



Senate Committee on Human Services

**Testimony in Support of SB 134**

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AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50+ to choose how they live as they age. AARP Oregon advocates on issues important to our more than 500,000 Oregon members with a focus on health security, financial resilience and livable communities.

AARP supports SB 134. Concerns about nursing home resident abuse and neglect and the lack of sufficient amounts of direct care staffing to meet nursing home residents' needs can prompt residents and their family caregivers to want to monitor resident care quality through electronic monitoring. This is especially important for caregivers who are unable to be present in a nursing home to visit or view the type of care the resident is or is not receiving

AARP supports the rights of resident to use electronic monitoring devices and for them to decide when and how to do this. That is why AARP across the country has supported these efforts and several states including Illinois, Kansas, Louisiana, Minnesota, Missouri, New Mexico, Ohio, Oklahoma, Texas, and Washington state have adopted electronic monitoring laws.

In consultation with various entities including the American Bar Association, AARP has developed a model bill. SB 134 is an excellent start and complements our model legislation in many ways. For today's hearing we thought it would be most helpful to focus on the few areas that we think the proposal can be strengthened, some of this is quite modest in added definitions and some does go into more details and clarity around the process for roommate notification and consent and the types of monitoring allowed as well as who has access to the footage.

We believe the following suggestions *align* with the intent of this bill.

**Clarify Definitions**

Add some definition provisions, specifically to refer to a resident's *authorized* representative and in addition to defining what an electronic monitoring device means, to add language defining what electronic monitoring means. Also where there is written consent, we expand to say, "notice and consent" (as in the form to so provide).

Add clarifying language that for a resident who has the ability to consent, the authorized representative may do so if the representative is authorized to make such decisions, has fully explained to the resident the monitoring and the resident has not affirmatively objected.

### **Strengthen & Clarify Roommate Consent Process**

Provide that if a resident shares a room, the roommate must provide consent including the type of monitoring (audio or video) and location, including any exposure of the lavatory.

If the roommate or roommate's authorized representative refuses to consent, we recommend the following approach

- Allow the resident to modify the plan to meet the roommate's conditions for consent
- Allow the resident to modify the plan to exclude requiring consent of roommate by not allowing the capture of audio or video of the roommate's half of the room or the lavatory

If those options are not satisfactory to the resident, *then* that is when the facility has a responsibility to make reasonable attempts to accommodate the resident who wants electronic monitoring in the following ways:

- They can move the resident to another shared room that is available at the time of the request
- If a resident chooses to reside in a private room to accommodate the request, the resident shall pay the private room rate
- If the facility cannot accommodate due to lack of space, it shall re-evaluate the request every month (this is a modification to the bill's two-week requirement)
- Make clear that the facility is not required to provide a private room or a single bedroom or private living unit if the resident is unable or unwilling to pay.
- Allow for consent to be withdrawn at any time by either the resident or roommate and the process that follows.

### **List of conditions/restrictions**

We recommend modifying what is described as the "list of conditions or restrictions" that may be elected when using electronic monitoring to one that doesn't just use "prohibit" the following but rather states "includes or excludes" each specific feature.

We suggest adding specific language that the resident's person-centered care plan include these details.

### **Expand protections against facility retaliation**

The bill includes important language on what a facility may not do but we believe it should be strengthened by adding the additional protections:

- The facility may not "influence or attempt to influence any roommate to object or withdraw consent for the purpose of obfuscating a resident's choice to have electronic monitoring" or

- The facility may not “move or attempt to move a new roommate into a resident’s room that the facility knows will or is likely to object to monitoring for the purpose of obfuscating a resident’s choice to have electronic monitoring.”

### **Recording**

Finally, we believe the section that allows very limited dissemination of the recording should be expanded in the very limited but important ways:

- Anyone to whom the resident or authorized representative grants permission
- Any representative of law enforcement or state agency who is conducting an investigation
- The state LTCO with the resident’s permission
- An attorney who is representative the resident or roommate and is acting within the scope of that representation.

The bottom line, we all believe that residents deserve high quality care and quality of life. To that end, AARP believes that persons who make their home in a long term care facility and their family caregivers have the right to monitor the quality of care being provided to ensure their loved ones are getting their needs met and we urge with some changes, passage of SB 134.