

Senate Bill 58 (Esther's Law)

Senate Bill 58

- Sponsored by Senators Antonio and Brenner
- Passed unanimously in both Senate and House (committee and floor)
- Takes effect March 23, 2022
- Not complex – only 5 pages long
- No required policies or procedures (although advisable)
- ODH can but is not required to adopt rules (they apparently do not intend to do so)

Applicability

- Applies only to skilled nursing facilities as defined in ORC 3721.21
 - Licensed nursing home
 - Certified but not licensed SNF
- Does not apply to assisted living (free-standing or co-located)

Electronic Monitoring Device

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

Key Point: Who Can Place Devices

- Electronic monitoring devices can be placed only by:
 - Resident
 - Legal guardian
 - Attorney in fact under a durable power of attorney for health care (that is activated)
 - We'll call these people authorized persons
- Does not include:
 - Other family members
 - Friends
 - Ombudsmen or other advocates
 - Surveyors
 - Media
- Exception for a law enforcement agency placing a device solely for a bona fide law enforcement purpose

Restrictions on Viewing/Listening

Only the following people can intentionally view or listen to images displayed or sounds recorded:

- An authorized person
- Someone authorized by an authorized person
- Law enforcement personnel (would not appear to include surveyors)

Not Secret

- Electronic monitoring devices can be used only if:
 - Authorized person completes and submits form prescribed by facility (form is not required)
 - Authorized person pays the cost of the device and installing, maintaining, and removing it (other than electricity)
- Resident can withdraw authorization at any time

Roommate

- Roommate or their guardian or attorney in fact must consent before installation or use
- Must use the facility's form, if there is one
- Roommate may require such conditions as pointing the device away from them or limiting or prohibiting certain devices
- If the roommate refuses to consent, the facility shall make a reasonable attempt to accommodate the resident who wants electronic monitoring by moving either resident to another available room, with their consent
- Roommate may withdraw consent at any time

The Form

If a facility chooses to use a form (which is advisable), it must contain the following:

- An explanation of the law
- An acknowledgment that an authorized person has consented to installation and use of the device in the resident's room
- If the form is used by a roommate, an acknowledgment that the roommate or an authorized person has given consent and a description of any conditions placed on that consent
- A section to provide the facility with information regarding the type, function, and use of the device
- A statement that the facility is released from liability in any civil or criminal action or administrative proceeding for violating the resident's right to privacy in connection with using the device

The Sign

- A facility may post a notice in a conspicuous place at the entrance to the resident's room stating that an electronic monitoring device is in use in that room
- The sign is not required but is advisable
- The statute does not address impact of electronic monitoring on any others (e.g., residents in hall or entering the room, staff members, visitors, surveyors), so the sign provides notice to them

Non-Discrimination

No person or resident shall be denied admission, discharged, or otherwise discriminated or retaliated against because of installation/use of an electronic monitoring device

Non-Tampering

- No person other than the authorized person shall intentionally obstruct, tamper with, or destroy an electronic monitoring device or a recording made by the device
- Violation is first-degree misdemeanor