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ACLU OF RI POSITION: OPPOSE

TESTIMONY ON 24-H 7969, RELATING TO ELECTRONIC MONITORING IN NURSING AND ASSISTED LIVING FACILITIES March 26, 2024

The ACLU of Rhode Island appreciates the intent behind this bill, allowing residents in nursing home facilities to electronically monitor their living space, presumably to help deter incidents of abuse, neglect or other misconduct by employees or others. We agree that individuals who wish to use technology to videotape themselves generally should have the right to do so. However, we feel the need to raise caution around the bill, as we believe there are some practical concerns that need to be addressed prior to its implementation to ensure that the privacy of the resident or their roommates is not violated. We briefly summarize some of those concerns below:

- The bill recognizes there are many instances when a resident might want the recording turned off – such as during physical exams, while dressing or bathing, or while having intimate conversations with particular people. *See* § 23-17.29-6(a)(5). But especially in those instances where the resident is incapable, by reason of physical or mental limitations, of controlling the electronic monitoring device, the bill does not explain how he or she, or their representative, will be able to control its on-off monitoring function 24 hours a day. It should do so. Similarly, if the responsibility for controlling the camera instead falls on the healthcare provider, the process for complying with that obligation should be specified in the bill.¹ This lack of clarity is particularly important to address in the context of the presence of roommates, as noted immediately below.
- In the case of roommates, the bill is unclear as to exactly what the person is consenting to when they sign the required notification form. Are they consenting to being recorded themselves at any time or just allowing the presence of a monitoring system for the requesting resident/representative? The bill suggests it is the former. *See* § 23-17.29-3(b)(4). But it is unclear whether the roommate will recognize, on signing a consent form, the full extent of their own privacy rights that they are waiving and their inability to control when the camera is recording.

¹ Perhaps in a limited attempt to address this issue, the bill bars dissemination of recordings except for health and welfare purposes. But this does not cure the inherent privacy violation that has occurred when a resident is captured in the first place having a private conversation or being recorded in a state of undress.

- A provision in the bill authorizing use of an electronic monitoring device in certain circumstances for up to 14 days without submitting a notification and consent form also raises serious privacy concerns. That is a significant period of time to avert compliance with the bill's consent procedures. In addition, the bill provides that monitoring without formal consent can take place if the resident submits a complaint "upon evidence from the electronic monitoring device that suspected maltreatment has occurred." § 23-17.29-5(b)(1). But this is circular: we do not understand how already-recorded evidence of suspected maltreatment can form the basis for allowing recording in the first place.

We wish to again express our recognition of the bill's commendable goal of protecting residents, but in light of these serious practical questions, the ACLU believes more consideration should first be given to how to fully protect their privacy rights, and those of the residents' roommates, before authorizing this type of potentially intrusive surveillance.

Thank you for considering our views.