



Testimony to the Aging Committee

Presented by Mag Morelli, President, LeadingAge Connecticut

February 27, 2020

Regarding

- **SB 160, An Act Concerning Smoking in Nursing Homes, Assisted Living Facilities, and Other Housing for the Elderly**
- **SB 161, An Act Increasing Funding for Aging in Place Initiatives**
- **SB 163, An Act Concerning Long-Term Care Services**
- **HB 5200, An Act Concerning a Study of Nursing Home Services**
- **HB 5204, An Act Concerning Transportation for Nonambulatory Nursing Home Residents**
- **HB 5205, An Act Concerning A Study of Medicaid-Funded State Programs**
- **HB 5208, An Act Deterring Abuse in Nursing Homes**

Good afternoon Senator Slap, Representative Serra, and members of the Aging Committee. On behalf of [LeadingAge Connecticut](#), a membership association representing not-for-profit provider organizations serving older adults across the entire field of aging services and senior housing, I am pleased to present the following testimony on several of the bills that are before you today.

House Bill 5204, An Act Concerning Transportation for Nonambulatory Nursing Home Residents

In Opposition

We appreciate the intent of this proposal which is to find additional means to help non-ambulatory residents visit their families. As always, we would be pleased to discuss ways to enhance the lives of nursing home residents, including enhancing their ability to engage with their families. We cannot, however, support the mandate proposed by this bill as we are extremely concerned that the additional burden of staffing for this function would place an untenable demand on our staff during a time when we are facing a workforce crisis.

Nursing homes currently face challenges in the provision of non-emergency medical transportation and growing time demands on staff who are sent to accompany residents on such visits. Providing nursing assistants to accompany residents on up to 104 non-medical visits a year for each resident would be an additional and potentially enormous strain on our staffing needs. And while the bill allows for the nursing home to charge for the cost of providing the mandated transportation, there is no guarantee of payment. While we know this proposal is well intended, we cannot support this mandate at this time.

Raised Bill 5208, An Act Deterring Abuse in Nursing Homes

In Opposition

Prevention of elder abuse is a priority for LeadingAge Connecticut members, and we take any related legislative proposal very seriously. The bill before you today states that it is designed to deter abuse of nursing home residents by permitting residents or their authorized representatives to install video cameras in a resident's nursing home room. While the bill language does attempt to address privacy, consent and other concerns surrounding the use of video cameras within this health care setting, we believe that it does not address all the concerns. We therefore would like to provide the Committee with additional information regarding the significant issues involved in implementing a proposal of this nature.

We first want to assure the Committee that numerous federal and state laws are already in place to deter abuse in nursing homes. These detailed requirements require that nursing homes have policies, monitoring and training in place to prevent, detect and report incidents of abuse, neglect, exploitation, misappropriation and mistreatment of all residents. In fact, the Centers of Medicare and Medicaid Services (CMS) revamped the requirements of participation for nursing homes within the last few years, and a key feature of the revised regulations is an emphasis on abuse, neglect, exploitation, misappropriation and mistreatment of nursing home residents. Nursing homes are now required to report any allegation of abuse or any incident involving serious injury immediately (within two hours) to the administrator and state authorities; allegations of neglect, exploitation, misappropriation and mistreatment must be reported within 24 hours. CMS requires its state survey agencies to strictly enforce these requirements.

The concept of implementing video monitoring of individual nursing home residents is a very complicated issue and balanced consideration must be given to the rights and interests of all those involved. Privacy rights are paramount in the discussion and should include consideration of the privacy of the resident, the resident's roommate, other residents in the building, and visitors to the nursing home. At present, some states have enacted statutes or regulations governing the use of electronic monitoring in nursing homes, but only after careful extensive analysis, review and consideration of the many complicated issues involved.

House Bill 5208 does require written and signed consent by the resident or resident representative to electronic monitoring and requires that the consent form be provided to the facility, so that it is aware that monitoring will occur in a particular resident's room. The bill also includes provisions aimed at protecting the privacy of roommates by requiring documentation of roommate consent on the consent form. This is an important consideration given that a majority of nursing home residents share a room with another resident. We do not agree, however, with the implicit proposal to have the long-term care ombudsman develop a standard consent form. Any such standardized form should be developed collaboratively involving nursing home providers as well as the Department of Public Health.

Moreover, **we strongly oppose subsection (e) of the bill**, which would permit residents or their representatives to conduct electronic monitoring without submitting the consent form to the facility if the resident or representative "reasonably fears retaliation against the resident by the nursing home

facility for recording or reporting alleged maltreatment of the resident by the nursing home facility staff” and submits the consent form to the ombudsman along with a report to the ombudsman, the Department of Social Services or police with evidence of “maltreatment” (a term which is not defined). It also permits the resident or resident representative to withhold the consent form from the nursing home (but requires that it be submitted to the ombudsman) if the facility does not respond to resident concerns about maltreatment within two business days or in cases where the resident or representative has already submitted a report to the ombudsman, Department of Social Services or police with concerns about the resident’s safety or well-being. These measures create gaping wide exceptions to the consent requirement and would result in a situation where covert monitoring will occur without the nursing home’s knowledge.

We are not aware of any other state that has enacted electronic monitoring laws or regulation with these types of exceptions. In fact, some states expressly prohibit covert monitoring. Residents already have the ability to file reports or complaints with any number of state agencies or officials if they believe that abuse has occurred. These agencies include the Department of Public Health, the Department of Social Services, the ombudsman and police, as well as agencies for the protection of the disabled. Nursing home are required to inform residents of these rights upon admission, and the Residents Bill of Rights is posted in each facility with the names and contact information for agencies where reports and complaints can be made.

There is no reason to subject any visitor, resident, employee or medical professional to covert video monitoring. Rather, the bill should require that the resident or authorized representative report any detected issues to the nursing home staff. And the bill should require that if the resident or representative does make a report to any authority based on electronic monitoring, they must provide a complete copy of the recorded images to the facility.

Video camera equipment may also be capable of capturing and recording audio and may allow for the person viewing the video stream to speak directly into the room where the camera is located. Further, some equipment such as the “nest” is small and capable of being hidden from view. These potential aspects of video monitoring capabilities must also be addressed. We are also very concerned about situations in which video footage of resident care might be released to the news media or to social media platforms such as Facebook or YouTube.

All persons whose voice or video may be captured by the recording device must be made aware of the recording activity. This not only includes roommates and nursing home staff, but visitors entering the room, treating health care professionals, and other residents. Therefore, covert or hidden cameras must be prohibited, and a sign should be posted indicating that recorded monitoring may be occurring. Workplace laws regarding video and/or audio surveillance must also be taken into consideration and honored.

Privacy and confidentiality issues also weigh heavily when considering the use, viewing and storage of the video. The images contained on the video would be protected by HIPAA and the viewing, storage and usage would need to be strictly regulated. And liability issues related to all aspects of the filming, use, viewing and storage would need to be resolved, and not just issues caused by potential internet

security breaches. The bill does include the requirement that the consent form for electronic monitoring contain a waiver of liability for the nursing home for any breach of privacy involving the resident's use of electronic monitoring device unless the breach occurred due to unauthorized use of the device by nursing home facility staff. Inclusion of the waiver is helpful but does not go far enough. **The bill must include an affirmative provision that not only the nursing home, but also its officers, directors, employees and contractors will be immune from any liability for alleged breach of privacy or for inadvertent or intentional disclosure from recordings made by the resident.** There also should be consequences and penalties for anyone who engages in covert monitoring in violation of the proposed bill. A notice of the laws and penalties surrounding the use of video monitoring should be developed by the State to be provided to nursing home residents upon admission.

Finally, although the bill does require that residents or their representatives pay for installation of electronic monitoring devices, there could still be costs that nursing homes may incur as well as disruption to facility internet services through expanded usage. Internet security and stability are vitally important given that electronic communications often occur with other health care providers about residents and regulatory agencies are increasingly turning to electronic systems for reporting and oversight. These hidden costs and internet concerns for facilities should be addressed. It may be necessary to allow the facility to require that residents or their representatives arrange and pay for their own internet connections, but that could raise privacy concerns as well.

As noted, prevention and detection of elder abuse is currently addressed and strengthened in the revised CMS requirements of participation for nursing homes. Abuse prevention and detection is also currently addressed in other state and federal laws, including the federal Elder Justice Act which was passed in the Patient Protection and Affordable Care Act of 2010. LeadingAge Connecticut and our members would be happy to engage the Committee in a discussion of these existing measures, as well as the mandatory reporting requirements and other programs and practices that are currently in place.

SB 161, An Act Increasing Funding for Aging in Place Initiatives

LeadingAge Connecticut is supportive of all the Committee's efforts to increase the funding for the state funded and administered programs that provide home and community-based services for older adults and their families. We strongly believe in the principle of ensuring choice for persons seeking long term services and supports and we know that a strong and balanced continuum of care that provides the right care, in the place, at the right time will lead to a more efficient and effective care delivery system.

SB 160, An Act Concerning Smoking in Nursing Homes, Assisted Living Facilities and Other Housing for the Elderly

We have assumed that nursing homes are currently included in Section 19a-342 of the statutes as a "health care institution" and therefore do not oppose the proposed amendment to this section of the statute.

HB 5200, AN ACT CONCERNING A STUDY OF NURSING HOME SERVICES

HB 5205, AN ACT CONCERNING A STUDY OF MEDICAID-FUNDED STATE PROGRAMS

HB 6175, AN ACT CONCERNING LONG-TERM CARE SERVICES

LeadingAge Connecticut has no objection to these proposed bills and would be happy to assist the Committee and the state with such studies. We did participate in the process of developing the [2019 State Long Term Services and Supports Plan](#). We also bring the Committee's attention to the recently updated [report on Connecticut's Medicaid Long Term Care Need Projections](#) as well as the [Strategic Rebalancing Plan](#).

Thank you again for your continued efforts to raise the importance of aging services and to maintain the focus on the needs of older adults and the families who support them. And please consider LeadingAge Connecticut as a resource to you throughout the session.

Respectfully submitted,

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