



Testimony to the Aging Committee

Presented by Mag Morelli, President, LeadingAge Connecticut

March 9, 2021

Regarding

- **House Bill 6554, An Act Concerning Aging and Covid-19**
- **Senate Bill 973, An Act Strengthening the Voice of Residents and Family Councils**
- **Senate Bill 975, An Act Strengthening the Bill of Rights for Long-term Care Facility Residents**
- **House Bill 6552, An Act Concerning the Rights of Residents in Long Term Care Facilities to Use the Technology of their Choice for Virtual Connections to Family, Friends and Other Persons**

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.

HB 6554, An Act Concerning Aging and Covid-19

Covid-19 is a virus that targets the elderly and which has caused great isolation, fear and disruption amongst the older adult population throughout the state. This bill proposes a study of the impact of the Covid-19 pandemic on the health, safety and welfare of the older adults in the state and if such a study is implemented, LeadingAge Connecticut would be supportive and interested in assisting.

SB 973, An Act Strengthening the Voice of Residents and Family Councils

It is our understanding of this proposal that it places a responsibility onto the state agencies, administration, and legislature to solicit input from resident and family councils on a broad range of actions prior to implementation. The language in the bill is very broad and it may be in the interest of all those involved to attempt to narrow down the language and make the mandate more specific and therefore more workable. Based on our review, the proposed mandate is not directed toward nursing homes and managed residential communities.

SB 975, An Act Strengthening the Bill of Rights for Long-Term Care Facility Residents

This bill aims to enhance certain existing rights for residents of nursing homes and managed residential communities. We do not object to this bill, but just want to assure the Committee that nursing home residents are afforded both a state and federal bill of rights. In addition, the state also has enacted a bill of rights for the residents of managed residential communities and Department of Public Health regulations governing assisted living services agencies (ALSAs) have a separate bill of rights that protects managed residential community residents receiving ALSA services. We understand the legislature's desire to enhance these rights, but we would like to point out that many of the proposed rights set out in the bill are already addressed in the current statutory and regulatory rights (i.e., visitation rights, the right to associate and communicate with persons of the resident's choice, the right to file grievances and freedom to exercise resident rights and rights as a citizen). Please know that these current rights are protected and enforced.

HB 6552, An Act Concerning the Rights of Residents in Long Term Care Facilities to Use the Technology of their Choice for Virtual Connections to Family, Friends and Other Persons

This proposal would establish a statutory framework to govern and facilitate the use of technology by residents in nursing homes. This bill offers us the opportunity to put into place a comprehensive state statute that will establish good public policy on this important issue - and we need to do it right. Therefore, we have provided extensive written comments with the intent of assisting in the development of a statute that addresses the many complex needs and concerns of ensuring resident rights within this highly regulated setting and in consideration of the common situations that impact many nursing home residents.

Our priority goal is to ensure the self-determination, privacy and dignity of the nursing home resident. Secondary to this issue is the financial impact of this bill's requirement for providing internet service that can support video surveillance throughout the building. We ask the Committee to consider our detailed written comments in the constructive manner in which they are presented and allow us to continue to work with all interested parties to develop and pass a strong and comprehensive statute.

LeadingAge Connecticut has been a strong advocate for enacting legislation to address the use of technology in nursing homes for virtual visitation, including the privacy, consent, regulatory and operational considerations that are necessary for an effective and workable virtual visitation process. In that regard, we appreciate having the opportunity for discussion with the Aging Committee about this legislative proposal and thank the Committee for including some of our suggestions in the bill before you today.

While we support legislation on virtual visitation, we have several significant concerns with House Bill 6552 because it reaches beyond the use of technology for virtual visitation in nursing homes and incorporates the use of technology for virtual monitoring. We must request that revisions be made to adequately address the sensitive issues connected to monitoring and offer our detailed comments to assist in developing a policy which addresses all of the issues involved. In summary:

- The bill lacks appropriate measures to safeguard resident privacy and dignity, prevent and address misuse of technology for monitoring, ensure transparency and accountability when issues are detected through monitoring, and avoid financial and operational burdens that the bill's requirements will impose on facilities.
- Other states that have enacted laws governing electronic monitoring in the long-term care setting have addressed these important concerns directly in the legislation. We have reviewed all of the legislation passed in other states and have pulled what we believe to be the best examples of good policy.
- While the bill does incorporate certain procedures addressing resident and roommate consent for virtual monitoring, those provisions need to be strengthened significantly to safeguard resident privacy and dignity and expanded to include a level of consent for use of all video and audio technology.
- The bill would burden facilities that are already financially challenged with additional operating costs by requiring that the facility provide free internet access that is capable of handling multiple streaming video and audio monitoring. While the bill provides for Medicaid reimbursement to cover the capital costs related to initial equipment upgrades and the ability to shift some costs to private resident, we don't see those provisions as workable and would instead request that a grant program be developed to provide the upfront cost of upgrades. With respect to the ongoing cost of providing internet services, this would be something outside of the current Medicaid reimbursement formula and we would request that it be reimbursed in full through an increase in the Medicaid rates.
- The bill's provisions governing facility notification, the need for resident and roommate consent and the ability of a facility to establish policies and procedures only apply to technology used for virtual monitoring. They do not apply when technology is used for virtual visitation, even though these provisions are just as essential when technology is used for that purpose. With today's technology, the same device that is used for a remote zoom visit or drop in call can easily be used covertly for ongoing monitoring and recording. It is important, therefore, that the bill require notification and consents for virtual visitation as well as further notification and consents when virtual visitation will be used for monitoring. It should also establish meaningful consequences for those who do not abide by the requirements.
- Finally, the bill applies to a "long-term care facility" including not only the nursing home setting but also the managed residential community ("MRC"). Yet the MRC in

Connecticut is not a licensed health care facility; it is a private residential setting where the resident already has the right to purchase and use technology for any purpose. Including MRCs is not necessary and could be viewed by some MRC residents as intrusive. We request that the MRC be removed from this bill.

Again, we offer detailed comments with our testimony and look forward to contributing to the development and passage of a statutory policy that protects the privacy and dignity of all nursing home residents.

Thank you for this opportunity to testify and I would be happy to answer any questions.

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Detailed written comments regarding House Bill 6552, An Act Concerning the Rights of Residents in Long-Term Care Facilities to Use the Technology of Their Choice for Virtual Connections to Family, Friends and Other Persons.

The following is a more detailed discussion outlining our concerns with recommendations on how these concerns can be addressed in the bill. Previously, we provided the Aging Committee with proposed language addressing many of these concerns and would be happy to work with the Committee on further revisions to strengthen the bill.

A. Virtual Monitoring Requires Heightened Protections and Requirements for Nursing Home Residents.

For any legislation addressing electronic monitoring in the long-term care setting, the primary focus should be the resident. Often it is the family member insisting that electronic monitoring is necessary. In these cases, the resident may not be capable of communicating whether he or she is in agreement with use of monitoring, which has the potential to record video and audio during the most intimate aspects of resident care. Any of us could imagine putting ourselves in the resident's shoes and asking whether, if given the opportunity now to express our wishes many years in advance of placement in a long-term care setting, we would agree to having outsiders, even though they are family members, watching us in our private space and sometimes even recording video and audio images of us. Many long-term care residents haven't expressed their wishes in that regard. The bill does not contain sufficient safeguards for the resident who likely has never communicated his or her preferences about monitoring.

In addition, there are many details that need to be coordinated with the facility when monitoring is in place. These include assurances that the resident has been given a voice in the process, that the roommate consents, that installation and placement of the device complies with life safety and fire codes, and that any particular procedures or preferences on use of the device are documented and understood. As a result, we recommend that the bill be amended to address, at a minimum, the following:

1. If there is any doubt about a resident's capacity to consent to virtual monitoring, several steps must be taken to verify capacity, ensure a qualified representative is involved and to give the resident a voice in the process. These same steps should apply when obtaining a roommate's consent.

- The resident's attending physician or advance practice registered nurse should determine whether the resident currently lacks the ability to understand and appreciate the consequences of a decision to install technology for virtual monitoring in the resident's room.
- If the resident is deemed not capable of consenting, then only a resident representative who has been legally appointed as a conservator of the person or guardian or has been designated health care representative should be permitted to provide consent to virtual monitoring on behalf of the resident. Exceptions should only be made for situations in which the resident has previously, when capable, designated a representative in a writing that is on file at the facility. This same standard was used in last year's bill, HB 5208, addressing electronic monitoring in the long-term care setting.
- The resident or roommate, as applicable, regardless of capacity, should be specifically asked whether the resident or roommate objects to virtual monitoring and permitted to indicate his or her answer orally, visually, or through use of auxiliary aids or services. This should be done with a facility witness present and documented on the consent form.
- Detailed provisions should be included on measures to be taken in the event that the roommate does not consent or revokes consent. HB 6552 addresses how to accommodate the resident who wishes to use virtual monitoring, but it does not adequately address protections for the roommate who does not consent or decides to revoke consent.

2. The Facility Should be Provided with at Least Fourteen Days' Prior Notice of any Proposed Virtual Monitoring.

- The bill requires seven days' advance notice to the facility through submission of the notice form accompanied by written consents. Seven days is adequate notice for virtual visitation, but not for virtual monitoring. We propose that the bill be revised to require at least fourteen days' notice for virtual monitoring.

- The facility (not the resident as implied in HB 6552) should be responsible for determining whether the proposed installation complies with applicable life safety and fire safety code requirements and whether there are any specific steps that must be taken regarding internet access. It is also necessary to review placement of the device and work out particular details and restrictions on use of the technology such as limitations to video only, whether and when the device will be turned on or off, particularly during resident care or visits with clergy, an attorney, a financial advisor or support person where the resident may prefer privacy. All of these steps take time to coordinate.

3. The bill should address reporting obligations in the event of suspected abuse or neglect, require that the facility should be provided with a copy of any relevant recordings upon request and permit the admissibility of video or audio recordings from virtual monitoring in legal proceedings.

- Most other states that have enacted legislation allowing electronic monitoring in the long-term care setting have addressed these issues in the legislation. These laws include requirements that any person who suspects abuse or neglect based on virtual monitoring must report suspicions as soon as practicable to the facility so that proper interventions can be taken and required reports made.
- These provisions also require that the individual in possession of any relevant recording provide a copy of the recording to the facility at the facility's request (and the facility is responsible for the cost of making a copy of the recording).
- Most states include provisions stating that, subject to applicable rules of evidence or procedure, video or audio recordings derived from virtual monitoring may be admitted into evidence in a civil, criminal or administrative proceeding unless the recording was obtained contrary to the law, or there is evidence of tampering.

4. Given the sensitive nature of virtual monitoring, certain prohibitions and limitations should be made explicit in the law to deter misuse of monitoring and any resulting recordings.

- The bill should clearly prohibit any use of technology to conduct covert electronic monitoring or surveillance and emphasize that only virtual monitoring conducted in accordance with the bill is permitted.
- The bill should include a prohibition on social media postings of video or audio recordings depicting a resident without his or her consent.
- It should also provide that anyone who does not follow the provisions of the law to institute virtual monitoring, or who posts any video, photograph or recording of a resident, may be subject to civil liability for violating the privacy rights of another. Some states even set out criminal penalties for covert monitoring and failure to

follow statutory requirements, and such an approach should be considered here as well.

B. HB 6552 Must Include Procedures and Protections for Virtual Visitation.

HB 6552 focuses notice, consent and the authorization for the facility to establish policies and procedures solely on virtual monitoring. However, all of these protections are equally necessary when technology is used for virtual visitation.

- The facility needs to be fully aware of all devices in use at the facility, even when the purpose is limited to virtual visitation. This is important in monitoring internet capacity and usage, posting of required signage, and the identification of staffing needs for assisting residents using virtual devices for visits.
- The facility should receive advance notice (seven days is adequate) with documentation of resident and roommate consents before virtual visitation can begin. Resident and roommate consent should be required for use of virtual visitation technology. Because virtual visitation is not as potentially intrusive as virtual visitation, we believe that it would be appropriate for a resident representative who has not been appointed in advance, but who is a legally liable relative or other person to provide consent on behalf of a resident who is not capable of providing, if that is limited to virtual visitation.
- The facility's ability to establish policies and procedures should apply both for virtual visitation as well as virtual monitoring.
- Many devices used for communication and visitation are also capable of monitoring and recording. It is extremely important that the bill clearly state that if a resident or resident representative using technology for virtual visitation later decides to start using the equipment for monitoring, they must provide a separate notice and consents from both the resident and any roommate before they can start virtual monitoring.
- We see no reason why all cellular mobile phones and tablets are excluded from the bill's requirements. We understand excluding these devices when they are in the possession of family members who visit, but if a resident will maintain any of these items in his or her room, the facility should be notified in advance that they are in use, and appropriate consents should be obtained from the resident and roommate.

C. HB 6552's Provisions Regarding Use of the Internet for Virtual Visitation and Virtual Monitoring Technology Will Impose a Financial Burden on Facilities.

HB 6552 requires that each long-term care facility provide internet access, electricity and a power source for technology used for virtual visitation or virtual monitoring at no cost to the resident. The bill then provides that the cost for any necessary upgrades to the internet infrastructure will be considered a capital improvement eligible for a higher rate of reimbursement for the nursing home facility (this would not apply to MRCs, which are also subject to the requirements). In addition, it permits the long-term care facility to assess a "pro-rated" portion of the upgrade cost to privately paying residents. While facilities can provide

access to electricity and a power source at no cost to the resident, providing internet access at no cost under these circumstances presents numerous issues and concerns. No other state has included such a requirement in legislation authorizing electronic monitoring in long-term care facilities.

- The ability of individual long-term care facilities to accommodate the internet needs for devices used under this bill will vary widely. Many facilities have older buildings. Some may have public internet access for visitors that is not secured. Most facilities either have converted or are in the process of converting to electronic medical records, which require seamless and uninterrupted access to internet. In addition, connections to hospitals, vendors and government agencies requiring mandatory reports occur via internet. As a result, it is vitally important that facilities not be in a position to compromise internet access for these important resident care and operational purposes. Expanded use of technology for virtual visitation is likely to tax internet capabilities at many facilities, and this will be exacerbated by virtual monitoring, which entails ongoing streaming through the internet.
- Having to provide internet access in all cases in the same way that electricity is readily available will only result in facilities, which are already shouldering unprecedented expenses due to the pandemic, bearing the brunt of the financial burden. We note that nursing homes are already experiencing increased staffing costs outside direct care in order to implement safe visitation protocols and assist residents with virtual visitation provided by the facility, and we will be raising this concern in our testimony before other legislative committees.
- The provision authorizing the expense as a capital improvement for purposes of Medicaid rate reimbursement provides no assurances that the financial burden will be eased. First of all, we are not aware of any specific appropriation for this purpose and so as it stands, it is an unfunded mandate. Indeed, this is not the type of non-basic charge that Medicaid typically recognizes (e.g., Medicaid doesn't cover private rooms and cable television). Secondly, it would only apply to the Medicaid portion of the cost. Though the bill permits the facility to charge a privately paying resident for the additional costs involved in an internet upgrade, that likely would not cover all costs associated with residents who pay privately or are covered by Medicare and it would not help MRCs at all, which are also subject to the bill's provisions. As noted in our testimony, we would instead request that a grant program be developed to provide the upfront cost of upgrades and that the ongoing costs of providing internet service to residents be addressed through a Medicaid rate increase.
- We previously proposed language to the Committee that would require that the facility provide access to electricity and a power source at no cost to the resident, but if the facility could not accommodate the resident's internet needs, the resident would need to either arrange to procure separate internet connectivity for their device or pay any additional fees that the facility may incur for use of the facility's internet provider. Our

language made it clear that the facility would not be required to arrange or pay for internet network enhancements or improvements to accommodate a resident's personal technology. We request that the Aging Committee replace the current provision related to internet coverage with our recommended language.

D. HB 6552 Should Be Limited to the Nursing Home Setting.

As we have indicated in discussions with the Aging Committee, it is not necessary to extend HB 6552's requirements to the MRC setting because MRCs are not licensed health care facilities. They consist of private residential units where residents are free to obtain and use virtual technology for any purpose. MRCs should be removed from the definition of "long-term care facility."

- The "managed residential community" is defined by statute as "a facility consisting of private residential units that provides a managed group living environment consisting of housing and services for persons who are primarily fifty-five years of age or older. Conn. Gen. Stat. § 19a-693(4). "Private residential unit" is defined as "a private living environment designed for use and occupancy by a resident within a managed residential community that includes a full bathroom and access to facilities and equipment for the preparation and storage of food." Conn. Gen. Stat. §19a-693(6).
- By statute and regulation, a licensed assisted living services agency ("ALSA") may only provide assisted living services in an MRC that is registered with DPH. In many MRCs, only a portion of the residents receive ALSA services. However, because residents' needs can change over time and because the occupants of different apartments can change as well, many organizations designate and register the entire building as an MRC. Examples include many life plan communities (which are all registered with DSS as continuing care facilities pursuant to Conn. Gen. Stat. § 17b-520 et seq.) as well as HUD-financed housing. In these settings, many MRC residents live independently in these residences.
- MRC residents are free to install and use devices within their residential units. Many MRC residents likely would not expect, or appreciate, having to comply with a statutory obligation to provide notices to the community or be subjected to rules and procedures on setting up and using technology in their private homes.

We appreciate this opportunity to comment on HB 6552 and reiterate our offer to work with the Committee to address our detailed concerns. 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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