

# ASSEMBLY HUMAN SERVICES COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 4013

with committee amendments

# STATE OF NEW JERSEY

DATED: DECEMBER 10, 2020

The Assembly Human Services Committee reports favorably and with committee amendments Assembly Bill No. 4013.

As amended by the committee, this bill would provide certain requirements in association with the use of electronic monitoring devices (EMDs) at group homes for individuals with developmental 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. The safety and quality of life of individuals with developmental disabilities who receive care from group homes is of paramount concern, and the use of video monitoring is one way in which the State can better ensure the prevention of, and the institution of a more proactive response to, the abuse, neglect, and exploitation of group home residents. This bill would make video monitoring technology more readily available in group home settings, while taking great care to strike the important and delicate balance between protecting the privacy rights and protecting the overall well-being of group home residents. Specifically, the bill would enable, but not require, group home residents or their authorized representatives, as the case may be, 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, so that the treatment of such residents can be recorded and instances of abuse, neglect, or exploitation documented with video evidence. In providing these authorizations, the bill respects the rights of all individuals with developmental disabilities, places a premium on their individuality, and recognizes that different people have different needs and preferences with respect to the use of video surveillance.

#### *Scope of Bill*

The term “group home” is defined more broadly in this bill than it is in other laws. Specifically, the term is defined to mean a living arrangement that is licensed by the Division of Developmental

Disabilities (DDD) in the Department of Human Services (DHS), and is operated in a residence or residences leased or owned by a licensee; which living arrangement either provides the opportunity for multiple adults with developmental disabilities to live together in a home, sharing in chores and the overall management of the residence, or provides the opportunity for a single adult with developmental disabilities and extreme behavioral difficulties to live more independently while receiving full-time care, and in which on-site staff provides supervision, training, or assistance, in a variety of forms and intensity, as required to assist the individual or individuals as they move toward independence. “Group home” does not include a living arrangement that is dedicated for use by children with developmental disabilities. The revised definition used in the bill makes it clear that this term not only includes facilities that house multiple persons with developmental disabilities, but also includes facilities that, while commonly referred to as supervised apartments, provide group home-style living for a single person who has developmental disabilities and particularly severe behavioral difficulties that prevent them from being housed in a group home with other disabled persons.

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

The bill is not intended to impose new requirements on those group home providers who already engage in electronic monitoring pursuant to an internal organizational policy. As a result, 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. Specifically, the bill provides that any such group home: 1) may continue to use previously installed EMDs in accordance with the organization’s written policies; 2) will not be required to remove the devices from service; and 3) will not be required to comply with the bill’s consent requirements in order to continue utilizing the devices. However, to the extent that a group home’s common areas or private rooms do not contain EMDs on the bill’s effective date, the licensee will be required to comply with the bill when installing new EMDs in such unmonitored areas. The bill is intended to give residents – particularly those with severe behavioral difficulties – the right to request electronic monitoring in the group home, as necessary to ensure their safe care. The bill is not intended to impose new electronic monitoring requirements on providers that already engage in electronic monitoring; and it is not intended to require other group home providers to commence electronic

monitoring, except in those cases where the residents have requested and agreed to such monitoring.

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

Under the bill's provisions, any group home that does not have EMDs already installed in the group home's common areas will be required to install EMDs in those common areas, upon the collective request of the residents and the residents' authorized representatives, if all of the residents of the group home and their authorized representatives agree to have EMDs installed and expressly consent to the installation and use of such devices. A licensee will be prohibited from requiring the group home's current residents to consent to the installation and use of EMDs in the common areas as a condition of their continued residency in the group home.

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

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

The EMDs installed in a group home's common areas are to be unobstructed and recording at all times. Each licensee will be required to inspect the devices, 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, as required by the bill. A resident or the resident's authorized representative will be authorized, upon request submitted to the licensee, to access and review any footage that is recorded by an EMD in the common areas of the group home.

The bill would specify that an individual's refusal to consent to the use of EMDs in a group home's common areas may not be used as a basis to prevent the timely placement of the individual in appropriate housing without surveillance.

The bill would further provide that nothing in the provisions of section 3, regarding the installation of EMDs in a group home's common areas, may be deemed to prohibit a group home licensee from installing and utilizing EMDs in the group home's common areas, pursuant to the group home's internal policies, in cases where the group home's residents have not submitted a collective request for such monitoring. This bill is intended to require the placement of EMDs in common areas only in cases where group home residents have collectively requested the electronic monitoring of such common areas. It is not intended to limit a licensee's discretionary ability to install and utilize EMDs in the common areas, in accordance with the group home's internal policies, in the absence of a collective resident request.

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

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

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 of the resident's intent to engage in electronic monitoring of the private room. Such written notice is to be submitted to the licensee at least 15 days prior to installation of the devices in the private single occupancy room. Any resident, or the authorized representative thereof, who provides such a notice of intent to install EMDs in a private single occupancy room, or who so installs such devices, will be deemed to have implicitly consented to electronic monitoring of the private room.

The installation and use of EMDs in a private double occupancy room may be effectuated only with the express written consent of the roommates of the resident who requested the monitoring, or of the roommates' authorized representatives, as the case may be. A roommate may place conditions on his or her consent to the use of EMDs within the double occupancy room, including conditions that require the EMDs to be pointed away from the consenting roommate at all times during operation, or at certain specified times. The roommate's consent to electronic monitoring, and any conditions on the roommate's consent, are to be memorialized in a formal electronic monitoring agreement that is executed between the consenting roommate and the resident who requested the monitoring, or between their authorized representatives, as appropriate. The licensee, either through its own activities or through a third-party's activities, will be

required to ensure that the conditions established in the agreement are followed.

If a resident's roommate or the roommate's authorized representative, as appropriate, refuses to consent to the installation and use of an EMD in a private double occupancy room, 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, in order to accommodate the resident's request for private monitoring. 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.

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 thereof.

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. The bill would specify that a licensee may not require a resident or the resident's authorized representative, as a condition of installing or using an EMD in the resident's private room, to turn over to the licensee, or to otherwise allow the licensee to access or review, any recordings that are produced by the EMD in the private room. Whenever an EMD is proposed to be installed in a private double occupancy room, the consenting roommate or authorized representative thereof, as the case may be, may elect to provide that, as a condition of the installation and ongoing use of the device in the room, the roommate and the roommate's authorized representative shall have the right and ability to access and review any recordings that are produced by the EMD, upon request submitted to the resident or authorized representative who owns the device. This condition, if elected by a consenting roommate or the roommate's authorized representative, is to be memorialized in the electronic monitoring agreement that is executed pursuant to bill's provisions. Any such electronic monitoring agreement will also be required to describe the procedures or protocols that are to be used by the owner of the device to ensure that the consenting roommate or the authorized representative thereof, as the case may be, is provided with timely access to all relevant footage recorded by the device, upon submission of a request therefor.

#### ***Additional Provisions***

The bill would require a group home licensee, when seeking to obtain consent from residents for electronic monitoring, to comply

with best practices that apply to professional interactions or communications being undertaken with persons with developmental disabilities, and particularly, with those persons who have difficulty with communication or understanding. The DDD would be authorized to impose any additional consent or consent declination requirements that it deems to be necessary.

Any recordings produced by an EMD in a group home's common areas are to be retained by the group home for a period of 90 days. Any consent forms, consent declination forms, and notice of intent forms submitted under the bill are to be retained by the group home for a period of time to be determined by the DDD.

Within 180 days after the bill's effective date, each group home will be required to develop and submit to the division a written internal policy specifying the procedures and protocols that are to be used by program staff when installing and utilizing EMDs. The internal policy is to provide, amongst other things, that 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 forward to the DDD, for appropriate review, all potentially relevant footage recorded by EMDs in the group home's common areas.

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 DHS. However, a group home licensee will not be subject to penalties or other disciplinary action for failing to comply with the bill's requirements if the group home licensee establishes, through documentation or otherwise, that EMDs were installed and being utilized in the group home on the bill's effective date, and that the group home is, therefore, exempt from compliance with the bill's provisions related to the placement of EMDs in unmonitored areas.

The Commissioner of Human Services, in consultation with the assistant commissioner of the DDD, will be required to annually report to the Governor and Legislature on the implementation of the bill's provisions. Each annual report is to include: 1) a list of group homes that are currently using EMDs in the common areas; 2) a list of group homes that have not installed EMDs in the common areas; 3) a list of group homes that have failed to install and use EMDs in the common areas, despite the licensee's receipt of uniform resident consent, and an indication of the penalties imposed in response to such failures; 4) a list of group homes that are exempt from the bill's provisions; 5) a list of group homes that have authorized the use of EMDs in the private rooms of one or more residents, and an indication of the number and percentage of private single occupancy rooms and the number and percentage of private double occupancy rooms in each such facility where EMDs are installed and being used; and 6) recommendations for

legislative, executive, or other action that can be taken to improve compliance with the bill or otherwise expand the consensual use of EMDs in group homes. The commissioner, in consultation with the assistant commissioner, 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. Each list posted online is to be searchable both by location and by name of group home. The commissioner will be required to annually update the website to ensure that each posted list contains the most recently reported data.

In addition to the commissioner's annual reports, the bill 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.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to make several substantive changes.

First, the amendments remove the provisions that would have designated the bill as "Billy Cray's Law," and they insert a new legislative findings and declarations explaining the reasoning behind the bill and specifying that the bill is being dedicated to, and is being enacted in response to the death of, Billy Cray.

The amendments extend, from 45 to 90 days, the period of time that a group home will be required to retain any recordings produced by EMDs in the common areas. The amendments also specify that a resident or the resident's authorized representative will be authorized, upon request submitted to the licensee, to access and review any footage that is recorded by an EMD in the group home's common areas. The amendments further provide the following, with respect to the placement of EMDs in a private room: 1) that 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; 2) that a licensee may not require a resident or the resident's authorized representative, as a condition of installing or using an EMD in the resident's private room, to turn over to the licensee, or to otherwise allow the licensee to access or review, any recordings that are produced by the EMD in the private room; and 3) that, whenever

an EMD is proposed to be installed in a private double occupancy room, the consenting roommate or authorized representative thereof, as the case may be, may elect to provide that, as a condition of the installation and ongoing use of the device in the room, the roommate and the roommate's authorized representative shall have the right and ability to access and review any recordings that are produced by the EMD, upon request submitted to the resident or authorized representative who owns the device. The amendments provide that this condition, if elected by a consenting roommate or the roommate's authorized representative, is to be memorialized in the electronic monitoring agreement that is executed pursuant to bill's provisions. The amendments further provide that any such electronic monitoring agreement will also be required to describe the procedures or protocols that are to be used by the owner of the device to ensure that the consenting roommate or the authorized representative thereof, as the case may be, is provided with timely access to all relevant footage recorded by the device, upon submission of a request therefor.

The amendments clarify that the Commissioner of Health is to include, in the commissioner's annual report to the Governor and Legislature, a list of group homes that have authorized the use of EMDs in the private rooms of one or more residents, which list is to include an indication of the number and percentage of private single occupancy rooms and private double occupancy rooms, in each such facility, where EMDs are installed and being used. This list would be required in addition to the other lists of group homes that are to be included in the commissioner's annual report under the bill.

Finally, the amendments require the Commissioner of Health, in consultation with the Assistant Commissioner of the Division of Developmental Disabilities, to post, at a publicly accessible location on the DHS Internet website, the same lists of group homes that are included in the commissioner's annual report. These lists include: 1) a list of group homes that are currently using EMDs in the common areas; 2) a list of group homes that have not installed EMDs in the common areas; 3) a list of group homes that have failed to install and use EMDs in the common areas, despite the receipt of uniform resident consent therefor, and an indication of the penalties that have been imposed on such facilities; 4) a list of group homes that are exempt from compliance with the bill's provisions; and 5) a list of group homes that have authorized the use of EMDs in the private rooms of one or more residents. The amendments further require each list posted online to be searchable by location and by name of group home.