

[Third Reprint]

ASSEMBLY, No. 4013

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MAY 4, 2020

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District 11 (Monmouth)

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District 37 (Bergen)

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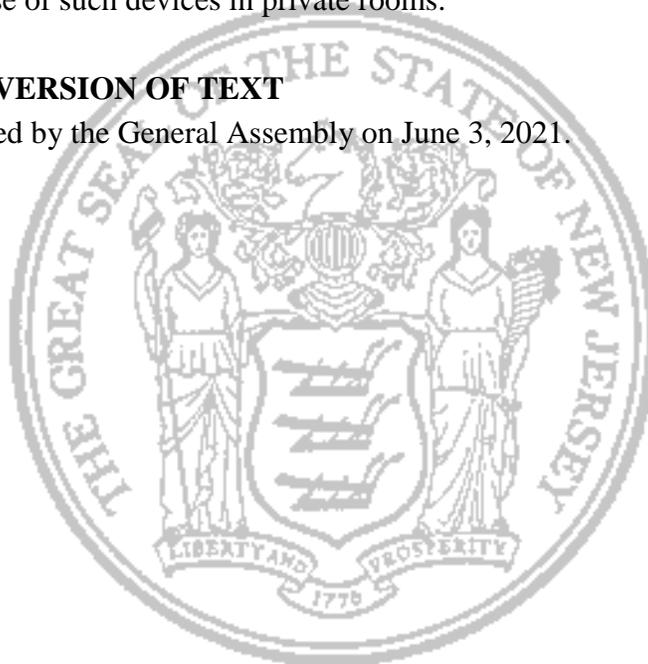
Assemblywoman Swain

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 3, 2021.



(Sponsorship Updated As Of: 12/20/2021)

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. ¹**[**This act shall be known, and may be cited, as “Billy Cray’s
10 Law.”**]** The Legislature finds and declares the following:

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

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

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

29 d. The rights of individuals with developmental disabilities,
30 including the right to privacy, should be respected and preserved at all
31 times, to the greatest extent practicable; however, just as is true of all
32 citizens, an individual with a developmental disability or the
33 individual’s authorized representative, as the case may be, may
34 consent to the waiver or limitation of the individual’s rights,
35 particularly the individual’s rights to privacy, by knowingly agreeing
36 to video surveillance, as deemed by the individual or the authorized
37 representative to be appropriate. ³The provisions of this act are
38 consistent with federal regulations pertaining to community-based
39 services, particularly regulations which protect an individual’s right to
40 privacy, dignity, respect, and freedom from coercion and restraint.³

41 e. It is in the public interest for the State to provide for the
42 enhanced protection of individuals with developmental disabilities
43 who reside at group homes by enabling group home residents, or their
44 authorized representatives, to cooperatively and collectively decide
45 whether to allow for the installation and use of video monitoring

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHU committee amendments adopted December 10, 2020.

²Assembly AAP committee amendments adopted March 17, 2021.

³Assembly floor amendments adopted June 3, 2021.

1 devices in the common areas of the group homes, and to individually
2 decide whether to allow for the installation and use of video
3 monitoring devices in the private residential room of each such
4 resident, so that the treatment of such residents can be recorded and
5 instances of abuse, neglect, or exploitation documented with video
6 evidence.

7 f.² The use of video surveillance in group homes will enable
8 consenting residents and their authorized representatives to more
9 proactively and effectively review and ensure the propriety of care that
10 is being provided to such residents and will further enable the State,
11 licensed service providers, and whistleblowers to more easily verify,
12 and obtain evidence to substantiate or refute, allegations of abuse,
13 neglect, and exploitation occurring in group homes.

14 g.² The State recognizes that each individual with developmental
15 disabilities is unique and has differing needs and preferences, and that,
16 while some group home residents and their authorized representatives
17 may consent to the use of video surveillance to better ensure the
18 residents' safety, others may refuse to consent to such video
19 surveillance.

20 ²[g.] h.² Through the enactment of this act, it is the intent of the
21 Legislature to make video monitoring technology more readily
22 available in group home settings, while taking great care to strike the
23 important and delicate balance between protecting the privacy rights
24 and protecting the overall well-being of group home residents. ²By
25 increasing the availability of video monitoring technology in group
26 homes, the Legislature intends to: (1) make it easier for residents and
27 their authorized representatives to monitor the residents' care, if they
28 so choose; (2) make it easier for concerned family members and
29 whistleblowers to file and substantiate complaints of abuse, neglect,
30 exploitation, or other improper care or treatment involving group home
31 residents; and (3) improve the ability of the State and of individual
32 licensees to verify and appropriately respond to such complaints.²

33 ²[h.] i.² This act is dedicated to William "Billy" Cray, a 33-
34 year-old with developmental disabilities who, on a Sunday morning in
35 ³[January] August³ 2017, was inexplicably found dead on the floor
36 of his bedroom ³closet³ in a ³[West Deptford] Somers Point³ group
37 home, operated by Devereux Advanced Behavioral Health New
38 Jersey, where he resided. Billy Cray, who had suffered from
39 institutional abuse since he was a child, was the son of Martha Cray, a
40 dedicated and long-time advocate for persons with developmental
41 disabilities. For many years, both preceding and following her son's
42 death, Martha Cray has continued to work tirelessly to advance
43 legislation protecting the rights and safety of individuals with
44 developmental disabilities, particularly those residing in group homes.
45 She was particularly instrumental in facilitating the passage of
46 "Stephen Komminos' Law," P.L.2017, c.238 (C.30:6D-9.1), which
47 provides for the heightened scrutiny of group homes by requiring more
48 frequent, unannounced oversight visits, and which requires group

1 homes to provide prompt notice of injury to the parent or guardian of
2 an injured resident.

3 ²[i.] j. Billy Cray's death is yet another reminder of why the
4 State needs to continue its work both to strengthen oversight of group
5 homes for individuals with developmental disabilities and to further
6 facilitate and enhance the ability of group home residents and their
7 family members or guardians, as the case may be, to take affirmative
8 steps to protect the rights and safety of residents and promptly and
9 appropriately respond to resident injuries and other concerning
10 incidents occurring in the group homes. By enabling group home
11 residents with developmental disabilities and their authorized
12 representatives to use video-based electronic monitoring to protect
13 against, provide documentary evidence of, and ensure a prompt and
14 adequate response to, any abuse, neglect, and exploitation occurring in
15 the group home, the Legislature can further preserve the rights and
16 safety of group home residents and facilitate the proactive prevention
17 of deaths like Billy Cray's.¹

18

19 2. As used in this act:

20 "Authorized representative" means a group home resident's
21 court-appointed guardian of the person or, if there is no guardian of
22 the person, the person who holds a valid power of attorney or is
23 otherwise legally authorized to act as the representative of the group
24 home resident for the purposes of making decisions related to the
25 resident's care and living arrangements. "Authorized
26 representative" does not include a caregiver or any other person
27 who is employed or contracted, on a paid or unpaid basis, by the
28 group home licensee.

29 ²"Commissioner" means the Commissioner of Human Services.²

30 "Common areas" means the living areas, dining areas, entrances,
31 outdoor areas, stairwells, and any other areas within a group home,
32 except bathrooms, which are commonly and communally accessible
33 to all residents, and are not dedicated for private use by a particular
34 resident.

35 "Division" means the Division of Developmental Disabilities in
36 the Department of Human Services.

37 ²"Department" means the Department of Human Services.

38 "Disclose" means the same as that term is defined by subsection
39 c. of section 1 of P.L.2003, c.206 (C.2C:14-9).²

40 "Electronic monitoring device" means a camera or other
41 electronic device that uses video, but not audio, recording
42 capabilities to monitor the activities taking place in the area where
43 the device is installed.

44 "Group home" means a living arrangement that is licensed by the
45 division, and is operated in a residence or residences leased or
46 owned by a licensee; which living arrangement either provides the
47 opportunity for multiple adults with developmental disabilities to
48 live together in a ²home, sharing in chores and the overall

1 management of the residence,] non-institutional, home-based
2 setting² or provides the opportunity for a single adult with
3 developmental disabilities and extreme behavioral difficulties to
4 live more independently², outside of an institution,² while still²
5 receiving full-time care²],² and in which on-site staff provides
6 supervision, training, or assistance, in a variety of forms and
7 intensity, as required to prevent or delay the institutionalization of
8 the individual or individuals residing in the home or to otherwise²
9 assist the individual or individuals as they move toward
10 independence. “Group home” does not include a living
11 arrangement that is dedicated for use by children with
12 developmental disabilities.

13 “Licensee” means an individual, partnership, or corporation that
14 is licensed by the division, and is ²],² responsible for providing
15 services associated with the operation of], contracted, or otherwise
16 authorized to operate² a group home ²in the State².

17 “Private room” means the private bedroom of a group home
18 resident.

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

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

23

24 3. a. A group home that does not have electronic monitoring
25 devices already installed in the group home’s common areas shall
26 be required to install electronic monitoring devices in those
27 common areas, upon the collective request of the residents and the
28 residents’ authorized representatives, if all of the residents of the
29 group home and their authorized representatives agree to have such
30 electronic monitoring devices installed and expressly consent to the
31 installation and use of such devices. A licensee shall not require
32 current residents to consent to the installation and use of electronic
33 monitoring devices in the common areas as a condition of their
34 continued residency in the group home. Each licensee operating a
35 group home that does not have electronic monitoring devices
36 already installed in the common areas shall:

37 (1) within six months after the group home adopts an internal
38 electronic monitoring policy pursuant to section 5 of this act, take
39 affirmative action to determine whether the residents of the group
40 home and their authorized representatives want and ²collectively²
41 consent to have electronic monitoring devices installed and used in
42 the group home’s common areas pursuant to this section; ²],²

43 (2) annually provide written notice to all residents and their
44 authorized representatives informing them of their right to
45 ²collectively² request ²and consent to² the installation and use of
46 electronic monitoring devices in the group home’s common areas,
47 as provided by this section²; and

1 (3) install new electronic monitoring devices in the common
2 areas, and comply with the provisions of paragraphs (1) and (2) of
3 subsection b. of this section, within one year after receiving a
4 collective request from residents or their authorized representatives,
5 as provided by this subsection².

6 b. A group home that installs and uses electronic monitoring
7 devices in its common areas pursuant to the ²collective² agreement,
8 request, and consent of the residents, as provided by this section,
9 shall:

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

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

18 (3) ensure that, ²[in the future] following the installation of
19 electronic monitoring devices in the group home's common areas²,
20 the group home ²[only]² allows residence ²only² by those
21 individuals who consent to the ongoing use of electronic monitoring
22 devices in the group home's common areas.

23 c. An individual's refusal to agree and consent to the use of
24 electronic monitoring devices in a group home's common areas
25 shall not be used as a basis to prevent the timely placement of the
26 individual in appropriate housing without surveillance.

27 d. ¹(1)¹ Any electronic monitoring devices installed pursuant
28 to this section shall be unobstructed and recording at all times²],
29 and any]. A licensee shall inspect the devices, and shall document
30 the results of each inspection, on a weekly basis. Any² recordings
31 produced by ²[the]² devices ²in the common areas² shall ²remain
32 the property of the licensee and shall² be retained ²[by] in the
33 possession of² the ²[program] licensee² for a minimum period of
34 ¹[45] ¹90 days. ²[Each licensee shall inspect the devices, and shall
35 document the results of each inspection, on a weekly basis.]²

36 ¹(2) A resident or the resident's authorized representative shall
37 be authorized ²], upon request submitted to the licensee,]² to access
38 and review any footage that is recorded by an electronic monitoring
39 device in the common areas of the group home ², provided that the
40 person first submits a request indicating either that the resident has
41 experienced, or that the resident or authorized representative has
42 witnessed, an incident of abuse, neglect, or exploitation occurring in
43 the common areas. A group home licensee may require that a
44 resident or the resident's authorized representative remain on the
45 premises of the group home when accessing and reviewing footage
46 recorded in the common areas, as provided by this paragraph.

1 (3) A group home employee shall maintain the confidentiality of
2 each recording that is retained by the licensee pursuant to this
3 subsection and shall not disclose any such recording to any person
4 who is not authorized, by paragraph (2) of this subsection or by
5 other applicable law, to receive or review the recording. Any group
6 home employee who, in violation of the provisions of this
7 paragraph, discloses a recording to a person not authorized by law
8 to receive or review it shall be guilty of a crime of the fourth
9 degree.

10 (4) Nothing in this subsection shall be deemed to prohibit a
11 group home employee from disclosing a recording produced in the
12 common areas, upon request or otherwise, to a State or local law
13 enforcement agency or officer or to any other person who is
14 authorized by law to investigate, prosecute, or take other official
15 remedial action in response to alleged instances of abuse, neglect,
16 exploitation, or other improper care or treatment occurring in the
17 common areas^{2, 1}

18 e. The Department of Human Services shall annually conduct
19 an on-site device inspection at each group home²~~[,]~~² in order to
20 ensure that any electronic monitoring devices installed in the
21 common areas are functioning properly, as required by subsection
22 d. of this section. The department may elect to conduct the on-site
23 device inspection required by this subsection as part of ²~~the~~ ²a
24 broader inspection ²~~of each group home~~² that ²~~it~~² is ²~~required~~
25 to perform ²being performed thereby² under section 8 of P.L.2017,
26 c.328 (C.30:11B-4.3) ²or under any other applicable provision of
27 law².

28 f. ²~~Nothing in this section shall be deemed to prohibit a group~~
29 home licensee from installing and utilizing electronic monitoring
30 devices in the group home's common areas, pursuant to the group
31 home's internal policies, in cases where the group home's residents
32 have not submitted a collective request for such monitoring ²~~All of~~
33 the costs associated with the installation and use of electronic
34 monitoring devices in the common areas of a group home, as
35 authorized by this section, shall be paid by the licensee.

36 g. A group home that has electronic monitoring devices
37 installed in the common areas shall remove those electronic
38 monitoring devices from service, as provided by this subsection, if
39 all of the residents of the group home and their authorized
40 representatives collectively agree to, and request, the removal of the
41 electronic monitoring devices from the common areas. Each
42 licensee operating a group home that has electronic monitoring
43 devices installed in the common areas shall:

44 (1) if the electronic monitoring devices were already in
45 operation as of the effective date of this act, take affirmative action,
46 within six months after the effective date of this act, to determine
47 whether the residents of the group home and their authorized
48 representatives want, and collectively agree, to have the existing

1 electronic monitoring devices removed from the common areas. If
2 the residents do not collectively agree to the removal of the devices,
3 the licensee shall be authorized to: (a) continue using such devices
4 in the common areas, in accordance with the group home's internal
5 policies, as provided by section 7 of this act; and (b) accept, as new
6 residents, only those persons who consent to the ongoing use of the
7 devices in the common areas;

8 (2) if the electronic monitoring devices were not in operation as
9 of the effective date of this act or were in operation, but were
10 removed from service pursuant to the collective agreement of
11 residents, as provided by paragraph (1) of this subsection, provide
12 written notice to all residents and their authorized representatives,
13 within 10 days after electronic monitoring devices are newly placed
14 into operation in the common areas pursuant to this section, and
15 annually thereafter, informing the residents and their authorized
16 representatives of their right to collectively request the removal of
17 existing electronic monitoring devices from the group home's
18 common areas; and

19 (3) remove any existing electronic monitoring devices from
20 service in the common areas within one year after a collective
21 request therefor is submitted by residents pursuant to this
22 subsection².

23

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

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

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

43 (3) 'whenever a resident or the resident's authorized
44 representative seeks to install an electronic monitoring device in the
45 resident's private room,¹ provide '【written notice to】¹ the
46 '【relevant】¹ resident¹,¹ or the resident's authorized
47 representative, ¹as appropriate, with written notice¹ of any
48 applicable installation or building construction requirements or

1 restrictions with which the resident must comply when installing
2 and using an electronic monitoring device in the private room.
3 Such notice shall be provided within 10 days after the licensee
4 receives notice of the resident's intent to install electronic
5 monitoring devices in a single occupancy room under subsection b.
6 of this section or within 10 days after the licensee receives a
7 resident's request for electronic monitoring of a double occupancy
8 room under subsection c. of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (3) Whenever an electronic monitoring device is proposed to be
17 installed in a private double occupancy room, pursuant to this
18 section, the consenting roommate or authorized representative
19 thereof, as the case may be, may elect to provide that, as a condition
20 of the installation and ongoing use of the device in the room, the
21 roommate and the roommate's authorized representative shall have
22 the right and ability to access and review any recordings that are
23 produced by the device, upon request submitted to the resident or
24 authorized representative who owns the device. This condition on
25 the installation and use of an electronic monitoring device in a
26 private double occupancy room, if elected by a consenting
27 roommate or the roommate's authorized representative, shall be
28 memorialized in the electronic monitoring agreement that is
29 executed pursuant to paragraph (2) of subsection c. of this section.
30 Any such electronic monitoring agreement shall also describe the
31 procedures or protocols that are to be used by the owner of the
32 device to ensure that the consenting roommate or the authorized
33 representative thereof, as the case may be, is provided with timely
34 access to all relevant footage recorded by the device, upon
35 submission of a request therefor.¹

36 ²(4) An authorized representative who installs an electronic
37 monitoring device in a private single-occupancy or double-
38 occupancy room, and each resident of a private double-occupancy
39 room where an electronic monitoring device has been installed,
40 shall maintain the confidentiality of each recording produced by the
41 installed device and shall not disclose any such recording to any
42 person who is not authorized by paragraph (3) of this subsection, by
43 subsection c. of section 5 of this act, or by other applicable law to
44 receive or review the recording. Any resident or authorized
45 representative who, in violation of the provisions of this paragraph,
46 discloses a recording to a person not authorized by law to receive or
47 review it shall be guilty of a crime of the fourth degree.

1 (5) Nothing in this subsection shall be deemed to prohibit a
2 resident or the authorized representative thereof from disclosing a
3 recording produced in the resident's private room, upon request or
4 otherwise, to a State or local law enforcement agency or officer or
5 to any other person who is authorized by law to investigate,
6 prosecute, or take other official remedial action in response to
7 alleged incidents of abuse, neglect, exploitation, or other improper
8 care or treatment occurring in the private room.

9 i. (1) A resident, or the authorized representative thereof, who
10 installs an electronic monitoring device in a private single-
11 occupancy room or private double-occupancy room, as provided by
12 this section, shall be authorized to remove the device from service
13 at any time following its installation. Any resident or authorized
14 representative who removes an electronic monitoring device
15 pursuant to this subsection shall provide written notice of such
16 removal, to the licensee, within 48 hours after the device is
17 removed from service.

18 (2) Whenever the roommate of a resident, or the roommate's
19 authorized representative, revokes the roommate's previously
20 granted consent for the use of electronic monitoring devices in a
21 private double-occupancy room, the licensee shall transfer the
22 resident who installed the devices to another private room, if
23 possible, or to another group home, if necessary, in accordance with
24 the provisions of subsection d. of this section, to accommodate the
25 resident's preexisting request for electronic monitoring.²

26
27 5. a. (1) Within 90 days after the effective date of this act, the
28 division, in consultation with the Ombudsman for Individuals with
29 Intellectual or Developmental Disabilities and Their Families, the
30 New Jersey Council on Developmental Disabilities, and the group
31 home provider community, shall establish and publish guidelines
32 for the development of internal policies pursuant to this section.

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

39 b. An internal electronic monitoring policy established
40 pursuant to this section shall:

41 (1) describe the procedures and protocols that are to be used:
42 (a) when obtaining consent from residents and facility staff for the
43 use of electronic monitoring devices in a group home's common
44 areas, as provided by section 3 of this act; ²**[and]**² (b) when
45 obtaining consent from residents and roommates for the use of
46 electronic monitoring devices in private double occupancy rooms,
47 as provided by subsection c. of section 4 of this act²; (c) when
48 removing, and providing notice to residents about their right to

1 collectively request the removal of, electronic monitoring devices
2 from the common areas, as provided by subsection g. of section 3 of
3 this act; and (d) when transferring a resident whose request for
4 electronic monitoring in a private double-occupancy room cannot
5 be accommodated, due either to conditions imposed or the
6 declination or revocation of consent by the resident's roommate, as
7 provided by subsection d. and paragraph (2) of subsection i. of
8 section 4 of this act²;

9 (2) identify the make and model of electronic monitoring
10 devices that may be installed and used within the group home for
11 the purposes of this act. The policy shall authorize the use of
12 multiple types of electronic monitoring devices for these purposes;

13 (3) indicate how the licensee will ensure the proper installation,
14 positioning, and use of EMDs in a private double-occupancy room,
15 in a manner that is consistent with all conditions established by the
16 consenting roommate, and establish protocols and procedures to be
17 used by the licensee when an EMD in a private double-occupancy
18 room makes an unauthorized recording of the roommate; and

19 (4)² describe the procedures and protocols that are to be used in
20 the review of footage recorded by electronic monitoring devices in
21 the group ²[home's common areas] home². The procedures and
22 protocols adopted pursuant to this paragraph shall, at a
23 minimum²[,]: (a)² reflect the requirements of subsection c. of this
24 section; ²[and

25 (3)] (b)² identify the persons who will have access to footage
26 recorded by electronic monitoring devices installed in the group
27 home's common areas and private rooms²[, and the circumstances
28 under which recorded footage will be subject to review by such
29 persons]; and

30 (c) establish the standards that shall identify, at a minimum, the
31 types of information that will constitute incidents of abuse, neglect,
32 or exploitation, as required under paragraph (2) of subsection d. of
33 section 3 of this act to be submitted by a resident or the resident's
34 authorized representative in order to receive authorization to access
35 and review any footage that is recorded by an electronic monitoring
36 device in the common areas of the group home².

37 c. Whenever a licensee receives notice about a complaint,
38 allegation, or reported incident of abuse, neglect, or exploitation
39 occurring within the group home, the licensee shall forward to the
40 division, for appropriate review, any and all potentially relevant
41 footage recorded by electronic monitoring devices in²: (1)² the
42 common areas of the² group ²[home's common areas] home; (2)
43 the private room of the resident who is the alleged victim of the
44 abuse, neglect, or exploitation; and (3) any other private room
45 where the abuse, neglect, or exploitation is alleged to have
46 occurred. Notwithstanding the provisions of subsection h. of
47 section 4 of this act to the contrary, any resident or authorized

1 representative who is in possession of potentially relevant footage
2 related to an incident of abuse, neglect, or exploitation, as provided
3 by this subsection, shall be required to turn over the pertinent
4 recording or recordings to the licensee, upon request, for
5 transmission to the division in accordance with the provisions of
6 this subsection. However, nothing in this subsection shall be
7 deemed to authorize the licensee to review, or to make copies of,
8 any footage contained on any such recordings, absent the express
9 written consent of the resident or authorized representative².

10
11 6. a. The division shall:

12 (1) develop, and provide to each licensee, consent forms that are
13 to be filled out and signed by individuals who consent to, or
14 request, electronic monitoring under section 3 or subsection c. of
15 section 4 of this act, and consent declination forms that are to be
16 filled out and signed by individuals who refuse to consent to such
17 electronic monitoring; and

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

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

29 c. When seeking to obtain consent from residents for electronic
30 monitoring, as required by this act, a licensee shall comply with
31 best practices that apply to professional interactions or
32 communications being undertaken with persons with developmental
33 disabilities, and particularly, with those persons who have difficulty
34 with communication or understanding.

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

38
39 7. Notwithstanding the provisions of this act to the contrary, if,
40 as of the effective date of this act, a licensee has already installed
41 and is utilizing electronic monitoring devices in a group home's
42 common areas or private rooms, the licensee may continue to utilize
43 the devices so installed, in accordance with the licensee's written
44 internal policies; ² shall not be required to remove the devices from
45 service; and ² shall not be required to comply with the provisions
46 of this act in order to continue utilizing the previously ²[-]²
47 installed devices ²; and shall not be required to remove the existing
48 devices from service, except as provided by paragraph (1) of

1 subsection g. of section 3 of this act². However, to the extent that a
2 group home's common areas or private rooms do not contain
3 electronic monitoring devices on the effective date of this act, the
4 licensee shall comply with the provisions of section 3 and 4 of this
5 act, as applicable, when installing and utilizing new electronic
6 monitoring devices in such unmonitored areas.

7
8 8. a. Any licensee that fails to comply with the provisions of
9 this act shall be subject to a penalty of \$5,000 for the first offense,
10 and a penalty of \$10,000 for the second or subsequent offense, to be
11 collected with costs in a summary proceeding, pursuant to the
12 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
13 et seq.), as well as an appropriate administrative penalty, the
14 amount of which shall be determined by the division.

15 b. A group home licensee shall not be subject to penalties,
16 under this section, or ²**[to]**² any other disciplinary action²**],**² for
17 failing to comply with the requirements of section 3 or 4 of this act,
18 as applicable, if the group home licensee establishes, through
19 documentation or otherwise, that ²**[**electronic monitoring devices
20 were installed and being utilized in the group home's common areas
21 or private rooms, or both, as of the effective date of this act**]** the
22 licensee is exempt from compliance with those requirements², as
23 provided by section 7 of this act ²**[**, and that the group home is,
24 therefore, exempt from compliance with the requirements of section
25 3 or section 4 of this act, as appropriate**]**².

26
27 9. a. Within five years after the effective date of this act, the
28 division shall prepare and submit to the Governor, and, pursuant to
29 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a
30 written report that:

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

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

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

39 b. The ²**[**Commissioner of Human Services**]** commissioner², in
40 consultation with the assistant commissioner of the division, shall ¹:

41 (1)¹ annually prepare and submit to the Governor, and, pursuant
42 to section 2 of P.L.1991, c.164 (C.52:14-19.1 et seq.), to the
43 Legislature, a written report describing how this act has been
44 implemented in the State. Each annual report shall include, at a
45 minimum:

46 ¹**[(1)]** (a)¹ a list of group homes that are currently using
47 electronic monitoring devices in the common areas;

- 1 ¹[(2)] (b)¹ a list of group homes that have not installed
2 electronic monitoring devices in the common areas;
- 3 ¹[(3)] (c)¹ to the extent known, a list of group homes that have
4 failed to install and use electronic monitoring devices in the
5 common areas upon the request of the residents, as provided by
6 section 3 of this act, despite the licensee's receipt of uniform
7 resident consent authorizing such monitoring, and an indication of
8 the penalties that were imposed under section 8 of this act in
9 response to such failures;
- 10 ¹[(4)] (d)¹ a list of group homes that are exempt from
11 compliance with the provisions of section 3 or 4 of this act, as
12 provided by section 7 of this act;
- 13 ¹[(5)] (e) a list of group homes that have authorized the use of
14 electronic monitoring devices in the private rooms of one or more
15 residents, and¹ an indication of the number and percentage of
16 private single occupancy rooms ¹and private double occupancy
17 rooms in each such facility¹ where electronic monitoring devices
18 are installed and ¹being¹ used, as provided by ¹[(subsection)]
19 subsections¹ b. ¹and c.¹ of section 4 of this act¹, and the number
20 and percentage of private double occupancy rooms where electronic
21 monitoring devices are installed and used, as provided by
22 subsection c. of section 4 of this act¹;
- 23 ²(f) a list of group homes that have removed electronic
24 monitoring devices from the common areas, pursuant to the
25 collective request of residents, as provided by subsection g. of
26 section 3 of this act;
- 27 (g) to the extent known, a list of group homes that have failed to
28 remove electronic monitoring devices from the common areas,
29 pursuant to subsection g. of section 3 of this act, despite the
30 licensee's receipt of a collective request from residents, and an
31 indication of the penalties that were imposed under section 8 of this
32 act in response to such failures;² and
- 33 ¹[(6)] ²[(f)¹] (h)² recommendations for legislative, executive,
34 or other action that can be taken to improve compliance with the
35 act's provisions, or to otherwise expand the consensual use of
36 electronic monitoring devices in group homes¹; and
- 37 (2) post, at a publicly accessible location on the²[(Department
38 of Human Services'] department's² Internet website, the various
39 lists of group homes produced under paragraph (1) of this
40 subsection, and annually update the website to ensure that each list
41 contains the most current data reported pursuant to this subsection.
42 Each list posted online shall be searchable by location and by name
43 of group home¹.
- 44 c. The Ombudsman for Individuals with Intellectual or
45 Developmental Disabilities and Their Families shall include, in
46 each of the ombudsman's annual reports prepared pursuant to
47 section 3 of P.L.2017, c.269 (C.30:1AA-9.3), a section evaluating

1 the implementation of this act and providing recommendations for
2 improvement.

3

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

9

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