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# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Carruthers

Jason Hoskins, Attorney

### SUMMARY

#### Electronic monitoring in ICFs/IID

- Permits a resident of an intermediate care facility for individuals with intellectual disabilities (ICF/IID) or the resident's guardian or attorney in fact to authorize the installation and use of an electronic monitoring device in the resident's room under certain conditions.
- Requires a resident's roommate to fully or conditionally consent to electronic monitoring.
- Requires an ICF/IID to make a reasonable attempt to accommodate a resident wishing to use electronic monitoring when the resident's roommate refuses consent.
- Permits an ICF/IID provider to post a notice stating that an electronic monitoring device is in use in a particular room.
- Prohibits discrimination or retaliation against a resident who authorizes electronic monitoring and the intentional obstruction, tampering with, or destruction of a device or a recording made by it.

#### Developmental disabilities home and community-based services

- Requires the Department of Medicaid to establish a Medicaid waiver component that provides home and community-based services to individuals with developmental disabilities under specified circumstances.
- Requires the established waiver component to provide monthly lump sum payments to parents and caregivers of waiver participants to be used to pay for services.

#### Act designation

- Designates the act as "Lauren's Law."

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## DETAILED ANALYSIS

### Electronic monitoring in ICFs/IID

The bill permits a resident of an intermediate care facility for individuals with intellectual disabilities (ICF/IID) or the resident's guardian or attorney in fact to authorize the installation and use of an electronic monitoring device in the resident's room under certain conditions.<sup>1</sup> The bill maintains the existing law definition of an "electronic monitoring device" that applies to electronic monitoring in nursing homes. It is defined as "a surveillance instrument with a fixed position video camera or an audio recording device, or a combination thereof, that is installed in a resident's room and broadcasts or records activities or sounds occurring in the room."<sup>2</sup>

#### Conditions

For installation and use of an electronic monitoring device to be authorized, all of the following conditions must be met:<sup>3</sup>

- The resident or the resident's guardian or attorney in fact must complete a form (see "**Form**," below) and submit it to the ICF/IID, if the ICF/IID provider has established and requires such a form to be used;
- The cost of the device and of installing, maintaining, and removing the device (other than the cost of electricity for the device) must be paid by the resident or the resident's guardian or attorney in fact; and
- If the resident lives with another a resident (i.e., has a roommate), the roommate or roommate's guardian or attorney in fact must consent to the use of the electronic monitoring device in the room by completing the specified portion of a form, if such a form is required by the ICF/IID provider.

A resident who has authorized the installation and use of an electronic monitoring device may withdraw that authorization at any time.<sup>4</sup> A roommate also may withdraw consent to the monitoring at any time.<sup>5</sup>

#### Roommate situations

If a resident wishes to use an electronic monitoring device authorized by the bill, but the resident's roommate or the roommate's guardian or attorney in fact refuses to consent, the ICF/IID provider must make a reasonable attempt to accommodate the resident by moving

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<sup>1</sup> R.C. 5124.82(A).

<sup>2</sup> R.C. 3721.60, not in the bill.

<sup>3</sup> R.C. 5124.82 and 5124.83(A).

<sup>4</sup> R.C. 5124.82(C).

<sup>5</sup> R.C. 5124.83(C).

either the resident or the roommate to an available room. The bill also authorizes a roommate or his or her guardian or attorney in fact to place conditions on consent to the installation and use of electronic monitoring, including pointing the device away from the roommate or limiting or prohibiting the use of certain devices. If conditions are placed on consent, the device must be installed and used according to those conditions.<sup>6</sup>

### **Form**

Under the bill, an ICF/IID provider may prescribe a form for use by a resident or a resident's guardian or attorney in fact seeking to authorize the installation and use of an electronic monitoring device in the resident's room. If the ICF/IID provider prescribes such a form, it must, at a minimum, include all of the following:<sup>7</sup>

- An explanation of the electronic monitoring provisions enacted by the bill;
- An acknowledgement that the resident or the resident's guardian or attorney in fact has consented to the installation and use of the device in the resident's room;
- In the case of a resident with a roommate, an acknowledgment that the roommate or roommate's guardian or attorney in fact has consented to the installation and use of the device and a description of any conditions placed on that consent;
- A section for providing the ICF/IID provider with information regarding the type, function, and use of the device to be installed and used; and
- A section stating that the ICF/IID provider is released from liability in any civil or criminal action or administrative proceeding for a violation of the resident's right to privacy in connection with using the device.

### **Notice**

The bill permits an ICF/IID provider to post a notice in a conspicuous place at the entrance to a resident's room that contains an electronic device stating that an electronic monitoring device is in use in that room.<sup>8</sup>

### **Prohibitions**

The bill prohibits a person or resident from being denied admission to, or being discharged from, an ICF/IID or otherwise being discriminated or retaliated against because of the decision to authorize the installation and use of an electronic monitoring device in a resident's room in the ICF/IID.<sup>9</sup>

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<sup>6</sup> R.C. 5124.83(B).

<sup>7</sup> R.C. 5124.84.

<sup>8</sup> R.C. 5124.85.

<sup>9</sup> R.C. 5124.86.

The bill also prohibits any person other than the resident or resident's guardian or attorney in fact who authorized the installation and use of an electronic monitoring device in the resident's room from intentionally obstructing, tampering with, or destroying the device or a recording made by the device.<sup>10</sup>

Further, the bill prohibits any person other than the resident, the resident's guardian or attorney in fact, or law enforcement personnel from intentionally viewing or listening to the images displayed or sounds recorded by an electronic monitoring device, unless the person has been authorized to do so by the resident or the resident's guardian or attorney in fact.<sup>11</sup>

## Rules

The bill permits the Director of Developmental Disabilities to adopt rules as necessary to implement the bill's provisions. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).<sup>12</sup>

## Developmental disabilities home and community-based services

The bill requires the Department of Medicaid (ODM) to establish a Medicaid waiver component that provides home and community-based services to individuals with developmental disabilities. The waiver must be available to individuals who have a developmental disabilities level of care determination from the Department of Developmental Disabilities.

The waiver must satisfy all of the following requirements:<sup>13</sup>

- It must provide a monthly lump sum payment to parents or other family caregivers of waiver participants for providing home and community-based services to waiver participants. Payment must be provided regardless of the age of the participant.
- It must permit monthly lump sum payments to be used by a parent or other family caregiver for either (1) payment for services provided by the parent or caregiver, or (2) payment for services provided by a third-party provider selected by the parent, other family caregiver, or waiver participant.
- The monthly lump sum payment provided under the waiver must equal 90% of the total per Medicaid day payment rate paid to an ICF/IID.

Additionally, the bill prohibits ODM from denying participation in the Medicaid waiver to an individual who requires the requisite developmental disabilities level of care, unless the

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<sup>10</sup> R.C. 5124.87(A).

<sup>11</sup> R.C. 5124.87(B) and (C).

<sup>12</sup> R.C. 5124.88.

<sup>13</sup> R.C. 5166.201(A).

Department determines that home and community-based care is not a viable, safe, or healthy option for the individual.<sup>14</sup>

The bill requires ODM, in collaboration with the Department of Developmental Disabilities, to adopt rules to implement the Medicaid waiver.<sup>15</sup> Before creating the Medicaid waiver, ODM must seek, accept, and consider public comment.<sup>16</sup>

## Act designation

The bill is designated as “Lauren’s Law.”<sup>17</sup>

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## HISTORY

Action	Date
Introduced	03-27-24

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<sup>14</sup> R.C. 5166.201(A)(5).

<sup>15</sup> R.C. 5166.201(B).

<sup>16</sup> R.C. 5166.201(C).

<sup>17</sup> Section 2.