

**Testimony**  
**Engrossed Senate Bill 2113 – Department of Human Services**  
**House Human Services Committee**  
**Representative Robin Weisz, Chairman**

March 4, 2019

Chairman Weisz, and members of the House Human Services Committee, I am Karla Backman, State Long-Term Care Ombudsman with the Department of Human Services (Department). I am here today in support of Engrossed Senate Bill No. 2113, which was introduced at the request of the Department.

As the State Long-Term Care Ombudsman, I have the honor of advocating to protect the health, safety, welfare and rights of residents of long-term care facilities. This bill is brought with the intent to protect their right to use authorized electronic monitoring (monitoring) in their rooms, to provide protections for the residents who want to use monitoring and protections for any residents who share their rooms from unknowingly having their privacy and HIPPA protections violated.

The right of a resident of a long-term care facility, or his or her representative, to place and use audio or video recording equipment, i.e. electronic monitoring, in the resident's room is an issue that is brought to the long-term care ombudsmen on a regular basis. There is audio and video recording equipment already being used in resident rooms and often covertly. The Long-Term Care Ombudsman Program takes the position that a resident has the right to conduct electronic monitoring in his or her room with protections for the resident and roommates. Thus, this legislation has the basic framework to provide:

- Protection of residents' rights and privacy,
- Notification to long-term care facilities of electronic monitoring occurring within their facility,
- Assignment of costs and responsibilities,
- Access to the recordings and use of the recordings.

Monitoring can be helpful in the prevention of maltreatment and validation of good care. It can improve communication between family members and providers. Monitoring can also give peace of mind to family members who live a distance away and can't regularly visit.

Laws on monitoring from other states were reviewed and used as a model in drafting the basic framework of this legislation to amend the Rights of Health Care Facility Residents chapter. Input was sought from the stakeholders of the Department of Health, Protection and Advocacy, and the Long-Term Care Association. Part of the discussion was that the Department shall develop and adopt rules necessary to implement this act with active involvement from stakeholders. Also please note technology will be continually evolving so there is probability this law will need future updates but there is an existing need to have a framework in law to protect residents now.

Attached to my testimony are copy of amendments to this Bill that were developed at the request of the Long-Term Care Association. They will be mentioned at the end of this testimony.

This Bill is proposing to create and enact a new section to chapter 50-10.2 of the North Dakota Century Code and to amend and reenact sections 12.1-31-14 and 50-10.2-01 of the North Dakota Century Code relating to authorizing electronic monitoring by health care facility residents and privacy and to provide a penalty.

**Section 1.** Page 2, Lines 1 and 2, amends section 12.1-31-14 of the North Dakota Century Code to add subsection 3 to cover the proposed amendment to chapter 50-10.2 in Sections 2 and 3 of this Bill

**Section 2.** Page 2, Lines 7 through 16 and Page 3, Lines 1 and 2, amends section 50-10.2-01 of the North Dakota Century Code to include the definitions of "authorized electronic monitoring", "authorized electronic monitoring device", and

“resident representative.” The definition for “authorized electronic monitoring device” has been written with the intent to not create a barrier to residents using social media, Facetime, Skype, webcams etc. to maintain contact with family and friends.

There is also a change from using “person” to “individual” in the definitions of conflict of interest, Page 2 line 19, and resident, Page 2 line 30. This change is for clarity as “individual” means a human being. A “person” can include a human being but also a corporation, entity, government, etc.

**Section 3.** Creates and enacts a new section to chapter 50-10.2 of the North Dakota Century Code.

Page 3, Lines 9 through 12, states residents of long-term care facility can place an electronic monitoring device in their room if it focuses on their area of the room. This gives a boundary to where a resident can use electronic monitoring equipment.

Page 3, Line 13 through 13, requires that the facility must be given written notice of the installation of the monitoring equipment and its use. This is to eliminate the use of hidden cameras and audio recording devices.

Page 3, Lines 16 and 17, requires the tape or recording created to record the date and time.

Page 3, Lines 18 through 21, assigns all costs of the monitoring, except for electricity, to the resident or resident representative. It is the intent that the resident electing to do the monitoring take on the financial responsibility and not the long-term care facility.

Page 3, Lines 22 through 23, requires written consent from a roommate or that roommate’s representative so he or she is fully aware of the use of monitoring within their room.

Page 3, Lines 24 through 30 includes the resident and residents sharing the room releasing the facility of liability regarding potential violations to their right to privacy and potential disclosure of protected health information when monitoring is taking place in the resident room.

Page 4, Lines 1 and 2, sets forth reasonable cooperation between the resident and the facility in the installation of the electronic monitoring devices.

Page 4, Lines 3 through 20 requires written informed consent from the resident's roommate or resident representative prior to electronic monitoring equipment being used and allows for that same consent to be withdrawn. Once consent is withdrawn the resident who initiated the monitoring must turn off or disable the monitoring equipment.

Page 4, Lines 21 through 28, instructs a facility to make reasonable attempts to accommodate a roommate if he or she refuses to consent to monitoring. This shows the balance needed to protect a resident's right to have monitoring while also protecting the roommate's rights of choice and privacy.

Page 4, Lines 29 and 30 and Page 5, Lines 1 and 2, establishes that a facility shall make a reasonable attempt to not move another resident into the room unless consent is received by the resident or resident's representative.

Page 5, Lines 3 through 6, protects a resident when choosing monitoring by prohibiting a facility from either refusing admission or discharging a resident for exercising that right.

Page 5, Lines 7 through 10, requires a facility to post signs so that residents, family, community visitors, and staff have full knowledge that monitoring is occurring within a resident's room.

Page 5, Lines 11 through 23, establish protections for the recordings, and the devices, and requires consent from the resident or a court order for facility staff to access the recordings. This leaves oversight of the devices and the recordings to the resident who initiated the electronic monitoring. Penalties are also set.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2113  
Amendments to address concerns of the ND Long-Term Care Association.

The proposed Page 2, line 16 amendment is clarification on limits to the devices being used for communication and that they should not be used to provide monitoring.

The proposed amendments to Page 3, Lines 10 through 12 adds additional assurances the placement of the monitoring device will protect the privacy and dignity of the residents.

The proposed amendment to Page 3, Line 16 clarifies date and time are required for video recordings only.

The proposed amendment to Page 3, Line 21 protects the privacy of the internet network of the long-term care facility as well as avoids additional wireless internet costs being incurred by the long-term care facility.

The proposed amendment to Page 3, Line 23 requires a copy of the roommate consent form to be given to the facility.

Proposed amendment to Page 3, Lines 24 through 30 adds protection for the facility regarding liability involving potential violations of privacy or disclosures of protected relating to the use of monitoring.

The proposed amendment to Page 4, lines 6 through 20 redo the language on a roommate's withdrawal of consent for monitoring and the responsibility for disabling the monitoring devices when consent is withdrawn.

The proposed amendment to Page 4, Line 25 through 28 take out specifics on what reasonable attempts the facility shall make to accommodate a resident when a resident sharing the room won't consent to monitoring. The Long-Term Care Association wants the definition of reasonable attempt to be developed through rule making.

The proposed amendment to Page 4, Lines 29 and 30 and Page 5, Lines 1 and 2 were added to address concerns on the part of the Long-Term Care Association about admission challenges and delays due to need for consent from a roommate in a room with monitoring occurring.

Proposed amendments to Page 5, Lines 7 through 10 remove the posting of a sign at the facility's main entrance. The Long-Term Care Association felt this would promote the use of monitoring by residents. The amendments also remove the requirement to post a sign outside a resident's room where monitoring is occurring. There was concern about the potential impact of such a sign's location on the resident's privacy and dignity.

The proposed amendment to Page 5, Line 19 was added to make sure that recordings used in any proceeding or formal process were obtained in accordance with this subsection.

This concludes my testimony. I am available to answer questions the committee may have. Thank you.