

CAHCF/CCAL

Connecticut Association of Health Care Facilities
Connecticut Center for Assisted Living

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Written testimony of Matthew V. Barrett, President/CEO of the Connecticut Association of Health Care Facilities and the Connecticut Center For Assisted Living (CAHCF/CCAL) opposing H.B. No. 5208 (RAISED) AN ACT DETERRING ABUSE IN NURSING HOMES.

Good morning Senator Slap, Representative Serra and to the distinguished members of the Aging Committee. My name is Matthew V. Barrett. I am the President and CEO of the Connecticut Association of Health Care Facilities (CAHCF), our state's trade association and advocacy organization of one-hundred and sixty skilled nursing facilities and assisted living communities. Thank you for this opportunity to testify on H.B. No. 5208 (RAISED) AN ACT DETERRING ABUSE IN NURSING HOMES.

This proposed legislation will authorize a nursing home resident to install an electronic monitoring device in the resident's room. Connecticut law is presently silent on this issue. Moreover, there are no federal laws either allowing or requiring the use of electronic or video monitoring in nursing home resident rooms. Neither has CMS issued any guidance on this matter to state public health agencies. The few states that have implemented or considered state legislation concerning video surveillance in nursing home resident rooms have made various attempts at addressing the very difficult issues that can arise when capturing very private material on video. Some of these protections---such as the written consent of the resident, the consent of roommates, advance notice to the nursing facility, the resident's responsibility for the installation and maintenance costs, and immunity from liability---are partially addressed in the proposed bill.

However, we urge the Aging Committee, as it further considers H.B. 5208, to evaluate a full range additional protections before advancing the bill.

Additional Notice and Consent

- All staff must be aware of the device and acknowledge their awareness by signing a form which is maintained by the center;
- There must be a sign at the door of the room alerting all who enter that a video device is in use;
- There must be clarification regarding the ability of the resident, roommate, and other residents to give consent allowing use of the device, including who may consent on their behalf. The requirements should also specify when, or if, the family's request to install a device must be honored if they do, or do not; have advanced directive authority;

Managing the Device

- Staff are never to have any responsibilities related to the video device or its use. If the family/resident does not want the device to be in use during certain types of care (e.g., perineal care), it is the resident's responsibility to disable the videotaping during that care giving and when that care is complete, the resident is responsible to turn on the video device;

- If the family/resident wishes to attach the device to a wall or doorway, the family/resident is responsible for all associated costs, including costs for a review by a life safety engineer following installation to ensure the wall or doorway continues to meet the CMS adopted edition of the NFPA Life Safety Codes/Standards as well as any state or local jurisdiction fire and life safety codes/standards. If the installation has caused the wall or doorway to no longer meet codes/standards, the family is responsible for bringing the wall or doorway up to code and re-inspection;

Security and Privacy

- The device must be placed in a conspicuously visible location in the room; the hidden, undisclosed use should only be permitted by court order related to a law enforcement investigation;

- The family/resident must have a written plan that is signed and dated, then given and retained by the nursing home, indicating the schedule that will be used to monitor the material that is in the device and when and how it will be destroyed;

- Consideration of if the family/resident should sign an agreement that any material in the device will never be posted on any social media;

- Evaluate whether to include specifications for encryption and other technical parameters;

- Generally the law should anticipate that the footage will be admissible in civil, criminal, or administrative proceedings so long as the recording is done in compliance with the law;

- Consider language that any footage gathered from covert or hidden placement of the device cannot be used in a civil lawsuit;

- A waiver of liability for the nursing home facility for any breach of privacy involving the resident's use of an electronic monitoring device, including a breach of privacy due to the unauthorized use of the device or a recording made by the device by nursing home facility staff;

- A waiver of liability for any unauthorized access (hacking) use or disclosure of the electronic recording or streaming due;

Operational or Compliance Issues for Providers

- Evaluate installation and physical plant use. Installation could raise issues with Life Safety Code compliance or internet bandwidth capacity;
- Ensure staff training;
- Assigning resident/family members will be responsible for posting signs and ensuring that signs remains visible;
- Document how capacity to consent from all relevant parties was determined.

We also urge the committee to very carefully consider the strong body of law and the existing enforcement authorities in place to prevent and detect elder abuse as it further deliberates on the bill. Federal nursing home requirements of participation rules issued in 2017 by the Centers for Medicare and Medicaid Services (CMS) enhance a body of strong state rules on nursing homes to prevent, detect, report and thoroughly investigate incidences of abuse, neglect, exploitation, misappropriation and mistreatment of nursing home residents. The requirements are strictly enforced by the Connecticut Department of Public Health (DPH), including federal Elder Justice Act required reporting requirements of allegations of abuse or any incident involving serious injury. Further, in 2019, the Centers for Medicare & Medicaid Services (CMS) made changes to its Nursing Home Compare website and the Five-Star Quality Rating System. Starting October 23, 2019, nursing homes cited for one of three abuse and neglect will display an alert icon to warn consumers. If a facility is flagged with an alert icon, the survey component will be capped at two stars. It should be noted that the consequences of a finding of abuse and neglect, including civil monetary penalties, are severe for Connecticut nursing homes.

The public disclosure of the very private material concerning nursing home residents can be devastating, especially given the impossibility of a full-proof assurance that the data or streaming material cannot be compromised. For this reason, we recommend the added protection that state regulations be promulgated by the Department of Public Health to implement any adopted statutory provisions.

Thank you again for this opportunity to testify on the bill as drafted. I would be happy to answer any questions you may have.

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