



March 25, 2024

House Committee on Health and Human Services
Rhode Island State House
HouseHealthandHumanServices@rilegislature.gov

Re: **Testimony SUPPORTING House Bill 7969**, giving residents of long-term care facilities the right to use electronic monitoring in their rooms

Dear Chair Donovan and Honorable Committee Members,

Advocates for Better Care in Rhode Island represents the rights and interests of residents of long-term care facilities in RI. We vigorously support H7969, which empowers residents of long term care facilities by giving them and their representatives the right to oversee their own condition and care by installing a camera in their room, with the consent of their roommate if they have one, **if they so choose**.

Numerous long-term care residents and family members have expressed to us an interest in submitting testimony supporting this bill, but were concerned about retaliation from the administrators of their facilities.

In 2019 the RI Long-Term Care Ombudsman's office received 14 complaints of sexual abuse, and 10 of physical abuse —that's **two complaints a month of physical and sexual abuse** in care facilities in Rhode Island—as well as 14 complaints of gross neglect and 22 of “accident or injury of unknown origin.” In February of this year alone, they received 11 complaints of “abuse, gross neglect, or exploitation.” Recently, we've seen headlines about RI facility staff accused of sexual abuse, on-site illegal drug use, theft of residents' pain medication, and numerous resident to resident assaults, some resulting in death. Imagine all the cases that we don't know about, especially in dementia care.

ABC-RI would prefer that this systemic problem be addressed primarily from other angles—a higher minimum wage for nursing staff, increased training and support for nursing staff and administrators, increased oversight and accountability for facilities— but until these more complicated measures are in place, one very easy way to address the problem of mistreatment in long-term care facilities and the fear that residents and their families feel, with no cost to facilities and very minimal risk, is to empower residents and their family advocates to hold facilities accountable and monitor their loved ones' care electronically.

We would like to preemptively **refute here some of the arguments we have seen in opposition to this bill:**

1. There is **no cost to the facility**. The resident is responsible for the cost of the camera and the internet connection.
2. *Some industry lobbyists argue that “[S]uch a requirement will be insulting and invasive to our staff...”* This is a disingenuous argument, as many, if not most, **facilities already have cameras in common areas** (see attached, Exhibit A).
3. *To evoke the idea of Big Brother here, as some industry representatives have done,* is also disingenuous, as Orwell’s dystopia was characterized by the powerful surveilling the oppressed. In this situation, **it is the most powerless and vulnerable individuals—the residents of long-term care—whom we are trying to empower**. It’s much more Orwellian to try to “protect” residents from their own choices, as those who would deny them this right are doing.
4. *Facility owner/administrator representatives argue that a camera in the room can damage the trust in the resident’s relationships with staff.* When a camera means the difference between a barked order and a gentle request, we argue it will increase trust on the part of the resident, and the resident is our primary concern. Additionally, with rates of staff turnover (averaging over 50% last year) and agency staff employment so high, **many residents frequently receive care from staff they don’t know**.
5. *It has been argued that the State Ombudsman’s Office and the Department of Health can manage oversight of Rhode Island’s long-term care facilities.* In 2019, the last year for which data is available, the RI State Ombudsman’s Office **resolved 38.1% of complaints** to the resident/complainant’s satisfaction. That ranks us 44th in the nation for complaint resolution. Our Ombudsman’s office determined that 18.4% of complaints they received that year needed no action, the 6th highest percentage in the nation. Many complaints go unresolved, and many are dismissed without action. As for RIDOH and CMS, **assisted living facilities in RI are surveyed by the Department of Health once every two years**. Nursing homes are required to be inspected once every 15 months. And more than 4500 nursing homes in the US are currently overdue for inspection. On those inspection days, it is unlikely that a RIDOH surveyor is going to witness mistreatment, especially because it is common for staff to know when inspections are going to occur. Of the 80 complaints the LTCO made to RIDOH in 2023, RIDOH surveyors only cited deficiencies for 16 of them. **80% of complaints made by the LTCO resulted in no citation or penalty, and yet immediate jeopardy findings, the most serious deficiencies that require a facility to cease admitting new residents, more than doubled from 2022 to 2023**.
6. **ACLU** Senior Policy Analyst for privacy and technology, Jay Stanley, said of the bill: “we do think that **people ought to be able to arrange for electronic monitoring of themselves or of those they represent who can’t make decisions for themselves**, as long as such monitoring is under their control and empowers them and not others.” Our bill ensures that is the case. In all of the states with similar legislation where testimony is publicly available, ACLU state affiliates have remained neutral on the legislation.
7. This is a **thoroughly well thought-out bill**. It requires the consent of any roommate. It requires a notice on the facility entrance and resident door. It allows only the resident and their legal representative to have access to any recording generated by the device. It allows conditions for the resident or roommate

to choose when the device is turned off; whether it's a bed-bath or a visit from a priest, if the resident or roommate chooses for the device to be turned off or blocked, that choice is honored.

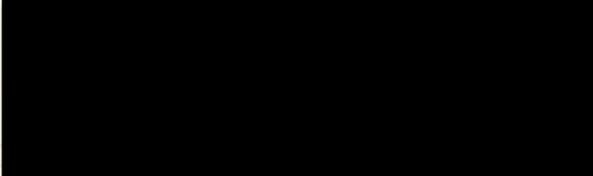
8. *Some argue this bill should not pass because the camera could be hacked. This is **exceedingly rare and easily preventable**. Would they argue the same about residents being allowed to have smartphones and tablets?*
9. *The only substantive argument we have heard against this bill is that it can compromise the privacy of other residents who may wander into the room where the camera is placed. While it does happen in dementia care facilities that residents sometimes wander into other residents' rooms, the potential for a negative outcome is far, far less than the potential for a **positive outcome from residents being empowered** to manage the oversight of their own care. This is a disingenuous argument from facility administrators, who would understandably prefer less oversight and accountability.*
10. While it's understandable that facility administrators would prefer less oversight, there are **numerous situations where such monitoring could be beneficial to facilities and staff**. For example, nursing facilities often have residents who fall frequently and suffer serious bruising. Often facility staff do not see residents fall and have no idea how it happens. Electronic monitoring could show how the fall is occurring so that the facility can take measures to correct the problem. In addition, electronic monitoring may exonerate staff from unfounded suspicions or allegations of maltreatment. Resident to resident mistreatment is a common, dangerous, and under-documented occurrence in nursing homes. ([2013, Journal of Elder Abuse and Neglect](#))
11. The 14-day clause, which allows a resident or their representative to place an electronic monitoring device before completing the consent process, still requires that certain important criteria be met, and is common to most of the legislation passed in other states.

We urge you to support H7969 and to grant Rhode Island's vulnerable long term care residents and their loved ones the right to oversee their care and condition with electronic monitoring.

We are happy to provide any additional information or answer any questions you may have. Thank you for your time and attention, and for all of your work on behalf of all Rhode Islanders.

Sincerely,

Kathleen Gerard,
ABC-RI



ELECTRONIC MONITORING NOTICE

“Electronic monitoring” is defined as “the collection of information on an employer’s premises concerning employee’s* activities or communications by any means other than direct observation, including the use of a computer, telephone, wire, radio, camera, electromagnetic, photoelectronic or photo-optical systems, but not including the collection of information for security purposes in common areas of the employer’s premises which are held out for use by the public, or which is prohibited under state or federal law.

Employees of this [REDACTED] managed facility may be subject to electronic monitoring or recording (including sound, voice or video devices) while in this facility or within any other facilities managed by [REDACTED], except that employees will not be subject to any such monitoring or recording in areas designed for health or personal comfort of the employees or for safeguarding of their possessions, such as rest rooms, locker rooms or employee break rooms.

Employees should understand that their activities involving an [REDACTED] managed facility computer equipment and computer and/or electronic documents, data and communications, including e-mail and internet usage, are subject to being monitored, recorded and reviewed. Employees should be aware that the fact that a document, data or communication has been ‘deleted’ by the employee does not mean that the item cannot be monitored or retrieved and reviewed.

Employees will not be subject to electronic monitoring or recording of the content of their direct telephone conversations, except as may be permitted under state and federal law.

*“Employee” means any person who performs services for an employer in a business of the employer, if the employer has the right to control and direct the person as to (A) the result to be accomplished by the services, and (B) the details and means by which such result is accomplished.