

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4013

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: MARCH 29, 2021

SUMMARY

- 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.
- Type of Impact:** Increase in State Costs and Revenue.
- Agencies Affected:** The Department of Human Services; The Ombudsman for Individuals with Intellectual or Developmental Disabilities and Their Families.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate increase in expenses incurred by the Department of Human Services (DHS) in complying with the monitoring, form development, reporting, and other requirements imposed under this bill. To the extent that these provisions can be performed with existing department staff, these expenses will be minimized.
- Any expenses incurred by the department under the bill may, in part, be offset by an increase in State revenues due to the collection of penalties assessed against group homes for infractions regarding the bill's provisions. The nature and number of infractions that may be committed, however, is unpredictable. As such, the OLS cannot quantify the amount of revenue generated from penalties and fines under the bill.
- The OLS notes two possible indirect outcomes of the bill's adoption. First, to the extent the bill's provisions increase the use of electronic monitoring devices (EMDs) in group homes, investigations regarding incidents of abuse, neglect, or exploitation occurring within group homes, and the expenditures to perform them, may increase as the EMDs will provide access to video documentation indicating such incidents. Second, expenses incurred by the group home industry to comply with the bill's provisions may put upward pressure on the

reimbursement rates established under the Medicaid program. Any increase in group home rates would also increase annual State Medicaid expenditures and federal Medicaid matching funds.

BILL DESCRIPTION

This bill would provide certain requirements in association with the use of EMDs at group homes for individuals with disabilities. An “EMD” is a camera or other electronic device that uses video, but not audio, recording capabilities to monitor the activities taking place in the area where the device is installed. Specifically, the bill would enable, but not require, group home residents or their authorized representatives to cooperatively and collectively decide whether to allow for the installation and use of EMDs in the common areas of the group homes, and to individually decide whether to allow for the installation and use of EMDs in the private residential room of each such resident. The bill includes a provision that grandfathers-in and exempts from the bill’s provisions those group homes that have already installed, and are utilizing, EMDs as of the bill’s effective date. As defined under the bill, “group home” includes facilities that house multiple persons with disabilities, as well as facilities commonly referred to as supervised apartments and that provide group home-style living for a single person.

Regarding EMDs in common areas, the bill places various requirements on a licensee, such as: 1) the determination of whether residents and their authorized representatives want and consent to have EMDs installed in or removed from common areas; 2) the annual provision of a written notice to all residents and their authorized representatives informing them of their right to request EMDs installed in or removed from common areas; 3) the installation of new EMDs or the removal of existing EMDs in the common areas within one year after receipt of a collective request; 4) the collection of an express written consent form from each employee for the use of the EMDs in common areas within one year after receiving a collective request from the group home’s residents; 5) the posting of a written notice at the entrance and exit doors to the home informing visitors of the presence of EMDs within one year after receiving a collective request from the group home’s residents; 6) the retention of recordings produced by an EMD for 90 days and the maintenance of confidentiality of such recordings; and 7) the admission of only those individuals who consent to the ongoing use of EMDs in common areas. Whenever a licensee who installs EMDs in a common area pursuant to the bill receives notice about a complaint, allegation, or reported incident of abuse, neglect, or exploitation occurring within the group home, the licensee will forward to the Division of Developmental Disabilities (DDD), for appropriate review, all potentially relevant footage recorded by EMDs in the group home’s common areas.

Each licensee will be required to inspect the devices in the group home’s common areas, and document the results of each inspection, on a weekly basis. The DHS will further be required to annually conduct an on-site device inspection, as part of its broader group home inspection authority, in order to ensure that the EMDs installed in a group home’s common areas are functioning properly. A resident or the resident’s authorized representative will be authorized to access and review any footage that is recorded by an EMD in the common areas of the group home; provided that the person first submits a request indicating that the resident has experienced, or that the resident or authorized representative has witnessed, an incident of abuse, neglect, or exploitation occurring in the common areas. All of the costs associated with installation and maintenance of an EMD in the group home’s common areas are to be paid by the group home licensee.

The installation and use of EMDs in a private single occupancy room may be done by the resident or the resident’s authorized representative, at any time, following the resident’s provision

of written notice to the licensee. The installation and use of EMDs in a private double occupancy room may be effectuated only with the express written consent of the roommate of the resident who requested the monitoring, or of the roommates' authorized representatives. The licensee, either through its own activities or through a third-party's activities, will be required to ensure that the conditions established in this agreement are followed. All of the costs associated with installation and maintenance of an EMD in a private room are to be paid by the resident who requested the monitoring, or by the authorized representative. Any recordings produced by an EMD installed in a private room will remain the property, and are to be retained in the possession, of the resident or the authorized representative who installed the EMD in the private room, unless otherwise agreed to with the licensee or a consenting roommate, as authorized under the bill.

If a resident's roommate or the roommate's authorized representative, as appropriate, refuses to consent to the installation and use of an EMD, or revokes a consent to installation and use, or if the licensee is unable to ensure compliance with the conditions on such installation and use that are imposed by a consenting roommate or the roommate's authorized representative, the licensee will be required, within a reasonable period of time, and to the extent practicable, to transfer the resident requesting the installation of the device to a different private room. If a request for private monitoring cannot be accommodated, the resident or resident's authorized representative may notify the DDD, which will be required to make every reasonable attempt to timely transfer the resident to a group home that can accommodate the request. A resident, or the authorized representative thereof, who installs an EMD in a private single-occupancy room or private double-occupancy room will be authorized to remove the device from service at any time following its installation.

Regarding EMDs in any location, the division would be authorized to impose any additional consent or consent declination requirements that it deems to be necessary, as well as determine the retention period for consent forms, consent declination forms, and notice of intent forms by the group home. Furthermore, a licensee is required to develop and submit to the division an internal policy specifying the procedures and protocols that are to be used by program staff regarding EMDs. Also, whenever a licensee receives notice about a complaint, allegation, or reported incident of abuse, neglect, or exploitation occurring within the group home, the licensee will be required to forward to the division, for appropriate review, all potentially relevant footage recorded by EMDs.

Any residential program that fails to comply with the bill's requirements will be subject to a penalty of \$5,000 for the first offense, and a penalty of \$10,000 for the second or subsequent offense, as well as an appropriate administrative penalty, the amount of which is to be determined by the DDD.

The DHS, in consultation with the DDD, will be required to annually report to the Governor and Legislature on the implementation of the bill's provisions. The DHS, in consultation with the DDD, will also be required to post, at a publicly accessible location on the department's Internet website, the various lists of group homes that the department has produced for its annual reports. The DHS will be required to annually update the website to ensure that each posted list contains the most recently reported data. The bill also requires the Ombudsman for Individuals with Intellectual or Developmental Disabilities and Their Families to include, in each of the ombudsman's annual reports, a section evaluating the implementation of the bill and providing recommendations for improvement.

The bill further requires the DDD, within five years of the bill's effective date, to provide the Governor and Legislature with a written report that: 1) identifies best practices for the installation and use of EMDs under the bill; 2) identifies best practices and provides recommendations regarding the obtaining of informed consent for electronic monitoring under the bill; and 3)

provides recommendations for the implementation of new legislation, policies, protocols, and procedures related to the use of EMDs in group homes.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill will result in an indeterminate increase in expenses incurred by the DHS in complying with the monitoring, form development, reporting, and other various requirements imposed under this bill. Currently, the DHS's Office of Program Integrity and Accountability (OPIA) is responsible for incident investigations and licensing of department programs and facilities, including group homes. The Office of Licensing, within the OPIA, among other things, is charged with ensuring that all persons receiving services under the DHS are protected from abuse, neglect, and exploitation. As such, the OLS assumes that the provisions of the bill will overlap with the existing duties and framework, at least in part, of this office, thereby minimizing costs.

The department may realize one-time costs under the bill due to the following: establishing and publishing guidelines for the group homes to develop an internal electronic monitoring policy, developing and distributing certain forms, as outlined under the bill, pertaining to EMDs in group homes; and producing a report regarding best practices and recommendations for EMDs in group homes, as described under the bill. The department may incur additional annual expenses related to reporting and posting requirements regarding the implementation of the bill, as well as arranging for the transfer of a resident, to the extent possible, to a group home that can accommodate a request for EMDs in a private residence, under certain circumstances. This fiscal estimate assumes that the department will not incur any cost in the onsite inspection of EMDs in common areas as the bill authorizes such inspections to be conducted during the broader inspection of group homes, as required under existing law.

The OLS notes that to the extent the bill's provisions increase the use of EMDs in group homes, it is possible that investigations performed by the OPIA regarding incidents of abuse, neglect, or exploitation occurring within group homes may increase, as the EMDs will provide access to video documentation indicating such incidents. However, the magnitude to which such investigations may increase under this bill is unknown. Costs, however, may include the employment of additional investigators to manage the larger caseload and expenses related to travel.

Any expenses incurred by the department under the bill may, in part, be offset by an increase in State revenues due to the collection of penalties assessed against group homes for infractions regarding the bill's provisions. The nature and number of infractions that may be committed, however, is unpredictable. As such, the OLS cannot quantify the amount of revenue generated from penalties and fines under the bill.

Finally, the bill may indirectly affect annual State Medicaid expenditures. Group homes will incur costs to comply with the provisions for bill, with the majority of expenses likely associated with the installation and maintenance of EMDs in the group home's common areas. While any change in group home operating expenditures does not automatically result in corresponding modifications to Medicaid group home rates, significant changes would likely apply upward

pressure on such rates and may lead to adjustments. Any increase in group home rates would also increase annual State Medicaid expenditures and federal Medicaid matching funds.

Section: Human Services

*Analyst: Sarah Schmidt
Senior Research Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).