

# AN ACT

To amend section 3721.99 and to enact sections 3721.60, 3721.61, 3721.62, 3721.63, 3721.64, 3721.65, 3721.66, 3721.67, and 3721.68 of the Revised Code to permit a resident of a long-term care facility to conduct electronic monitoring of the resident's room and to designate this act as Esther's Law.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 3721.99 be amended and sections 3721.60, 3721.61, 3721.62, 3721.63, 3721.64, 3721.65, 3721.66, 3721.67, and 3721.68 of the Revised Code be enacted to read as follows:

Sec. 3721.60. As used in sections 3721.60 to 3721.67 of the Revised Code:

(A) "Attorney in fact" means a person designated as such by a durable power of attorney for health care executed pursuant to sections 1337.11 to 1337.17 of the Revised Code.

(B) "Electronic monitoring device" means 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.

(C) "Guardian" has the same meaning as in section 2111.01 of the Revised Code.

(D) "Long-term care facility" has the same meaning as in section 3721.21 of the Revised Code.

(E) "Resident" means an individual who resides in a long-term care facility.

Sec. 3721.61. (A) Subject to section 3721.62 of the Revised Code, a resident or a resident's guardian or attorney in fact may authorize the installation and use of an electronic monitoring device in the resident's room in a long-term care facility.

(B) The installation and use of an electronic monitoring device may be authorized only if both of the following conditions are met:

(1) If a long-term care facility has prescribed a form described in section 3721.63 of the Revised Code, the resident or resident's guardian or attorney in fact completes the form and submits it to the facility.

(2) The cost of the device and the cost of installing, maintaining, and removing the device, other than the cost of electricity for the device, is paid for by the resident or the resident's guardian or attorney in fact.

(C) A resident who has authorized the installation and use of an electronic monitoring device may withdraw that authorization at any time.

Sec. 3721.62. (A) If a resident wishing to conduct authorized electronic monitoring of the resident's room lives with another resident in a long-term care facility, the consent of the other resident or the other resident's guardian or attorney in fact to the installation and use of an electronic

monitoring device in the room is required before any installation or use of such a device may occur. If the long- term care facility has prescribed a form described in section 3721.63 of the Revised Code, the other resident or other resident's guardian or attorney in fact shall consent by completing the relevant part of the form.

(B)(1) If a resident living in a room with another resident wishes to conduct authorized electronic monitoring of the resident's room, but the other resident or other resident's guardian or attorney in fact refuses to consent to the installation and use of an electronic monitoring device, the facility shall make a reasonable attempt to accommodate the resident wishing to conduct authorized electronic monitoring by moving either resident to another available room with the consent of the resident being moved or resident's guardian or attorney in fact.

(2) In the case of a resident living in a room with another resident, the other resident or other resident's guardian or attorney in fact may place conditions on any consent to the installation and use of an electronic monitoring device, including conditions such as pointing the device away from the other resident or limiting or prohibiting the use of certain devices. If conditions are placed on consent, the device shall be installed and used according to those conditions.

(C) A resident whose consent is required under this section may withdraw that consent at any time.

Sec. 3721.63. A long-term care facility may prescribe a form for use by a resident or resident's guardian or attorney in fact seeking to authorize the installation and use of an electronic monitoring device in the resident's room in a long-term care facility. If a long-term care facility prescribes a form, it shall, at a minimum, include all of the following:

(A) An explanation of sections 3721.60 to 3721.67 of the Revised Code;

(B) An acknowledgment that the resident or resident's guardian or attorney in fact has consented to the installation and use of the device in the resident's room;

(C) In the case of a resident who lives in a room with another resident, an acknowledgment that the other resident or other resident'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 pursuant to division (B)(2) of section 3721.62 of the Revised Code;

(D) A section for providing the facility with information regarding the type, function, and use of the device to be installed and used;

(E) A section stating that the facility 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.

Sec. 3721.64. A long-term care facility may post a notice in a conspicuous place at the entrance to a resident's room with an electronic monitoring device stating that an electronic monitoring device is in use in that room.

Sec. 3721.65. No person or resident shall be denied admission to or discharged from a long-term care facility or otherwise 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 facility.

Sec. 3721.66. (A) No 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 in a long-term care facility shall intentionally obstruct, tamper with, or destroy the device or a recording

made by the device.

(B) Except as provided in division (C) of this section, no person other than the following shall intentionally view or listen to the images displayed or sounds recorded by an electronic monitoring device installed in a resident's room:

- (1) The resident;
- (2) The resident's guardian or attorney in fact;
- (3) Law enforcement personnel.

(C) A resident or resident's guardian or attorney in fact may authorize a person to view or listen to the images displayed or sounds recorded by an electronic monitoring device installed in a resident's room.

Sec. 3721.67. The director of health may adopt rules in accordance with Chapter 119. of the Revised Code as necessary to implement sections 3721.60 to 3721.66 of the Revised Code.

Sec. 3721.68. Sections 3721.60 to 3721.67 of the Revised Code do not apply if an electronic monitoring device is installed by a law enforcement agency and used solely for a bona fide law enforcement purpose.

Sec. 3721.99. (A) Whoever violates section 3721.021, division (B), (D), or (E) of section 3721.05, division (A), (C), or (D) of section 3721.051, section 3721.06, division (A) of section 3721.22, division (A) or (B) of section 3721.24, ~~or~~ division (E) or (F) of section 3721.30, or section 3721.65 of the Revised Code shall be fined one hundred dollars for a first offense. For each subsequent offense, the violator shall be fined five hundred dollars.

(B) Whoever violates division (A) or (C) of section 3721.05 or division (B) of section 3721.051 of the Revised Code shall be fined five thousand dollars for a first offense. For each subsequent offense, the violator shall be fined ten thousand dollars.

(C) Whoever violates division (D) of section 3721.031 or division (E) of section 3721.22 of the Revised Code is guilty of registering a false complaint, a misdemeanor of the first degree.

(D) Whoever violates section 3721.66 of the Revised Code is guilty of tampering with an electronic monitoring device, a misdemeanor of the first degree.

SECTION 2. That existing section 3721.99 of the Revised Code is hereby repealed.

SECTION 3. This act shall be known as Esther's Law.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Sub. S. B. No. 58

134th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_