



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4387

by Rep. Thomas M. Bennett

SYNOPSIS AS INTRODUCED:

See Index

Creates the Authorized Electronic Monitoring in Community-Integrated Living Arrangements and Developmental Disability Facilities Act. Provides that under certain conditions, a resident of a living arrangement certified under the Community-Integrated Living Arrangements Licensure and Certification Act and a resident of a developmental disability facility shall be permitted to use an audio and video surveillance system in his or her room at his or her own expense. Requires the electronic monitoring device to be placed in a conspicuously visible location in the room. Requires the Department of Human Services to establish a program to distribute specified funds each year for the purchase and installation of electronic monitoring devices. Establishes criminal penalties for a person or entity that knowingly hampers, obstructs, tampers with, or destroys an electronic monitoring device. Contains provisions concerning: resident and roommate consent to monitoring; notice of electronic monitoring to the staff and visitors; limitations on the staff's access to recordings; the admissibility of recordings in civil, criminal, and administrative actions; staff reporting; liability; and rulemaking. Makes other changes. Amends the Community-Integrated Living Arrangements Licensure and Certification Act and Mental Health and Developmental Disabilities Code to make conforming changes. Provides that it is a business offense for a person to discriminate or retaliate against a resident for consenting to the electronic monitoring, or to prevent the installation or use of an electronic monitoring device by a resident who has provided specified notice and consent. Makes other changes. Effective January 1, 2019.

LRB100 15559 MJP 30636 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Authorized Electronic Monitoring in Community-Integrated
6 Living Arrangements and Developmental Disability Facilities
7 Act.

8 Section 5. Definitions. As used in this Act:

9 "Authorized electronic monitoring" means the placement and
10 use of an electronic monitoring device by a resident in his or
11 her room in accordance with this Act.

12 "Community-integrated living arrangement" has the meaning
13 given to that term in Section 3 of the Community-Integrated
14 Living Arrangements Licensure and Certification Act.

15 "Department" means the Department of Human Services.

16 "Developmental disability facility" has the meaning
17 provided in Section 1-107 of the Mental Health and
18 Developmental Disabilities Code.

19 "Electronic monitoring device" means a surveillance
20 instrument with a fixed position video camera or an audio
21 recording device, or a combination thereof, that is installed
22 in a resident's room under the provisions of this Act and
23 broadcasts or records activity or sounds occurring in the room.

1 "Resident" means a person residing in a
2 community-integrated living arrangement or developmental
3 disability facility.

4 "Staff" includes individuals providing supervisory of
5 other services at a community-integrated living arrangement or
6 developmental disability facility.

7 Section 10. Authorized electronic monitoring.

8 (a) A resident shall be permitted to conduct authorized
9 electronic monitoring of the resident's room through the use of
10 electronic monitoring devices placed in the room pursuant to
11 this Act.

12 (b) Nothing in this Act shall be construed to allow the use
13 of an electronic monitoring device to take still photographs or
14 for the nonconsensual interception of private communications.

15 Section 15. Consent.

16 (a) Except as otherwise provided in this subsection, a
17 resident, a resident's plenary guardian of the person, or the
18 parent of a resident under the age of 18 must consent in
19 writing on a notification and consent form prescribed by the
20 Department to the authorized electronic monitoring in the
21 resident's room. If the resident has not affirmatively objected
22 to the authorized electronic monitoring and the resident's
23 physician determines that the resident lacks the ability to
24 understand and appreciate the nature and consequences of

1 electronic monitoring, the following individuals may consent
2 on behalf of the resident, in order of priority:

3 (1) a health care agent named under the Illinois Power
4 of Attorney Act;

5 (2) the resident's spouse;

6 (3) the resident's parent;

7 (4) the resident's adult child who has the written
8 consent of the other adult children of the resident to act
9 as the sole decision maker regarding authorized electronic
10 monitoring; or

11 (5) the resident's adult brother or sister who has the
12 written consent of the other adult siblings of the resident
13 to act as the sole decision maker regarding authorized
14 electronic monitoring.

15 (a-5) Prior to another person, other than a resident's
16 plenary guardian of the person, consenting on behalf of a
17 resident 18 years of age or older in accordance with this
18 Section, the resident must be asked by that person, in the
19 presence of staff, if he or she wants authorized electronic
20 monitoring to be conducted. The person must explain to the
21 resident:

22 (1) the type of electronic monitoring device to be
23 used;

24 (2) the standard conditions that may be placed on the
25 electronic monitoring device's use, including those listed
26 in paragraph (7) of subsection (b) of Section 20;

1 (3) with whom the recording may be shared according to
2 Section 45; and

3 (4) the resident's ability to decline all recording.

4 For the purposes of this subsection, a resident
5 affirmatively objects when he or she orally, visually, or
6 through the use of auxiliary aids or services declines
7 authorized electronic monitoring. The resident's response must
8 be documented on the notification and consent form.

9 (b) A resident or roommate may consent to authorized
10 electronic monitoring with any conditions of the resident's
11 choosing, including, but not limited to, the list of standard
12 conditions provided in paragraph (7) of subsection (b) of
13 Section 20. A resident or roommate may request that the
14 electronic monitoring device be turned off or the visual
15 recording component of the electronic monitoring device be
16 blocked at any time.

17 (c) Prior to the authorized electronic monitoring, a
18 resident must obtain the written consent of any other resident
19 residing in the room on the notification and consent form
20 prescribed by the Department. Except as otherwise provided in
21 this subsection, a roommate, a roommate's plenary guardian of
22 the person, or the parent of a roommate under the age of 18
23 must consent in writing to the authorized electronic monitoring
24 in the resident's room. If the roommate has not affirmatively
25 objected to the authorized electronic monitoring in accordance
26 with subsection (a-5) and the roommate's physician determines

1 that the roommate lacks the ability to understand and
2 appreciate the nature and consequences of electronic
3 monitoring, the following individuals may consent on behalf of
4 the roommate, in order of priority:

5 (1) a health care agent named under the Illinois Power
6 of Attorney Act;

7 (2) the roommate's spouse;

8 (3) the roommate's parent;

9 (4) the roommate's adult child who has the written
10 consent of the other adult children of the resident to act
11 as the sole decision maker regarding authorized electronic
12 monitoring; or

13 (5) the roommate's adult brother or sister who has the
14 written consent of the other adult siblings of the resident
15 to act as the sole decision maker regarding authorized
16 electronic monitoring.

17 (c-5) Consent by a roommate under subsection (c) authorizes
18 the resident's use of any recording obtained under this Act, as
19 provided in Section 45 of this Act.

20 (c-7) Any resident previously conducting authorized
21 electronic monitoring must obtain consent from any new roommate
22 before the resident may resume authorized electronic
23 monitoring. If a new roommate does not consent to authorized
24 electronic monitoring and the resident conducting the
25 authorized electronic monitoring does not remove or disable the
26 electronic monitoring device, the staff shall turn off the

1 device.

2 (d) Consent may be withdrawn by the resident or roommate at
3 any time, and the withdrawal of consent shall be documented in
4 the resident's clinical record. If a roommate withdraws consent
5 and the resident conducting the authorized electronic
6 monitoring does not remove or disable the electronic monitoring
7 device, the staff may turn off the electronic monitoring
8 device.

9 (e) If a resident who is residing in a shared room wants to
10 conduct authorized electronic monitoring and another resident
11 living in or moving into the same shared room refuses to
12 consent to the use of an electronic monitoring device, the
13 staff shall make a reasonable attempt to accommodate the
14 resident who wants to conduct authorized electronic
15 monitoring. Staff has met the requirement to make a reasonable
16 attempt to accommodate a resident who wants to conduct
17 authorized electronic monitoring when upon notification that a
18 roommate has not consented to the use of an electronic
19 monitoring device in his or her room, the staff offers to move
20 either resident to another shared room that is available at the
21 time of the request. If a resident chooses to reside in a
22 private room in order to accommodate the use of an electronic
23 monitoring device, the resident must pay the private room rate.
24 If staff is unable to accommodate a resident due to lack of
25 space, then staff must reevaluate the request every 2 weeks
26 until the request is fulfilled.

1 Section 20. Notice to the staff.

2 (a) Authorized electronic monitoring may begin only after a
3 notification and consent form prescribed by the Department has
4 been completed and submitted to the staff.

5 (b) A resident shall notify the staff in writing of his or
6 her intent to install an electronic monitoring device by
7 providing a completed notification and consent form prescribed
8 by the Department that must include, at minimum, the following
9 information:

10 (1) the resident's signed consent to electronic
11 monitoring or the signature of the person consenting on
12 behalf of the resident in accordance with Section 15 of
13 this Act; if a person other than the resident signs the
14 consent form, the form must document the following:

15 (A) the date the resident was asked if he or she
16 wants authorized electronic monitoring to be conducted
17 in accordance with subsection (a-5) of Section 15;

18 (B) who was present when the resident was asked;
19 and

20 (C) an acknowledgement that the resident did not
21 affirmatively object; and

22 (2) the resident's roommate's signed consent or the
23 signature of the person consenting on behalf of the
24 resident in accordance with Section 15 of this Act, if
25 applicable, and any conditions placed on the roommate's

1 consent; if a person other than the roommate signs the
2 consent form, the form must document the following:

3 (A) the date the roommate was asked if he or she
4 wants authorized electronic monitoring to be conducted
5 in accordance with subsection (a-5) of Section 15;

6 (B) who was present when the roommate was asked;
7 and

8 (C) an acknowledgement that the roommate did not
9 affirmatively object; and

10 (3) the type of electronic monitoring device to be
11 used;

12 (4) any installation needs, such as mounting of a
13 device to a wall or ceiling;

14 (5) the proposed date of installation for scheduling
15 purposes;

16 (6) a copy of any contract for maintenance of the
17 electronic monitoring device by a commercial entity;

18 (7) a list of standard conditions or restrictions that
19 the resident or a roommate may elect to place on use of the
20 electronic monitoring device, including, but not limited
21 to:

22 (A) prohibiting audio recording;

23 (B) prohibiting broadcasting of audio or video;

24 (C) turning off the electronic monitoring device
25 or blocking the visual recording component of the
26 electronic monitoring device for the duration of an

1 exam or procedure by a health care professional;

2 (D) turning off the electronic monitoring device
3 or blocking the visual recording component of the
4 electronic monitoring device while dressing or bathing
5 is performed; and

6 (E) turning the electronic monitoring device off
7 for the duration of a visit with a spiritual advisor,
8 ombudsman, attorney, financial planner, intimate
9 partner, or other visitor; and

10 (8) any other condition or restriction elected by the
11 resident or roommate on the use of an electronic monitoring
12 device.

13 (c) A copy of the completed notification and consent form
14 shall be placed in the resident's and any roommate's clinical
15 record and a copy shall be provided to the resident and his or
16 her roommate, if applicable.

17 (d) The Department shall prescribe the notification and
18 consent form required in this Section no later than 60 days
19 after the effective date of this Act. If the Department has not
20 prescribed such a form by that date, the Office of the Attorney
21 General shall post a notification and consent form on its
22 website for resident use until the Department has prescribed
23 the form.

24 Section 25. Cost and installation.

25 (a) A resident choosing to conduct authorized electronic

1 monitoring must do so at his or her own expense, including
2 paying purchase, installation, maintenance, and removal costs.

3 (b) If a resident chooses to install an electronic
4 monitoring device that uses Internet technology for visual or
5 audio monitoring, that resident is responsible for contracting
6 with an Internet service provider.

7 (c) The staff shall make a reasonable attempt to
8 accommodate the resident's installation needs, including, but
9 not limited to, allowing access to a telecommunications or
10 equipment room. Staff has the burden of proving that a
11 requested accommodation is not reasonable.

12 (d) The electronic monitoring device must be placed in a
13 conspicuously visible location in the room.

14 (e) The resident may not be charged a fee for the cost of
15 electricity used by an electronic monitoring device.

16 (f) All electronic monitoring device installations and
17 supporting services shall comply with the requirements of the
18 edition of the National Fire Protection Association (NFPA) 101
19 Life Safety Code in force at the time of installation and shall
20 remain in compliance with that or any subsequent edition of
21 NFPA 101 enforced pursuant to Part 483 of Title 42 of the Code
22 of Federal Regulations.

23 Section 27. Assistance program.

24 (a) Subject to appropriation, the Department shall
25 establish a program to assist residents receiving medical

1 assistance under Article V of the Illinois Public Aid Code in
2 accessing authorized electronic monitoring.

3 (b) The Department shall distribute up to \$50,000 in funds
4 on an annual basis to residents receiving medical assistance
5 under Article V of the Illinois Public Aid Code for the
6 purchase and installation of authorized electronic monitoring
7 devices.

8 (c) Applications for funds and disbursement of funds must
9 be made in a manner prescribed by the Department.

10 Section 30. Notice to visitors.

11 (a) If a resident of a community-integrated living
12 arrangement or developmental disability facility conducts
13 authorized electronic monitoring, a sign shall be clearly and
14 conspicuously posted at all building entrances accessible to
15 visitors. The notice must be entitled "Electronic Monitoring"
16 and must state, in large, easy-to-read type, "The rooms of some
17 residents may be monitored electronically by or on behalf of
18 the residents.".

19 (b) A sign shall be clearly and conspicuously posted at the
20 entrance to a resident's room where authorized electronic
21 monitoring is being conducted. The notice must state, in large,
22 easy-to-read type, "This room is electronically monitored.".

23 (c) Staff is responsible for installing and maintaining the
24 signage required in this Section.

1 Section 40. Obstruction of electronic monitoring devices.

2 (a) A person or entity is prohibited from knowingly
3 hampering, obstructing, tampering with, or destroying an
4 electronic monitoring device installed in a resident's room
5 without the permission of the resident or the individual who
6 consented on behalf of the resident in accordance with Section
7 15 of this Act.

8 (b) A person or entity is prohibited from knowingly
9 hampering, obstructing, tampering with, or destroying a video
10 or audio recording obtained in accordance with this Act without
11 the permission of the resident or the individual who consented
12 on behalf of the resident in accordance with Section 15 of this
13 Act.

14 (c) A person or entity that violates this Section is guilty
15 of a Class B misdemeanor. A person or entity that violates this
16 Section in the commission of or to conceal a misdemeanor
17 offense is guilty of a Class A misdemeanor. A person or entity
18 that violates this Section in the commission of or to conceal a
19 felony offense is guilty of a Class 4 felony.

20 (d) It is not a violation of this Section if a person or
21 staff turns off the electronic monitoring device or blocks the
22 visual recording component of the electronic monitoring device
23 at the direction of the resident or the person who consented on
24 behalf of the resident in accordance with Section 15 of this
25 Act.

1 Section 45. Dissemination of recordings.

2 (a) Staff may not access any video or audio recording
3 created through authorized electronic monitoring without the
4 written consent of the resident or the person who consented on
5 behalf of the resident in accordance with Section 15 of this
6 Act.

7 (b) Except as required under the Freedom of Information
8 Act, a recording or copy of a recording made pursuant to this
9 Act may only be disseminated for the purpose of addressing
10 concerns relating to the health, safety, or welfare of a
11 resident or residents.

12 (c) The resident or person who consented on behalf of the
13 resident in accordance with Section 15 of this Act shall
14 provide a copy of any video or audio recording to parties
15 involved in a civil, criminal, or administrative proceeding,
16 upon a party's request, if the video or audio recording was
17 made during the time period that the conduct at issue in the
18 proceeding allegedly occurred.

19 Section 50. Admissibility of evidence. Subject to
20 applicable rules of evidence and procedure, any video or audio
21 recording created through authorized electronic monitoring in
22 accordance with this Act may be admitted into evidence in a
23 civil, criminal, or administrative proceeding if the contents
24 of the recording have not been edited or artificially enhanced
25 and the video recording includes the date and time the events

1 occurred.

2 Section 55. Report. Staff of each community-integrated
3 living arrangement and developmental disability facility shall
4 report to the Department, in a manner prescribed by the
5 Department, the number of authorized electronic monitoring
6 notification and consent forms received annually. The
7 Department shall report the total number of authorized
8 electronic monitoring notification and consent forms received
9 by staff of community-integrated living arrangements and
10 developmental disability facilities to the Office of the
11 Attorney General annually.

12 Section 60. Liability.

13 (a) A community-integrated living arrangement or
14 developmental disability facility is not civilly or criminally
15 liable for the inadvertent or intentional disclosure of a
16 recording by a resident or a person who consents on behalf of
17 the resident for any purpose not authorized by this Act.

18 (b) A community-integrated living arrangement or
19 developmental disability facility is not civilly or criminally
20 liable for a violation of a resident's right to privacy arising
21 out of any electronic monitoring conducted pursuant to this
22 Act.

23 Section 65. Rules. The Department shall adopt rules

1 necessary to administer and enforce any Section of this Act.
2 Rulemaking shall not delay the full implementation of this Act.

3 Section 70. The Community-Integrated Living Arrangements
4 Licensure and Certification Act is amended by adding Section
5 14.5 as follows:

6 (210 ILCS 135/14.5 new)

7 Sec. 14.5. Authorized electronic monitoring of a
8 resident's room.

9 (a) A resident shall be permitted to conduct authorized
10 electronic monitoring of the resident's room through the use of
11 electronic monitoring devices placed in the room pursuant to
12 the Authorized Electronic Monitoring in Community-Integrated
13 Living Arrangements and Developmental Disability Facilities
14 Act.

15 (b) No person shall:

16 (1) intentionally retaliate or discriminate against
17 any resident for consenting to authorized electronic
18 monitoring under the Authorized Electronic Monitoring in
19 Community-Integrated Living Arrangements and Developmental
20 Disability Facilities Act; or

21 (2) prevent the installation or use of an electronic
22 monitoring device by a resident who has provided the staff
23 of the community-integrated living arrangement with notice
24 and consent as required in Section 20 of the Authorized

1 Electronic Monitoring in Community-Integrated Living
2 Arrangements and Developmental Disability Facilities Act.

3 A violation of this subsection is a business offense,
4 punishable by a fine not to exceed \$10,000. The State's
5 Attorney of the county in which the community-integrated living
6 arrangement is located, or the Attorney General, shall be
7 notified by the Director of any violations of this subsection.

8 Section 75. The Mental Health and Developmental
9 Disabilities Code is amended by adding Section 2-116 as
10 follows:

11 (405 ILCS 5/2-116 new)

12 Sec. 2-116. Authorized electronic monitoring of a
13 recipient's room.

14 (a) A recipient who resides in a developmental disability
15 facility shall be permitted to conduct authorized electronic
16 monitoring of the recipient's room through the use of
17 electronic monitoring devices placed in the room pursuant to
18 the Authorized Electronic Monitoring in Community-Integrated
19 Living Arrangements and Developmental Disability Facilities
20 Act.

21 (b) No person shall:

22 (1) intentionally retaliate or discriminate against
23 any recipient for consenting to authorized electronic
24 monitoring under the Authorized Electronic Monitoring in

1 Community-Integrated Living Arrangements and Developmental
2 Disability Facilities Act; or

3 (2) prevent the installation or use of an electronic
4 monitoring device by a recipient who resides in a
5 developmental disability facility who has provided the
6 staff of the developmental disability facility with notice
7 and consent as required in Section 20 of the Authorized
8 Electronic Monitoring in Community-Integrated Living
9 Arrangements Act and Developmental Disability Facilities
10 Act.

11 A violation of this subsection is a business offense,
12 punishable by a fine not to exceed \$10,000. The State's
13 Attorney of the county in which the developmental disability
14 facility is located, or the Attorney General, shall be notified
15 by the Director of any violations of this subsection.

16 Section 99. Effective date. This Act takes effect January
17 1, 2019.

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New Act

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210 ILCS 135/14.5 new

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405 ILCS 5/2-116 new