

Surveillance Cameras in Senior Care Facilities

Question

I work in a nursing home, and we recently discovered that a resident's family member hid a video-recording device in the resident's room without the resident or staff knowing about it. How should our organization handle residents and their family members using surveillance cameras to videotape 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 are there privacy rules in the Health Insurance Portability and Accountability Act (HIPAA), but also state privacy and health information laws apply that may be more stringent.

However, state laws do vary. Some states, such as Oklahoma, Illinois, Maryland, New Mexico, Texas, Virginia, Minnesota and Washington, have specific regulations. For example, Minnesota allows the use of surveillance cameras in senior care facility resident rooms. The law requires family members to obtain the resident's consent to do so (unless the resident is unable to understand the consequences and nature of electronic monitoring) and notify the senior care facility before installing the camera.¹

Other rules include The Joint Commission's accreditation standards, which also require senior care facilities to obtain a resident's or his/her caregiver's consent to make or use images of the resident for purposes other than the person's care. 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 HIPAA's privacy requirements for resident authorization for the use and release of images or recordings that contain personally identifiable information (PHI), HIPAA's security rule for the electronic storage and transmission of PHI, and applicable federal and state laws, senior care facilities need to establish a clear policy on camera monitoring and photography.

Additionally, facilities need to educate their staff, 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.

It's imperative to first consult with an attorney before developing such a policy because both state and federal regulations might apply. The policy should address:³

- Situations in which camera monitoring of and photographing residents are permitted as well as situations in which they are not permitted (account for all cameras including those on personal electronic devices, webcams on laptop computers, and law enforcement body cameras).
- Instances when it is permissible for residents, employees, healthcare staff, volunteers, and visitors to use cameras and video recording devices.
- The securing of a resident's written consent to be photographed/videotaped and documenting it in his/her resident's health record.
- Acceptable photograph and video recording storage, security, and retention (including any contained in the resident's health record to prevent unauthorized access to PHI).

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

If your state law allows camera monitoring in your facility, leadership should ensure that protective measures, such as the following, are in place to address resident consent as well as privacy and staff awareness:⁵

- Identify the person responsible for the cost, installation, maintenance, and removal of video-recording equipment.
- Educate residents, families, and staff members about why the facility uses 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 for nonprivate rooms.
- Display signage 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 staff member can turn off the camera.
- Provide a policy for the retention and disposal of video recordings, and be sure it complies with federal, state, and local laws.
- Place conspicuous signs that notify residents, staff, and visitors that camera monitoring is in place if cameras are installed in areas of public access, such as parking lots or at exit doors to a unit.

Resources

- [Congressional Research Service: Privacy: An Overview of Federal Statutes Governing Wiretapping and Electronic Eavesdropping](#)
- [The National Ombudsman Resource Center: Balancing Privacy & Protection: Surveillance Cameras in Nursing Home Residents' Rooms](#)

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). *Photography, filming, and other recording of residents*. Retrieved from <https://www.ecri.org/components/CCRM/Pages/QualRisk23.aspx>

⁴ Ibid.

⁵ ECRI. (2018, September 17). *Ask ECRI: Policies for recording devices in resident rooms*. Retrieved from <https://www.ecri.org/components/CCRM/Pages/AskECRI091718.aspx>

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