

Surveillance Cameras in Senior Care Facilities

Question

How should senior care facilities (e.g., nursing homes and long-term care facilities) handle residents and their family members using surveillance cameras (often referred to as “granny cams”) to record staff without their knowledge?

Answer

Privacy and security factors as well as residents’ rights can be compromised when family members of residents install surveillance cameras in residents’ rooms. Not only does HIPAA include privacy rules, but state privacy and health information laws also may apply — and they might be more stringent.

However, it’s important to note that state laws vary, and some states have specific requirements or restrictions. For example, Minnesota state law requires family members to obtain the resident’s consent for electronic monitoring (unless the resident is unable to understand the consequences and nature of the monitoring) and notify the senior care facility before installing the camera.¹

In addition, the Centers for Medicare & Medicaid Services indicates that taking photographs or recordings of a resident without the resident’s or designated representative’s written consent violates a resident’s right to privacy and confidentiality.²

To ensure compliance with federal and state laws and other applicable rules and standards (e.g., accreditation standards), senior care facilities need to establish a clear policy on audio/video surveillance and photography. Additionally, facilities need to educate staff members, residents, family members, caregivers, volunteers, and visitors about the policy; post visible signs about it in the facility; include a copy of it in new residents’ admission packets; and review it on a regular basis.

Senior care organizations should consult with an attorney while developing surveillance policies to ensure all legal aspects are thoroughly addressed. General considerations for policy development include:

- Identifying situations in which photographing or recording residents are permitted as well as situations in which they are not permitted (account for all recording devices, including those on personal electronic devices, webcams on laptop computers, and law enforcement body cameras).
- Determining instances when it is permissible for residents, employees, healthcare staff, volunteers, and visitors to use electronic recording devices.
- Developing a process for securing residents' written consent to be photographed/videotaped and documenting it in their health records.
- Devising policies for acceptable photograph and audio/video recording storage, security, and retention (including any photos or recordings contained in residents' health records to prevent unauthorized access to protected health information).³

Guidance from ECRI also notes that organizational photographing and electronic monitoring policies should include a statement indicating that the facility retains sole possession of any photography and electronic recordings taken by any media representatives until consent is obtained from residents who are photographed or recorded. The statement should indicate that if this consent is not obtained, then the images or recordings of nonconsenting residents must be removed or destroyed.⁴

If state law allows surveillance monitoring in senior care facilities, organizational leadership should ensure that protective measures, such as the following, are in place to promote staff awareness and address resident consent and privacy:

- Identify the person responsible for the cost, installation, maintenance, and removal of recording equipment.
- Educate residents, families, and staff members about why the facility permits camera monitoring and the associated policy.
- If possible, only permit camera monitoring in private resident rooms. If this isn't possible, ensure the resident's roommates provide written consent.

- Display signage directly outside or in the resident's room announcing the presence of camera monitoring.
- Ensure the camera is not within range of a resident performing personal care activities (such as toileting). If this isn't possible, ensure the resident or a staff member can turn off the camera.
- Provide a policy for the retention and disposal of electronic recordings, and be sure it complies with federal, state, and local laws.
- Place visible signs that notify residents, staff, and visitors that surveillance monitoring is in place if cameras are installed in public areas, such as parking lots or at exit doors to a unit.⁵

Resources

- [Annals of Long-Term Care: Cameras in Long-Term Care: Monitoring, Surveillance, and Risk Management Concerns](#)
- [Congressional Research Service: Privacy: An Overview of Federal Statutes Governing Wiretapping and Electronic Eavesdropping](#)
- [National Consumer Voice for Quality Long-Term Care for the National Center on Elder Abuse: Balancing Privacy & Protection: Surveillance Cameras in Nursing Home Residents' Rooms](#)

Endnotes

¹ Minnesota Department of Health. (n.d.). Electronic consent monitoring. Retrieved from www.health.state.mn.us/facilities/regulation/emonitoring/index.html

² Centers for Medicare & Medicaid Services. (2016, August 5). Protecting resident privacy and prohibiting mental abuse related to photographs and audio/video recordings by nursing home staff (Survey & Certification Memorandum S&C-16-33-NH). Retrieved from www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-16-33.pdf

³ ECRI. (2018, June 14 [Last update]). Photography, filming, and other recording of residents. *Aging Services Risk Management*. Retrieved from www.ecri.org/components/CCRM/Pages/QualRisk23.aspx

⁴ Ibid.

⁵ ECRI. (2018, September 17). Ask ECRI: Policies for recording devices in resident rooms. *Aging Services Risk Management*. Retrieved from www.ecri.org/components/CCRM/Pages/AskECRI091718.aspx; Rose, V. L. (2018, August). Cameras in long-term care: Monitoring, surveillance, and risk management concerns. *Annals of Long-Term Care*. Retrieved from www.hmpgloballearningnetwork.com/site/altc/articles/cameras-long-term-care-monitoring-surveillance-and-risk-management-concerns

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