

ASSEMBLY, No. 4013

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 4, 2020

Sponsored by:

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

Assemblyman DePhillips, Assemblyman Rooney, Assemblywoman Stanfield, Assemblymen McGuckin and Catalano

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; “Billy Cray’s Law.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/27/2020)

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. This act shall be known, and may be cited, as “Billy Cray’s
10 Law.”

11
12 2. As used in this act:

13 “Authorized representative” means a group home resident’s
14 court-appointed guardian of the person or, if there is no guardian of
15 the person, the person who holds a valid power of attorney or is
16 otherwise legally authorized to act as the representative of the group
17 home resident for the purposes of making decisions related to the
18 resident’s care and living arrangements. “Authorized
19 representative” does not include a caregiver or any other person
20 who is employed or contracted, on a paid or unpaid basis, by the
21 group home licensee.

22 “Common areas” means the living areas, dining areas, entrances,
23 outdoor areas, stairwells, and any other areas within a group home,
24 except bathrooms, which are commonly and communally accessible
25 to all residents, and are not dedicated for private use by a particular
26 resident.

27 “Division” means the Division of Developmental Disabilities in
28 the Department of Human Services.

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

33 “Group home” means a living arrangement that is licensed by the
34 division, and is operated in a residence or residences leased or
35 owned by a licensee; which living arrangement either provides the
36 opportunity for multiple adults with developmental disabilities to
37 live together in a home, sharing in chores and the overall
38 management of the residence, or provides the opportunity for a
39 single adult with developmental disabilities and extreme behavioral
40 difficulties to live more independently while receiving full-time
41 care, and in which on-site staff provides supervision, training, or
42 assistance, in a variety of forms and intensity, as required to assist
43 the individual or individuals as they move toward independence.
44 “Group home” does not include a living arrangement that is
45 dedicated for use by children with developmental disabilities.

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

1 “Private room” means the private bedroom of a group home
2 resident.

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

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

7
8 3. a. A group home that does not have electronic monitoring
9 devices already installed in the group home’s common areas shall
10 be required to install electronic monitoring devices in those
11 common areas, upon the collective request of the residents and the
12 residents’ authorized representatives, if all of the residents of the
13 group home and their authorized representatives agree to have such
14 electronic monitoring devices installed and expressly consent to the
15 installation and use of such devices. A licensee shall not require
16 current residents to consent to the installation and use of electronic
17 monitoring devices in the common areas as a condition of their
18 continued residency in the group home. Each licensee operating a
19 group home that does not have electronic monitoring devices
20 already installed in the common areas shall:

21 (1) within six months after the group home adopts an internal
22 electronic monitoring policy pursuant to section 5 of this act, take
23 affirmative action to determine whether the residents of the group
24 home and their authorized representatives want and consent to have
25 electronic monitoring devices installed and used in the group
26 home’s common areas pursuant to this section; and

27 (2) annually provide written notice to all residents and their
28 authorized representatives informing them of their right to request
29 the installation and use of electronic monitoring devices in the
30 group home’s common areas, as provided by this section.

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

34 (1) require each person employed by the group home to provide
35 express written consent to the use of the electronic monitoring
36 devices in the group home’s common areas, as a condition of the
37 person’s employment;

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

42 (3) ensure that, in the future, the group home only allows
43 residence by those individuals who consent to the ongoing use of
44 electronic monitoring devices in the group home’s common areas.

45 c. An individual’s refusal to agree and consent to the use of
46 electronic monitoring devices in a group home’s common areas
47 shall not be used as a basis to prevent the timely placement of the
48 individual in appropriate housing without surveillance.

- 1 d. Any electronic monitoring devices installed pursuant to this
2 section shall be unobstructed and recording at all times, and any
3 recordings produced by the devices shall be retained by the program
4 for a period of 45 days. Each licensee shall inspect the devices, and
5 shall document the results of each inspection, on a weekly basis.
- 6 e. The Department of Human Services shall annually conduct
7 an on-site device inspection at each group home, in order to ensure
8 that any electronic monitoring devices installed in the common
9 areas are functioning properly, as required by subsection d. of this
10 section. The department may elect to conduct the on-site device
11 inspection required by this subsection as part of the broader
12 inspection of each group home that it is required to perform under
13 section 8 of P.L.2017, c.328 (C.30:11B-4.3).
- 14 f. Nothing in this section shall be deemed to prohibit a group
15 home licensee from installing and utilizing electronic monitoring
16 devices in the group home's common areas, pursuant to the group
17 home's internal policies, in cases where the group home's residents
18 have not submitted a collective request for such monitoring.
19
- 20 4. a. A group home for individuals with developmental
21 disabilities shall permit electronic monitoring devices to be
22 installed and used in a resident's private room, as provided by this
23 section, for the purposes of monitoring the resident's in-room care,
24 treatment, and living conditions. Each licensee shall:
- 25 (1) within six months after the effective date of this act, and
26 annually thereafter, provide written notice to all residents, and to
27 their authorized representatives, informing them of their right to
28 install and use electronic monitoring devices in the residents'
29 private rooms, as provided by this section, and articulating the
30 notice requirements that are to be satisfied, pursuant to subsection
31 b. of this section, before an electronic monitoring device may be
32 installed and used in a private single occupancy room, and the
33 consent requirements that are to be satisfied, pursuant to subsection
34 c. of this section, before an electronic monitoring device may be
35 installed and used in a private double occupancy room;
- 36 (2) ensure that reasonable accommodations are made, as
37 necessary, to enable the authorized use of electronic monitoring
38 devices in private rooms, as provided by this section; and
- 39 (3) provide written notice to the relevant resident, or the
40 resident's authorized representative, of any applicable installation
41 or building construction requirements or restrictions with which the
42 resident must comply when installing and using an electronic
43 monitoring device in the private room. Such notice shall be
44 provided within 10 days after the licensee receives notice of the
45 resident's intent to install electronic monitoring devices in a single
46 occupancy room under subsection b. of this section or within 10
47 days after the licensee receives a resident's request for electronic

1 monitoring of a double occupancy room under subsection c. of this
2 section.

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

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

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

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

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

43 (3) Each resident, or the authorized representative thereof, who
44 wishes to install and use an electronic monitoring device in a
45 double occupancy private room, shall file with the licensee: (a) a
46 signed form, developed by the division, formally requesting and
47 giving the resident's express consent for the installation and use of
48 one or more electronic monitoring devices in the double occupancy

1 room; and (b) a copy of the electronic monitoring agreement that
2 has been executed between the resident and the resident's roommate
3 pursuant to paragraph (2) of this subsection, or, if the roommate or
4 the roommate's authorized representative has refused to consent to
5 electronic monitoring of the private room, a copy of the consent
6 declination form that has been signed by the roommate or the
7 roommate's authorized representative.

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

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

29 e. A licensee shall not refuse to admit an individual to a group
30 home, and shall not transfer or remove an individual from a group
31 home, except as otherwise provided by subsection d. of this section,
32 on the basis that the individual, or the individual's authorized
33 representative, has requested electronic monitoring of the
34 individual's private room, as authorized by this section.

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

41 g. All of the costs associated with installation and maintenance
42 of an electronic monitoring device in the private room of a resident
43 shall be paid by the resident who requested the monitoring, or by
44 the authorized representative thereof.

45
46 5. a. (1) Within 90 days after the effective date of this act, the
47 division, in consultation with the Ombudsman for Individuals with
48 Intellectual or Developmental Disabilities and Their Families, the
49 New Jersey Council on Developmental Disabilities, and the group

1 home provider community, shall establish and publish guidelines
2 for the development of internal policies pursuant to this section.

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

9 b. An internal electronic monitoring policy established
10 pursuant to this section shall:

11 (1) describe the procedures and protocols that are to be used:

12 (a) when obtaining consent from residents and facility staff for the
13 use of electronic monitoring devices in a group home's common
14 areas, as provided by section 3 of this act; and (b) when obtaining
15 consent from residents and roommates for the use of electronic
16 monitoring devices in private double occupancy rooms, as provided
17 by subsection c. of section 4 of this act;

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

23 (3) identify the persons who will have access to footage
24 recorded by electronic monitoring devices installed in the group
25 home's common areas and private rooms, and the circumstances
26 under which recorded footage will be subject to review by such
27 persons.

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

34
35 6. a. The division shall:

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

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

1 b. Consent forms and consent declination forms filed under
2 section 3 or subsection c. of section 4 of this act, and notices of
3 intent filed under subsection b. of section 4 of this act, shall be
4 retained by the licensee for a period of time to be determined by the
5 division.

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

12 d. The division may establish additional consent or consent
13 declination requirements, for the purposes of this act, as deemed by
14 the division to be necessary.

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

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

38 b. A group home licensee shall not be subject to penalties
39 under this section, or to any other disciplinary action, for failing to
40 comply with the requirements of section 3 or 4 of this act, as
41 applicable, if the group home licensee establishes, through
42 documentation or otherwise, that electronic monitoring devices
43 were installed and being utilized in the group home's common areas
44 or private rooms, or both, as of the effective date of this act, as
45 provided by section 7 of this act, and that the group home is,
46 therefore, exempt from compliance with the requirements of section
47 3 or section 4 of this act, as appropriate.

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

5 (1) identifies best practices for the installation and use of
6 electronic monitoring devices under this act;

7 (2) identifies best practices and provides recommendations
8 regarding the obtaining of informed consent for electronic
9 monitoring, as provided by this act; and

10 (3) provides recommendations for the implementation of new
11 legislation, policies, protocols, and procedures related to the use of
12 electronic monitoring devices in group homes.

13 b. The Commissioner of Human Services, in consultation with
14 the assistant commissioner of the division, shall annually prepare
15 and submit to the Governor, and, pursuant to section 2 of P.L.1991,
16 c.164 (C.52:14-19.1 et seq.), to the Legislature, a written report
17 describing how this act has been implemented in the State. Each
18 annual report shall include, at a minimum:

19 (1) a list of group homes that are currently using electronic
20 monitoring devices in the common areas;

21 (2) a list of group homes that have not installed electronic
22 monitoring devices in the common areas;

23 (3) to the extent known, a list of group homes that have failed to
24 install and use electronic monitoring devices in the common areas
25 upon the request of the residents, as provided by section 3 of this
26 act, despite the licensee's receipt of uniform resident consent
27 authorizing such monitoring, and an indication of the penalties that
28 were imposed under section 8 of this act in response to such
29 failures;

30 (4) a list of group homes that are exempt from compliance with
31 the provisions of section 3 or 4 of this act, as provided by section 7
32 of this act;

33 (5) an indication of the number and percentage of private single
34 occupancy rooms where electronic monitoring devices are installed
35 and used, as provided by subsection b. of section 4 of this act, and
36 the number and percentage of private double occupancy rooms
37 where electronic monitoring devices are installed and used, as
38 provided by subsection c. of section 4 of this act; and

39 (6) recommendations for legislative, executive, or other action
40 that can be taken to improve compliance with the act's provisions,
41 or to otherwise expand the consensual use of electronic monitoring
42 devices in group homes.

43 c. The Ombudsman for Individuals with Intellectual or
44 Developmental Disabilities and Their Families shall include, in
45 each of the ombudsman's annual reports prepared pursuant to
46 section 3 of P.L.2017, c.269 (C.30:1AA-9.3), a section evaluating
47 the implementation of this act and providing recommendations for
48 improvement.

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

6
7 11. This act shall take effect on the first day of the third month
8 next following the date of enactment.

9
10
11 STATEMENT
12

13 This bill would provide certain requirements in association with
14 the use of electronic monitoring devices (EMDs) at group homes for
15 individuals with developmental disabilities. An “EMD” is a camera
16 or other electronic device that uses video, but not audio, recording
17 capabilities to monitor the activities taking place in the area where
18 the device is installed. The sponsor believes that it is imperative to
19 enhance the quality of life of people with disabilities. Through this
20 bill, the sponsor aims to make video monitoring technology more
21 available in group home settings, taking great care to strike the
22 important balance between protecting people’s privacy and
23 protecting their overall well-being. In so doing, the bill respects the
24 rights of all individuals with intellectual or developmental
25 disabilities, placing a premium on their individuality and
26 recognizing that different people have different needs and
27 preferences.

28
29 *Scope of Bill*

30 The term “group home” is defined more broadly in this bill than
31 it is in other laws. Specifically, the term is defined to mean a living
32 arrangement that is licensed by the Division of Developmental
33 Disabilities (DDD) in the Department of Human Services (DHS),
34 and is operated in a residence or residences leased or owned by a
35 licensee; which living arrangement either provides the opportunity
36 for multiple adults with developmental disabilities to live together
37 in a home, sharing in chores and the overall management of the
38 residence, or provides the opportunity for a single adult with
39 developmental disabilities and extreme behavioral difficulties to
40 live more independently while receiving full-time care, and in
41 which on-site staff provides supervision, training, or assistance, in a
42 variety of forms and intensity, as required to assist the individual or
43 individuals as they move toward independence. “Group home”
44 does not include a living arrangement that is dedicated for use by
45 children with developmental disabilities. The revised definition
46 used in the bill makes it clear that this term not only includes
47 facilities that house multiple persons with developmental
48 disabilities, but also includes facilities that, while commonly

1 referred to as supervised apartments, provide group home-style
2 living for a single person who has developmental disabilities and
3 particularly severe behavioral difficulties that prevent them from
4 being housed in a group home with other disabled persons.

5 The bill would require group homes, as defined thereunder, to
6 install EMDs in the common areas, upon the agreement, request,
7 and uniform consent of all residents. “Common areas” is defined to
8 include entrances, living areas, dining areas, stairwells, and outdoor
9 areas, but not bathroom areas. The bill would additionally require
10 group homes to permit the installation and use of EMDs in the
11 private rooms of group home residents.

12 The bill is not intended to impose new requirements on those
13 group home providers who already engage in electronic monitoring
14 pursuant to an internal organizational policy. As a result, the bill
15 includes a provision that grandfathers-in and exempts from the
16 bill’s provisions those group homes that have already installed, and
17 are utilizing, EMDs as of the bill’s effective date. Specifically, the
18 bill provides that any such group home: 1) may continue to use
19 previously installed electronic monitoring devices in accordance
20 with the organization’s written policies; 2) will not be required to
21 remove the devices from service; and 3) will not be required to
22 comply with the bill’s consent requirements in order to continue
23 utilizing the devices. However, to the extent that a group home’s
24 common areas or private rooms do not contain EMDs on the bill’s
25 effective date, the licensee will be required to comply with the bill
26 when installing new EMDs in such unmonitored areas. The bill is
27 intended to give residents – particularly those with severe
28 behavioral difficulties – the right to request electronic monitoring in
29 the group home, as necessary to ensure their safe care. The bill is
30 not intended to impose new electronic monitoring requirements on
31 providers that already engage in electronic monitoring; and it is not
32 intended to require other group home providers to commence
33 electronic monitoring, except in those cases where the residents
34 have requested and agreed to such monitoring.

35

36 ***Installation and Use of EMDs in Common Areas***

37 Under the bill’s provisions, any group home that does not have
38 EMDs already installed in the group home’s common areas will be
39 required to install EMDs in those common areas, upon the
40 collective request of the residents and the residents’ authorized
41 representatives, if all of the residents of the group home and their
42 authorized representatives agree to have such electronic monitoring
43 devices installed and expressly consent to the installation and use of
44 such devices. A licensee will be prohibited from requiring the
45 group home’s current residents to consent to the installation and use
46 of electronic monitoring devices in the common areas as a condition
47 of their continued residency in the group home.

1 A licensee operating a group home that does not have electronic
2 monitoring devices already installed in the common areas will be
3 required: 1) within six months after the group home adopts an
4 internal electronic monitoring policy pursuant to the bill's
5 provisions, to take affirmative action to determine whether the
6 residents of the group home and their authorized representatives
7 want and consent to have electronic monitoring devices installed
8 and used in the group home's common areas; and 2) annually
9 provide written notice to all residents and their authorized
10 representatives informing them of their right to request the
11 installation and use of electronic monitoring devices in the group
12 home's common areas.

13 The bill would require any group home that installs and uses
14 electronic monitoring devices in its common areas, pursuant to the
15 agreement, request, and consent of the residents, to: 1) require each
16 person employed by the group home to provide express written
17 consent to the use of the EMDs in the group home's common areas,
18 as a condition of the person's employment; 2) ensure that a
19 prominent written notice is posted at the entrance and exit doors to
20 the home informing visitors that they will be subject to electronic
21 video monitoring while present in the home; and 3) ensure that, in
22 the future, the group home only allows residence by those
23 individuals who consent to the ongoing use of electronic monitoring
24 devices in the group home's common areas.

25 The EMDs installed in a group home's common areas are to be
26 unobstructed and recording at all times. Each licensee will be
27 required to inspect the devices, and document the results of each
28 inspection, on a weekly basis. The DHS will further be required to
29 annually conduct an on-site device inspection, as part of its broader
30 group home inspection authority, in order to ensure that the EMDs
31 installed in a group home's common areas are functioning properly,
32 as required by the bill.

33 An individual's refusal to consent to the use of EMDs in a group
34 home's common areas may not be used as a basis to prevent the
35 timely placement of the individual in appropriate housing without
36 surveillance.

37 The bill would specify that nothing in the provisions of section 3,
38 regarding the installation of EMDs in a group home's common
39 areas, may be deemed to prohibit a group home licensee from
40 installing and utilizing EMDs in the group home's common areas,
41 pursuant to the group home's internal policies, in cases where the
42 group home's residents have not submitted a collective request for
43 such monitoring. This bill is intended to require the placement of
44 EMDs in common areas only in cases where group home residents
45 have collectively requested the electronic monitoring of such
46 common areas. It is not intended to limit a licensee's discretionary
47 ability to install and utilize EMDs in the common areas, in

1 accordance with the group home's internal policies, in the absence
2 of a collective resident request.

3

4 ***Installation and Use of EMDs in Private Rooms***

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

8 The installation and use of EMDs in a private single occupancy
9 room may be done by the resident or the resident's authorized
10 representative, at any time, following the resident's provision of
11 written notice to the licensee of the resident's intent to engage in
12 electronic monitoring of the private room. Such written notice is to
13 be submitted to the licensee at least 15 days prior to installation of
14 the devices in the private single occupancy room. Any resident, or
15 the authorized representative thereof, who provides such a notice of
16 intent to install EMDs in a private single occupancy room, or who
17 so installs such devices, will be deemed to have implicitly
18 consented to electronic monitoring of the private room.

19 The installation and use of EMDs in a private double occupancy
20 room may be effectuated only with the express written consent of
21 the roommates of the resident who requested the monitoring, or of
22 the roommates' authorized representatives, as the case may be. A
23 roommate may place conditions on his or her consent to the use of
24 EMDs within the double occupancy room, including conditions that
25 require the EMDs to be pointed away from the consenting
26 roommate at all times during operation, or at certain specified
27 times. The roommate's consent to electronic monitoring, and any
28 conditions on the roommate's consent, are to be memorialized in a
29 formal electronic monitoring agreement that is executed between
30 the consenting roommate and the resident who requested the
31 monitoring, or between their authorized representatives, as
32 appropriate. The licensee, either through its own activities or
33 through a third-party's activities, will be required to ensure that the
34 conditions established in the agreement are followed.

35 If a resident's roommate or the roommate's authorized
36 representative, as appropriate, refuses to consent to the installation
37 and use of an EMD in a private double occupancy room, or if the
38 licensee is unable to ensure compliance with the conditions on such
39 installation and use that are imposed by a consenting roommate or
40 the roommate's authorized representative, the licensee will be
41 required, within a reasonable period of time, and to the extent
42 practicable, to transfer the resident requesting the installation of the
43 device to a different private room, in order to accommodate the
44 resident's request for private monitoring. If a request for private
45 monitoring cannot be accommodated, the resident or resident's
46 authorized representative may notify the DDD, which will be
47 required to make every reasonable attempt to timely transfer the
48 resident to a group home that can accommodate the request.

1 All of the costs associated with installation and maintenance of
2 an EMD in a private room are to be paid by the resident who
3 requested the monitoring, or by the authorized representative
4 thereof.

5
6 ***Additional Provisions***

7 The bill would require a group home licensee, when seeking to
8 obtain consent from residents for electronic monitoring, to comply
9 with best practices that apply to professional interactions or
10 communications being undertaken with persons with developmental
11 disabilities, and particularly, with those persons who have difficulty
12 with communication or understanding. The DDD would be
13 authorized to impose any additional consent or consent declination
14 requirements that it deems to be necessary.

15 Any recordings produced by an EMD in a group home's common
16 areas are to be retained by the group home for a period of 45 days.
17 Any consent forms, consent declination forms, and notice of intent
18 forms submitted under the bill are to be retained by the group home
19 for a period of time to be determined by the DDD.

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

30 Any residential program that fails to comply with the bill's
31 requirements will be subject to a penalty of \$5,000 for the first
32 offense, and a penalty of \$10,000 for the second or subsequent
33 offense, as well as an appropriate administrative penalty, the
34 amount of which is to be determined by the DHS. However, a
35 group home licensee will not be subject to penalties or other
36 disciplinary action for failing to comply with the bill's requirements
37 if the group home licensee establishes, through documentation or
38 otherwise, that EMDs were installed and being utilized in the group
39 home on the bill's effective date, and that the group home is,
40 therefore, exempt from compliance with the bill's provisions related
41 to the placement of EMDs in unmonitored areas.

42 The Commissioner of Human Services, in consultation with the
43 assistant commissioner of the DDD, will be required to annually
44 report to the Governor and Legislature on the implementation of the
45 bill's provisions. The Ombudsman for Individuals with Intellectual
46 or Developmental Disabilities and Their Families will similarly be
47 required to include, in each of the ombudsman's annual reports, a
48 section evaluating the implementation of the bill and providing
49 recommendations for improvement. In addition, the bill requires

1 the DDD, within five years of the bill's effective date, to submit a
2 written report that: 1) identifies best practices for the installation
3 and use of EMDs under the bill; 2) identifies best practices and
4 provides recommendations regarding the obtaining of informed
5 consent for electronic monitoring under the bill; and 3) provides
6 recommendations for the implementation of new legislation,
7 policies, protocols, and procedures related to the use of EMDs in
8 group homes.

9 This bill is named in honor of Billy Cray, an individual with a
10 developmental disability who, in 2017, at 33 years of age, was
11 unfortunately found dead in the group home in New Jersey where
12 he resided.