

AN ACT concerning regulation.

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

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

Section 5. Definitions. As used in this Act:

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

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

"Department" means the Department of Human Services.

"Developmental disability facility" means a facility or section of a facility that is licensed by, operated by, or is under contract with the State or a political subdivision of the State and that admits persons with developmental disabilities for residential services.

"Electronic monitoring device" means 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 under the provisions of this Act and broadcasts or records activity or sounds occurring in the room.

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

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

Section 10. Authorized electronic monitoring.

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

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

Section 15. Consent.

(a) Except as otherwise provided in this subsection, a resident, a resident's plenary guardian of the person, or the parent of a resident under the age of 18 must consent in writing on a notification and consent form prescribed by the Department to the authorized electronic monitoring in the resident's room.

(b) A resident or roommate may consent to authorized

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

(c) Prior to the authorized electronic monitoring, a resident must obtain the written consent of any other resident residing in the room on the notification and consent form prescribed by the Department. Except as otherwise provided in this subsection, a roommate, a roommate's plenary guardian of the person, or the parent of a roommate under the age of 18 must consent in writing to the authorized electronic monitoring in the resident's room.

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

(d) Consent may be withdrawn by the resident or roommate at any time, and the withdrawal of consent shall be documented in the resident's clinical record. If a roommate withdraws consent

and the resident conducting the authorized electronic monitoring does not remove or disable the electronic monitoring device, the staff may turn off the electronic monitoring device.

(e) If a resident who is residing in a shared room wants to conduct authorized electronic monitoring and another resident living in or moving into the same shared room refuses to consent to the use of an electronic monitoring device, the staff shall make a reasonable attempt to accommodate the resident who wants to conduct authorized electronic monitoring.

Section 20. Notice to the staff.

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

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

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

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

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

(C) an acknowledgment that the resident did not affirmatively object; and

(2) the resident's roommate's signed consent or the signature of the person consenting on behalf of the resident in accordance with Section 15 of this Act, if applicable, and any conditions placed on the roommate's consent; if a person other than the roommate signs the consent form, the form must document the following:

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

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

(C) an acknowledgment that the roommate did not affirmatively object; and

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

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

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

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

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

(A) prohibiting audio recording;

(B) prohibiting broadcasting of audio or video;

(C) turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device for the duration of an exam or procedure by a health care professional;

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

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

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

(c) A copy of the completed notification and consent form shall be placed in the resident's and any roommate's clinical record and a copy shall be provided to the resident and his or

her roommate, if applicable.

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

Section 25. Cost and installation.

(a) A resident choosing to conduct authorized electronic monitoring must do so at his or her own expense, including paying purchase, installation, maintenance, and removal costs.

(b) If a resident chooses to install an electronic monitoring device that uses Internet technology for visual or audio monitoring, that resident is responsible for contracting with an Internet service provider and installing a secure, password-protected network.

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

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

(e) The resident may not be charged a fee for the cost of

electricity used by an electronic monitoring device.

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

Section 27. Assistance program.

(a) Subject to appropriation, the Department shall establish a program to assist residents receiving medical assistance under Article V of the Illinois Public Aid Code in accessing authorized electronic monitoring.

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

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

Section 30. Notice to visitors.

(a) If a resident of a community-integrated living arrangement or developmental disability facility conducts authorized electronic monitoring, a sign shall be clearly and

conspicuously posted at all building entrances accessible to visitors. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents.".

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

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

Section 40. Obstruction of electronic monitoring devices.

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

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

(c) A person or entity that violates this Section is guilty

of a Class B misdemeanor. A person or entity that violates this Section in the commission of or to conceal a misdemeanor offense is guilty of a Class A misdemeanor. A person or entity that violates this Section in the commission of or to conceal a felony offense is guilty of a Class 4 felony.

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

Section 45. Dissemination of recordings.

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

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

(c) The resident or person who consented on behalf of the resident in accordance with Section 15 of this Act shall provide a copy of any video or audio recording to parties

involved in a civil, criminal, or administrative proceeding, upon a party's request, if the video or audio recording was made during the time period that the conduct at issue in the proceeding allegedly occurred.

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

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

Section 60. Liability.

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

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

Section 65. Rules. The Department shall adopt rules necessary to administer and enforce any Section of this Act. Rulemaking shall not delay the full implementation of this Act.

Section 900. The Community-Integrated Living Arrangements Licensure and Certification Act is amended by adding Section 14.5 as follows:

(210 ILCS 135/14.5 new)

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

(a) A resident shall be permitted to conduct authorized electronic monitoring of the resident's room through the use of electronic monitoring devices placed in the room pursuant to the Authorized Electronic Monitoring in Community-Integrated

Living Arrangements and Developmental Disability Facilities Act.

(b) No person shall:

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

(2) prevent the installation or use of an electronic monitoring device by a resident who has provided the staff of the community-integrated living arrangement with notice and consent as required in Section 20 of the Authorized Electronic Monitoring in Community-Integrated Living Arrangements and Developmental Disability Facilities Act.

A violation of this subsection is a business offense, punishable by a fine not to exceed \$1,000. The State's Attorney of the county in which the community-integrated living arrangement is located, or the Attorney General, shall be notified by the Director of any violations of this subsection.

Section 905. The Mental Health and Developmental Disabilities Code is amended by adding Section 2-116 as follows:

(405 ILCS 5/2-116 new)

Sec. 2-116. Authorized electronic monitoring of a

recipient's room.

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

(b) No person shall:

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

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

A violation of this subsection is a business offense, punishable by a fine not to exceed \$1,000. The State's Attorney of the county in which the developmental disability facility is located, or the Attorney General, shall be notified by the

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Director of any violations of this subsection.

Section 999. Effective date. This Act takes effect January 1, 2020.