

Department of Legislative Services  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**

House Bill 327 (Delegate Love, *et al.*)  
Health and Government Operations

---

**Nursing Facilities - Electronic Monitoring**

---

This bill requires a “related institution,” such as a nursing home, to install and use electronic monitoring devices in resident rooms to monitor the safety of residents, including the rooms of residents most at risk of falling and sustaining injuries.

---

**Fiscal Summary**

**State Effect:** To the extent the bill applies to State Residential Centers (SRCs) such as Rosewood, Department of Health and Mental Hygiene (DHMH) general fund expenditures could increase by a significant amount, beginning in FY 2007. DHMH could monitor compliance with existing resources. The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

**Local Effect:** The criminal penalty provisions of this bill are not expected to significantly affect local finances or operations.

**Small Business Effect:** Meaningful. Small business providers would incur additional administrative expenses to comply with the bill’s monitoring and notification requirements.

---

**Analysis**

**Bill Summary:** The bill applies to related institutions that have 50 or more residents and a nursing assistant staff ratio of more than 2:1. An institution must post a notice in a conspicuous location stating that rooms of residents are being monitored by an electronic monitoring device. The area in an institution that receives the signals from the electronic

monitoring devices must • be staffed 24 hours per day; • be out of the view and hearing of visitors and other institution residents; and • have a communication system that immediately notifies the appropriate staff of a monitored resident's need for assistance.

Monitoring must be • noncompulsory and with the written permission of the resident or resident's legal representative; and • funded by the institution.

An institution must develop and implement policies regarding the protection of privacy rights of residents that elect not to be monitored and of visitors. An institution may not discharge or refuse to admit an individual because of a refusal to accept electronic monitoring.

Subject to the Maryland Rules of Evidence, a tape created through the use of electronic monitoring is admissible in either a civil or criminal action brought in a Maryland court.

A person who operates an institution in violation of the bill's provisions is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,000 or imprisonment not exceeding five years, or both.

A person who willfully and without consent of the institution hampers, obstructs, tampers with, or destroys an electronic monitoring device or tape is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,000 and/or imprisonment not exceeding 90 days.

**Current Law:** Under Maryland's wiretapping and electronic surveillance laws, it is unlawful to willfully intercept any wire, oral, or electronic communication. "Interception" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device. A person who violates these provisions is guilty of a felony and subject to imprisonment for not more than five years or a fine of not more than \$10,000, or both. There are specified exceptions for lawful acts performed by such individuals as: (1) a switchboard operator, or wire or electronic communication service employee; (2) an investigative or law enforcement officer acting in a criminal investigation or other specified circumstances; (3) a person who is a party to the intercepted communication, where all of the parties have given prior consent; (4) an employee of a governmental emergency communications center; and (5) a person intercepting an electronic communication that is readily accessible to the general public.

There are no provisions in current law authorizing or mandating electronic monitoring in nursing homes.

Regulations specify that an intermediate care facility serving the mentally retarded shall be considered: (1) a “related institution” under Health-General Article, § 19-301 and shall be governed by the provisions of Title 19, Subtitle 3 of that article; and (2) a provider of “services” under Health-General Article, § 7-101 shall be governed by the applicable provisions of Title 7 of that article including:

- Subtitle 4: Provisions of Services;
- Subtitle 5: State Residential Centers;
- Subtitle 8: Transfers; and
- Subtitle 10: Rights of Individuals.

**Background:** Chapter 409 of 2003 (“Vera’s Law”), requires DHMH to develop guidelines for a nursing home that elects to use electronic monitoring with the consent of a resident or the resident’s legal representative. In January 2004, DHMH reported to the Finance Committee and the Health and Government Operations Committee on its proposed guidelines. The guidelines contain mandatory criteria that relate to privacy and consent.

**State Fiscal Effect:** If the bill applies to DHMH State Residential Centers such as Rosewood, Holly, and Potomac centers that provide residential care for individuals with developmental disabilities, DHMH expenditures could increase by a significant amount beginning in fiscal 2007. DHMH advises it would be required to wire approximately 355 rooms in the three centers as well as hire additional staff to monitor the cameras. There are insufficient data at this time to reliably estimate the impact, but costs conceivably could exceed \$1 million.

DHMH also advises that if the bill is applicable to State SRCs, it could jeopardize DHMH’s federal Intermediate Care Facilities for the Mentally Retarded (ICF/MR) certifications relating to required personal privacy rights. DHMH could potentially lose ICF/MR status or funding for these SRCs. Federal funding for Rosewood alone is about \$16 million annually.

---

### **Additional Information**

**Prior Introductions:** An identical bill, HB 807 of 2004, was withdrawn. HB 1097 of 2003, also identical, was not reported by Health and Government Operations Committee.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene (Office of Health Care Quality, Developmental Disabilities Administration), Department of Legislative Services

**Fiscal Note History:** First Reader - February 3, 2006  
mam/jr

---

Analysis by: Susan D. John

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510