
8 procedures or protocols that are to be used by the owner of the
9 device to ensure that the consenting roommate or the authorized
10 representative thereof, as the case may be, is provided with timely
11 access to all relevant footage recorded by the device, upon
12 submission of a request therefor.

13

14 *Additional Provisions*

15 The bill would require a group home licensee, when seeking to
16 obtain consent from residents for electronic monitoring, to comply
17 with best practices that apply to professional interactions or
18 communications being undertaken with persons with developmental
19 disabilities, and particularly, with those persons who have difficulty
20 with communication or understanding. The DDD would be
21 authorized to impose any additional consent, consent declination, or
22 withdrawal of consent requirements that it deems to be necessary.

23 Any recordings produced by an EMD in a group home's common
24 areas are to be retained by the group home for a period of 90 days.
25 Any consent forms, consent declination forms, withdrawal of
26 consent, and notice of intent forms submitted under the bill are to
27 be retained by the group home for a period of time to be determined
28 by the DDD.

29 Within 180 days after the bill's effective date, each group home
30 will be required to develop and submit to the division a written
31 internal policy specifying the procedures and protocols that are to
32 be used by program staff when installing and utilizing EMDs. The
33 internal policy is to provide, amongst other things, that whenever a
34 licensee receives notice about a complaint, allegation, or reported
35 incident of abuse, neglect, or exploitation occurring within the
36 group home, the licensee will forward to the DDD, for appropriate
37 review, all potentially relevant footage recorded by EMDs in the
38 group home's common areas.

39 Any residential program that fails to comply with the bill's
40 requirements will be subject to a penalty of \$5,000 for the first
41 offense, and a penalty of \$10,000 for the second or subsequent
42 offense, as well as an appropriate administrative penalty, the
43 amount of which is to be determined by the DHS. However, a
44 group home licensee will not be subject to penalties or other
45 disciplinary action for failing to comply with the bill's requirements
46 if the group home licensee establishes, through documentation or
47 otherwise, that EMDs were installed and being utilized in the group
48 home on the bill's effective date, and that the group home is,

1 therefore, exempt from compliance with the bill's provisions related
2 to the placement of EMDs in unmonitored areas.

3 The Commissioner of Human Services, in consultation with the
4 assistant commissioner of the DDD, will be required to annually
5 report to the Governor and Legislature on the implementation of the
6 bill's provisions. Each annual report is to include: 1) a list of
7 group homes that are currently using EMDs in the common areas;
8 2) a list of group homes that have not installed EMDs in the
9 common areas; 3) a list of group homes that have failed to install
10 and use EMDs in the common areas, despite the licensee's receipt
11 of uniform resident consent, and an indication of the penalties
12 imposed in response to such failures; 4) a list of group homes that
13 are exempt from the bill's provisions; 5) a list of group homes that
14 have authorized the use of EMDs in the private rooms of one or
15 more residents, and an indication of the number and percentage of
16 private single occupancy rooms and the number and percentage of
17 private double occupancy rooms in each such facility where EMDs
18 are installed and being used; and 6) recommendations for
19 legislative, executive, or other action that can be taken to improve
20 compliance with the bill or otherwise expand the consensual use of
21 EMDs in group homes. The commissioner, in consultation with the
22 assistant commissioner, will also be required to post, at a publicly
23 accessible location on the department's Internet website, the various
24 lists of group homes that the department has produced for its annual
25 reports. Each list posted online is to be searchable both by location
26 and by name of group home. The commissioner will be required to
27 annually update the website to ensure that each posted list contains
28 the most recently reported data.

29 In addition to the commissioner's annual reports, the bill requires
30 the Ombudsman for Individuals with Intellectual or Developmental
31 Disabilities and Their Families to include, in each of the
32 ombudsman's annual reports, a section evaluating the
33 implementation of the bill and providing recommendations for
34 improvement. The bill further requires the DDD, within five years
35 of the bill's effective date, to provide the Governor and Legislature
36 with a written report that: 1) identifies best practices for the
37 installation and use of EMDs under the bill; 2) identifies best
38 practices and provides recommendations regarding the obtaining of
39 informed consent for electronic monitoring under the bill; and 3)
40 provides recommendations for the implementation of new
41 legislation, policies, protocols, and procedures related to the use of
42 EMDs in group homes.