

Virginia Department of Health
Office of Licensure and Certification

August 1, 2004

Electronic Monitoring of Resident's Rooms¹

Principle

A resident has the right to live in a safe and secure environment and to personal privacy.

Introduction

Family members, seeking to monitor the quality of care of their loved ones, are continuing to express interest in placing video cameras or other means of electronic surveillance in the rooms of nursing home residents. Advocacy groups have joined in this effort to propose federal laws that would explicitly permit a nursing facility resident and/or family member to install electronic monitoring equipment with a facility's knowledge. Currently, two states have laws addressing electronic monitoring, while eleven states, including Virginia, have considered legislation.

State and federal long-term care regulations do not prohibit the placing of electronic monitoring equipment in resident rooms for the purposes of monitoring at-risk residents. However, Virginia law (§18.2- 386.1 of the Code of Virginia) prohibits the filming, videotaping or photographing of non-consenting persons if: "(i) that person is totally nude, clad in undergarments, or in a state of undress so as to expose the genitals, pubic area, buttocks or female breast in a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth or other location and (ii) the circumstances are otherwise such that the person being videotaped, photographed or filmed would have a reasonable expectation of privacy." Facilities cannot use cameras in violation of the law based solely on a family member's request or approval.

Therefore, facilities must have procedures in place to obtain the resident's *documented consent* prior to installing any monitoring equipment, *including* the consent of any resident sharing a room with the resident to be monitored. Residents have a right to refuse consent to be monitored. Family members cannot insist on monitoring over the objections of the residents in the room. It is not necessary to obtain consent of employees or for using monitoring equipment in community areas such as hallways, elevators, and dining rooms.

This guideline is a resource tool designed to assist in the facilitation and implementation of electronic monitoring requests. It is not meant to be all-inclusive. Permissible electronic monitoring under this guideline does not include audiotaping or the audio component of monitoring. Any monitoring of oral communication would be subject to both federal and state wiretap laws and would, therefore, require additional privacy protections to be in place. Facilities

¹ Our thanks to the Office of Health Care Quality of the Maryland Department of Health and Mental Hygiene and the Office of Long Term Care Policy of the Texas Department of Human Services for the use of their guidelines in developing this document for nursing facilities in Virginia.

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should consult with legal counsel when developing their own policies regarding the use of electronic monitoring systems in their facility.

Definitions

“Authorized” means the installation of a device, for the purpose of recording the activities in a resident’s room. Such devices are obvious or clearly visible to persons entering a room in which the equipment has been placed.

“Covert” means the installation and use of a device hidden, concealed or secreted from view to persons entering the room in which the equipment has been placed.

“Electronic monitoring” or “device” means the recording systems, video surveillance cameras, web-based cameras, or videophones. These devices may be interactive or merely recording mechanisms.

General Information

- A. All requests for electronic monitoring should be made in writing and signed by the resident or the resident’s legal representative, if the resident has been properly assessed incapable of requesting and authorizing the monitoring.
- B. Only authorized electronic monitoring is permitted.
- C. A facility cannot refuse to admit an individual, and cannot discharge a resident, because of a request to conduct authorized electronic monitoring.
- D. Family members cannot insist on monitoring over the objections of the resident or the resident’s roommate. Facilities cannot use monitoring equipment in violation of the law based solely on a family member’s request or approval.
- E. Authorization for electronic monitoring should be kept in the resident’s medical record
- F. Facilities should designate one staff person responsible for handling monitoring requests, and to coordinate the installation, operation, and dismantling of all equipment.
- G. Facilities have the option of designating custodial ownership of any recordings resulting from monitoring devices to the resident’s family. Facility-retained recordings² shall be

² Any recordings may be reviewed during survey or complaint investigation processes. The OLC may take regulatory action, as appropriate, after reviewing the tapes.

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considered part of the resident's medical record. All state and federal regulations pertaining to medical records apply to monitoring tapes retained by a facility.

H. If a facility chooses to retain ownership of the recordings, they must accommodate family viewing of any recordings, including, but not limited to:

1. Providing appropriate playing/viewing equipment;
2. Privacy during viewing; and
3. Viewing times convenient to the family.

I. Facilities should instruct family members that any untoward or questionable incidences regarding safety or quality of care discovered as a result of viewing a recording should be reported immediately to the facility administrator and to the Office of Licensure and Certification (OLC). In addition, the facility should make the OLC's Complaint Hotline telephone number readily available to family members.

J. A facility is under no regulatory or statutory obligation to seek access to a tape in its possession or to have knowledge of a tape's content, unless the facility is aware of a taped incident of suspected abuse, neglect, accident or injury; or the resident or the resident's legal representative, or a government agency, seeks to use a tape in any way that affects the facility. Facilities must immediately report suspected abuse and neglect, discovered as a result of using monitoring devices, as required by law.³

K. A Facility may require the resident, resident's family, or legal representative to be responsible for all aspects of the operation of the monitoring equipment, including the removal and replacement of tapes, and for firewall protections to prevent images that would violate obscenity laws from being inadvertently shown on the Internet.

L. Facility staff cannot refuse to enter a monitored room.

Installation, Costs and Maintenance

M. Any electronic monitoring equipment should be installed in a manner that is safe for residents, employees, or visitors who may be moving about the resident's room.

N. A facility must make reasonable physical accommodation for the monitoring equipment, including:

1. Providing a reasonably secure place to mount the device; and
2. Providing access to power sources for the device.

³ Refer to the guidelines on "Facility Internal Investigation of Abuse, Neglect, and Misappropriation of Resident Personal Property" and "Reporting Abuse, Neglect or Misappropriation of Resident Personnel Property."

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O. A facility may require a resident, or resident's legal representative, to pay for all costs, other than the cost of electricity, associated with installing electronic monitoring equipment. Such costs should be reasonable and may include, but are not limited to: equipment, tapes and installation; compliance with life safety and building/electrical codes; maintenance or removal of the equipment; posting and removal of any public notices; or structural repairs to the building resulting from the removal of the equipment. Facilities should give 45 days notice of any increase in monthly monitoring fees.

P. Any equipment installed for the purposes of monitoring a resident room should be fixed and unable to rotate.

Informed Consent

Q. The informed consent of all residents assigned to the monitored room must be obtained *prior to* any electronic monitoring equipment being installed.

R. A facility may require that the resident, or the resident's legal representative, obtain the necessary signed consent of other residents in the room.

S. A copy of any signed consent form should be kept in the resident's medical record as well as on file with the facility's designated electronic monitoring coordinator.

T. Any resident of a monitored room may condition his or her consent for use of monitoring devices. Such conditions may be, but are not limited to, pointing the camera away or limiting or prohibiting the use of certain devices. If conditions are placed on consent, then electronic monitoring shall be conducted according to those conditions.

Required Notice

U. The facility should conspicuously post and maintain a notice at the entrance to the resident's room stating that an electronic monitoring device is in operation.

V. Facilities should notify all staff and their VDH Long Term Care Supervisor that electronic monitoring equipment is in use.

Covert Monitoring

W. Covert monitoring is prohibited. However, a facility cannot discharge a resident from the facility because covert electronic monitoring was conducted by or on behalf of a resident.

X. If covert monitoring is discovered, the facility may require a resident, or the resident's

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legal representative, to meet all the requirements for authorized monitoring prior to the continuation of monitoring.

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CHECKLIST FOR ELECTRONIC MONITORING

The following checklist has been designed to assist facilities in addressing electronic monitoring in resident rooms. This checklist is not intended to be all-inclusive. Facilities are expected to develop policies that best suit the needs of their unique circumstances.

1. What devices will be used, i.e., monitoring systems, video surveillance equipment, web-based cameras, videophones or audio devices?
2. Will the devices be interactive or merely recording mechanisms?
3. Have policies and procedures for electronic monitoring been developed?
4. Have consent agreements for the resident and any roommates been developed?
5. Has it been decided who will be responsible for the:
 - Cost of the equipment
 - Installation of the equipment;
 - Maintenance of the equipment;
 - Removal of the equipment.
6. Is the equipment installed so that it cannot rotate?
7. Who has custodial ownership of any recordings? If the facility retains recordings, has adequate storage of these records been addressed?