

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4013

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 17, 2021

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4013 (1R), with committee amendments.

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 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 non-institutional, home-based setting or provides the opportunity for a single adult with developmental disabilities and extreme behavioral difficulties to live more independently, outside of an institution, while still 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 prevent or delay the institutionalization of the individual or individuals residing in the home or to otherwise 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 electronic monitoring 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 comply with the bill’s consent requirements in order to continue utilizing the devices; and 3) will not be required to remove the existing devices from service unless the residents collectively indicate, within six months after the bill’s effective date, that they want such devices to be removed. 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 collectively consent to have EMDs installed and used in the group home's common areas; 2) annually provide written notice to all residents and their authorized representatives informing them of their right to collectively request and consent to the installation and use of EMDs in the group home's common areas; and 3) install new EMDs in the common areas within one year after receipt of a collective request therefor.

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, following the installation of EMDs in the common areas, 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 licensee is to comply with the first two of these requirements within one year after receiving a collective request from residents authorizing electronic monitoring of the 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 to access and review any footage that is recorded by an EMD in the common areas of the group home; provided that the person first submits a request indicating that the resident has experienced, or that the resident or authorized representative has witnessed, an incident of abuse, neglect, or exploitation occurring in the common areas. A group home licensee may require that a resident or the resident's authorized representative remain on the premises of the group home when accessing and reviewing footage recorded in the common areas.

All of the costs associated with installation and maintenance of an EMD in the group home's common areas are to be paid by the group home licensee.

The 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.

Removal of EMDs from Common Areas

A group home that has EMDs installed in the common areas will be required to remove those EMDs from service, as provided by the bill, if all of the residents of the group home and their authorized representatives collectively agree to, and request, the removal of the EMDs from the common areas.

The bill provides that, if the EMDs in a group home's common areas were already in operation as of the bill's effective date, the licensee will be required to take affirmative action, within six months after the bill's effective date, to determine whether the residents of the group home and their authorized representatives want, and collectively agree, to have the existing EMDs removed from the common areas. If the residents do not collectively agree to the removal of the EMDs, the licensee will be authorized to: 1) continue using the devices in the common areas, in accordance with the group home's internal policies, as provided by section 7 of the bill (which is the section of the bill that exempts from the bill's requirements any group home that already has EMDs installed as of the bill's effective date); and 2) accept, as new residents, only those persons who consent to the ongoing use of the devices in the common areas.

The bill further provides that, if the EMDs in a group home's common areas were not in operation as of the bill's effective date, or if the EMDs existing in a group home's common areas on the bill's effective date were removed by the licensee pursuant to the collective agreement of residents, as described above, the licensee will be required to provide written notice to all residents and their authorized representatives, within 10 days after EMDs are newly placed into the common areas under the bill, and annually thereafter, informing the residents and their authorized representatives of their right to

collectively request the removal of existing EMDs from the group home's common areas.

The bill requires a group home licensee to remove any EMDs from the common areas within one year after receipt of a collective request from residents therefor.

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 DHS, 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.

Removal of EMDs from Private Rooms

A resident, or the authorized representative thereof, who installs an EMD in a private single-occupancy room or private double-occupancy room will be authorized to remove the device from service at any time following its installation. Any resident or authorized representative who removes an EMD will be required to provide written notice of such removal, to the licensee, within 48 hours after the device is removed from service.

Whenever the roommate of a resident, or the roommate's authorized representative, revokes the roommate's previously granted consent for the use of EMDs in a private double-occupancy room, the licensee will be required to transfer the resident who installed the devices to another private room, if possible, or to another group home, if necessary, to accommodate the resident's preexisting request for electronic monitoring. (This is the same requirement that applies, under the bill, whenever a roommate refuses to consent to, or imposes

unattainable conditions on, the use of an EMD in a private double-occupancy room).

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 DHS 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 will be the property of the group home licensee, and are to be retained by the licensee 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 DHS.

The bill requires each group home employee to maintain the confidentiality of each recording that is retained by the licensee pursuant to the bill, and it prohibits group home employees from disclosing any such recording to any person who is not authorized by law to receive or review it. The bill similarly provides that any authorized representative who installs an EMD in a private single-occupancy or double-occupancy room, and any resident of a private double-occupancy room where an EMD has been installed, will be required to maintain the confidentiality of recordings produced by the installed device and will be prohibited from disclosing any such recording to any person who is not authorized by law to receive or review it. The bill would specify that nothing in its provisions is to be construed to prohibit a group home employee or resident, or a resident's authorized representative, from disclosing a recording, upon request or otherwise, to a State or local law enforcement agency or officer or to any other person who is authorized by law to investigate, prosecute, or take other official remedial action to address instances of abuse, neglect, exploitation, or other improper care or treatment occurring in the group home.

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, when removing EMDs from the common areas, and when transferring, to another room or group home, a resident whose request for private electronic monitoring cannot be accommodated. The internal EMD policy is also to: 1) describe the make and model of EMDs that may be used within the group home; 2) authorize the use of various types of EMDs in the home; and 3) indicate how the licensee will ensure the proper installation, positioning, and use of EMDs in a private double-occupancy room, in a manner that is consistent with all conditions

established by the consenting roommate, and establish protocols and procedures to be used by the licensee when an EMD in a private double-occupancy room makes an unauthorized recording of the roommate. Finally, the policy is to describe the procedures and protocols that will be used in the review of footage recorded by EMDs in the group home. Among other things, such procedures and protocols are to identify the persons who will have access to recorded footage, and the standards that are to identify, at a minimum, the types of information that will constitute incidents of abuse, neglect, or exploitation, as are required to be submitted by a resident or the resident's authorized representative in order to receive authorization to access and review any footage that is recorded by an electronic monitoring device in the common areas of the group home.

Whenever a licensee receives notice about a complaint, allegation, or reported incident of abuse, neglect, or exploitation occurring within the group home, the licensee will be required to forward to the DHS, for appropriate review, all potentially relevant footage recorded by EMDs in: 1) the common areas of the group home; 2) the private room of the resident who is the alleged victim of the abuse, neglect, or exploitation; and 3) any other private room where the abuse, neglect, or exploitation is alleged to have occurred. Notwithstanding the provisions of the bill to the contrary, any resident or authorized representative who is in possession of potentially relevant footage related to an incident of abuse, neglect, or exploitation will be required to turn over the pertinent recording or recordings to the licensee, upon request, for transmission to the division. However, the bill specifies that nothing in its provisions may be deemed to authorize a licensee to review, or to make copies of, any footage contained on those private recordings, absent the express written consent of the resident or authorized representative.

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 the group home is 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 Division of Developmental Disabilities, 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; 6) a list of group homes that have removed EMDs from the common areas, pursuant to the collective request of residents; 7) to the extent known, a list of group homes that have failed to remove EMDs from the common areas, despite the licensee's receipt of a collective request from residents, and an indication of the penalties imposed in response to such failures; and 8) 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 commissioners, 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 commissioner, 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: 1) incorporate findings and declarations regarding whistleblowers; 2) require all of the costs associated with installation and maintenance of an EMD in the group home's common areas to be paid by the group home licensee; 3) clarify that recordings from EMDs installed in a group home's common areas are to remain the property, and be retained in the possession, of the group home licensee; 4) require all group home employees to maintain the confidentiality of recordings produced by

EMDs in the common areas; 5) require an authorized representative to maintain the confidentiality of recordings produced by an EMD installed thereby in a private single-occupancy or double-occupancy room; 6) require each resident of a private double-occupancy room where EMDs have been installed to maintain the confidentiality of recordings produced by the EMDs therein; 7) expressly prohibit the disclosure of any recordings by a group home employee, a group home resident, or an authorized representative, except to persons who are authorized, by the bill or by other provisions of law, to receive or review such recordings; 8) provide that any person who engages in an unauthorized disclosure of a recording, as prohibited by the bill, will be guilty of a crime of the fourth degree; and 9) specify that nothing in the bill shall be deemed to prohibit the disclosure of recordings to persons who are authorized by law to investigate, prosecute, or take other official remedial action in response to alleged instances of abuse, neglect, exploitation, or other improper care or treatment occurring in the group home.

The amendments further require a group home licensee to install new EMDs in the common areas, to obtain employee consent for the use of EMDs in the common areas, and to post a prominent written notice 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, within one year after the licensee receives a collective request from residents or their authorized representatives seeking the installation and use of EMDs in the common areas.

The amendments also remove a provision that would have provided that nothing in the bill may be deemed to prohibit a group home license from installing and utilizing EMDs in the group home's common areas in cases where the residents have not submitted a collective request for monitoring. The amendments replace this provision with new provisions that require a licensee to notify residents of their ability to request the removal of EMDs from the common areas and that further require the licensee to take appropriate action to remove EMDs from the common areas within a year after receipt of a collective request and consent of residents therefor. The amendments also address the removal of EMDs from the private rooms of residents and provide for the transfer of a resident to another room or group home in any case where a roommate revokes previously granted consent for private electronic monitoring.

The amendments require a resident or an authorized representative who seeks to review footage recorded in the common areas to first submit, a request indicating that the resident has experienced, or that the resident or authorized representative has witnessed, an incident of abuse, neglect, or exploitation occurring in the common areas. The amendments also provide that a licensee may require a resident or authorized representative to remain on the premises of the group home while reviewing footage recorded in the group home's common areas.

The amendments further provide that, in addition to the other issues described in the first reprint of the bill, an internal electronic monitoring policy adopted by a group home is to: 1) identify the procedures and protocols that are to be used when removing EMDs from the common areas upon the collective request of residents, and when transferring a resident whose request for private electronic monitoring cannot be accommodated; 2) identify various makes and models of EMDs that may be used in the group home; 3) indicate how the licensee will ensure the proper installation, positioning, and use of EMDs in a private double-occupancy room, in a manner that is consistent with all conditions established by the consenting roommate, and establish protocols and procedures to be used by the licensee when an EMD in a private double-occupancy room makes an unauthorized recording of the roommate; and 4) establish the standards that are to identify, at a minimum, the types of information that will constitute incidents of abuse, neglect, or exploitation, as are required to be submitted by a resident or the resident's authorized representative in order to receive authorization to access and review any footage that is recorded by an electronic monitoring device in the common areas of the group home.

Finally, the amendments provide 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 be required to forward to the DHS, for appropriate review, all potentially relevant footage recorded by EMDs in: 1) the common areas of the group home; 2) the private room of the resident who is the alleged victim of the abuse, neglect, or exploitation; and 3) any other private room where the abuse, neglect, or exploitation is alleged to have occurred. The amendments specify that, notwithstanding the provisions of the bill to the contrary, any resident or authorized representative who is in possession of potentially relevant footage related to a reported incident of abuse, neglect, or exploitation will be required to turn over the pertinent recording or recordings to the licensee, upon request, for transmission to the division. However, the amendments further indicate that nothing in the bill's provisions may be deemed to authorize a licensee to review, or to make copies of, any footage contained on those private recordings, absent the express written consent of the resident or authorized representative.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate increase in expenses incurred by the Department of Human Services (DHS) in complying with the monitoring, form development, reporting, and other various requirements imposed under this bill. Currently, the DHS's Office of Program Integrity and Accountability (OPIA) is responsible for incident investigations and licensing of department programs and facilities, including group homes. The Office of Licensing, within the

OPIA, among other things, is charged with ensuring that all persons receiving services under the DHS are protected from abuse, neglect, and exploitation. As such, the OLS assumes that the provisions of the bill will overlap with the existing duties and framework, at least in part, of this office, thereby minimizing costs. This fiscal estimate also assumes that the department will not incur any cost in the onsite inspection of electronic monitoring devices (EMDs) in common areas as the bill authorizes such inspections to be conducted during the broader inspection of group homes, as required under existing law.

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

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

Furthermore, the bill may indirectly impact annual State Medicaid expenditures. Group homes will incur costs to comply with the provisions for bill, with the majority of expenses likely associated with the installation and maintenance of EMDs in the group home's common areas. While any change in group home operating expenditures does not automatically result in corresponding modifications to Medicaid group home rates, significant changes would likely apply upward pressure on such rates and may lead to adjustments. Any increase in group home rates would also increase annual State Medicaid expenditures and federal Medicaid matching funds.