

Cameras in Long-Term Care: Monitoring, Surveillance, and Risk Management Concerns

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ECRI Institute and Annals of Long-Term Care: Clinical Care and Aging (ALTC) have joined in collaboration to bring ALTC readers periodic articles on topics in risk management, quality assurance and performance improvement (QAPI), and safety for persons served throughout the aging services continuum. ECRI Institute is an independent nonprofit that researches the best approaches to improving health care.

Picture-taking and other forms of imaging and recording are commonplace in long-term care facilities (LTCFs), and risks abound from potential violations of the privacy and security rules of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), lawsuits alleging breach or invasion of privacy, and unwanted media attention. The widespread use of cameras on smartphones, tablets, and other personal electronic devices and the ease in uploading the images to social media websites have only increased the risks.

Health care organizations must heed both general state privacy laws and state health information privacy laws when crafting their photography policies. At the federal level, HIPAA privacy and security regulations largely guide health care organizations' approaches to photography and recording of residents. Joint Commission's accreditation standards also require facilities to obtain and honor a resident or his or her caregiver's consent to make or use images of the resident for purposes other than the person's care.¹ In addition, a memorandum from the Centers for Medicare and Medicaid Services (CMS) has made it clear that, in LTCFs, taking photographs or recordings of a resident without the resident, or designated representative's, written consent is a violation of the resident's right to privacy and confidentiality.²

It is important to keep all of the above guidance in mind when creating surveillance policies at a care facility. Specific considerations, real-life situations, and suggestions are outlined below in order to assist facility personnel in creating effective policies.

Establishing Surveillance Policies and Managing Risk

Although much has been written about instances of inappro-

priate photos taken by LTC organization staff, particularly in the context of social media, other recording scenarios warrant continued attention.

Increasingly, health care organizations are using cameras for security monitoring in areas such as parking lots and at the exits of secure units (eg, dementia units) to prevent residents from wandering. In some instances, a facility may even install a surveillance camera in a resident's room at the request of the resident's family.

Risk managers at health care facilities with LTC campuses should keep up-to-date on state laws and regulations governing electronic surveillance of residents' rooms. Eight states—Illinois, Maryland, New Mexico, Oklahoma, Texas, Utah, Virginia, and Washington—have enacted laws or guidelines that allow residents of LTC facilities or their families to install cameras in a resident's room to monitor the care provided. Fifteen other states have proposed similar legislation, and other states, such as Pennsylvania, have issued regulatory compliance guidance.³

In 2001, Texas was the first state to enact a law permitting nursing home (NH) residents or their guardians to install, with the consent of the resident and any roommates, monitoring cameras in resident rooms. The law requires the facility to post a conspicuous notice at the room entrance to indicate that the room is being monitored by a camera. The law also gives the Texas Department of State Health Services the authority to fine a facility that refuses to permit electronic or video monitoring or discharges a resident after discovering covert monitoring.⁴

The use of cameras for monitoring and surveillance raises numerous risk management considerations about resident consent, staff notification, procedures for monitoring record-

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ings, and retention of the recordings. Although no federal laws prohibit or authorize video monitoring in NHs,⁵ facilities will need to address any state privacy or other protection laws (eg, wiretapping laws could apply when audio recordings are collected) in their jurisdictions that may apply to camera surveillance.

The organization's risk management approach to the use of monitoring and surveillance cameras should be guided partly by where cameras will be placed. If cameras are installed in areas of public access, such as parking lots or at exit doors to a unit, the organization can address privacy concerns with conspicuous signs in the areas monitored that notify residents, staff, and visitors that camera monitoring is in place. If staff raise concerns that the presence of cameras will strain relationships with employees or affect staff recruiting, the organization should discuss with employees and job candidates the reasons for the cameras. Staff members are less likely to voice resistance to the cameras if they understand that the goal is to enhance their safety, as well as the safety of residents and visitors.

Nevertheless, organizations with union employees will need to evaluate whether the presence of surveillance cameras affects the terms of negotiated contracts. The National Labor Relations Board has said that employers with union employees must bargain with the union over the installation of surveillance cameras.⁶

Organizations must also be aware that expectations for security camera surveillance may be created if, for example, brochures describing the campus make such claims as "24-hour security monitoring." In such instances, surveillance monitors must be observed at all times, and a means must be in place to immediately contact security staff or law enforcement when suspicious behavior is observed. If possible, the security system should be on a backup generator, so that continuous monitoring is maintained even during a power failure. Many security systems use the same recording tape every 24 hours, so the organization will need to determine whether it will require backup tapes and, if so, how long they will be kept. A backup tape can be helpful, for example, to determine where and how an injury occurred if a complaint is filed regarding an injury in a monitored area, such as the parking lot.

If a camera is installed in a resident's room, its use will invoke privacy concerns that must be addressed. Family members may request to pay for and install monitoring cameras in order to gain peace of mind from being able to check on the resident. Of course, if state law does not prohibit monitoring cameras, facilities may still decide that camera monitoring of a resident's room is not feasible or practical and may suggest alternative measures for the family to stay in touch with the resident, such as through Skype sessions.

If a facility does decide to proceed with monitoring in a resident's room, the camera should be installed in a private room, so that it does not interfere with a roommate's privacy. For pri-

ate room monitoring, only the consent of the resident and the resident's family or surrogate is needed. If another resident is in the room, that resident's consent must also be obtained. Staff and others should be informed of the surveillance with signs posted outside the resident's room. Refer to **Box 1** for a complete list of issues that should be addressed when a resident is monitored with a camera in his or her room.

"Granny Cam" Situations—What Can We Learn?

With the availability of inexpensive stealth video cameras—concealed in clock radios, digital picture frames, and other items—some families have resorted to covert monitoring of a family member in a NH when they are suspicious of the care provided. In a few reported instances, the cameras have caught horrific footage of staff abusing a resident, which family members shared with their attorneys and with the media. For example:

- In 2011, a Pennsylvania family filed a lawsuit against a NH after a hidden camera filmed 3 of the facility's employees hitting and taunting a resident who suffers from dementia.⁷
- In 2015, the family of a 96-year-old resident of an Oklahoma City NH was awarded \$1.2 million for emotional distress after video footage from a camera hidden in the resident's room in April 2012 showed aides stuffing the resident's mouth with latex gloves, taunting her, throwing her on the bed, and performing heavy-handed chest compressions.^{8,9}
- In 2018, the family of an 89-year-old resident sued a Michigan NH after a camera hidden in an alarm clock by the man's son allegedly recorded caregivers physically abusing the resident and insulting him with ethnic slurs, along with other negligent behavior. The family said they became suspicious after the resident developed cuts and bruises and lost a significant amount of weight; according to the family's lawyer, the NH attributed the bruises and cuts to the resident falling 11 times over a 5-month period. The son alleges that the camera caught over 100 clips of negligent behavior over a 2-day period.¹⁰

Proponents of hidden cameras say they empower families to bring to light any abuse or neglect; help in gathering evidence; and could, in some instances, exonerate staff from suspicion.¹¹ Opponents, including many continuing care facilities and their associations, say video surveillance could diminish residents' dignity by recording intimate care, such as bathing, dressing, and toileting; harm residents' relationships with staff by sending a message of distrust; and misrepresent an incident.¹² For example, a staff member who is seen on film taking an item from a resident's room could be viewed as stealing, when the employee's actual intention is to bring the item to the resident who is in another area of the facility.

If cameras are used in some resident rooms to monitor residents, risk managers should ensure that the following measures are in place to address resident consent and privacy and staff awareness that cameras are in use.

- Review the policy to ensure that it conforms to federal, state, and local laws.
- Discuss the rationale for camera monitoring with the resident and family.
- Obtain the resident, or his or her representative's, consent for video or electronic monitoring.
- Ensure that the resident's documented consent is included in his or her medical record.
- Limit monitoring to private rooms or, if this is not possible, ensure consent is obtained from the resident's roommate(s).
- Consider requiring that video taken in resident care rooms be live and that nothing be recorded.
- While the camera is operating, require continuous monitoring from the designated monitoring area.
- Post a sign outside the resident's room indicating that camera monitoring is in progress.
- Continue regular nurse and nurse aide rounds and checks of the resident—camera surveillance is not a substitute for resident care.
- Implement measures to ensure resident privacy (eg, resident's personal care needs, such as toileting and dressing, are managed outside the camera's range; alternatively, the resident can request that the camera be turned off for specific situations).
- Establish an organizational policy for retention and disposal of recordings, if any.

Box 1. Camera Surveillance Checklist¹³

Of course, establishing a relationship of trust and understanding between the facility and the family and resident begins at the time of admission. Aging services providers should have policies in place that state what types of photography and camera use are acceptable in the facility and what will be done if stealth cameras are discovered in the facility. This information should be shared with the resident and family upon admission, and the family (or resident's representative) should be advised that, rather than resorting to hidden cameras, they should contact a designated individual within the facility with any concerns about the care provided, so that the facility can investigate the situation.

Sometimes, as was the case in the Pennsylvania and Michigan incidents, residents' family members resorted to hidden cameras after they brought their suspicions that staff were abusing their loved one to the attention of facility administrators, and administrators dismissed their concerns or addressed them insufficiently. When a family comes to a facility's administrators with concerns and suspicions, leadership must listen, thoroughly address the claims, and document how the organization investigated the charges and its findings.

Organizations might also adopt a proactive approach when reports appear in the news of abuse captured on hidden cameras in other continuing care facilities. Remind residents and their families of the rigorous procedures in place at the organization to screen prospective employees and to provide ongoing training and education. Additionally, reiterate the organization's need to hear of any concerns and its commitment to listen to and address them.

Conclusion

Setting clear policies—and educating staff, residents, caregivers, and visitors about the policies—can help to mitigate the risks from picture taking and other types of recording in health care facilities. The policies should specify circumstances in which photographing or recording of residents

will be permitted and spell out requirements for obtaining a resident's authorization or consent and for complying with HIPAA use and disclosure requirements. Facility policies for imaging and recording of residents should also address issues related to storage, security, and retention of the recordings. ♦

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