

Granny Cams Are Likely Here to Stay: Taking Steps to Address the Inevitable

February 25, 2021 – Dorsey Health Law

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“Granny cams” or family-placed electronic monitoring in a nursing facility have become more commonplace. Cameras are easier to obtain and set up and can easily be linked to one or more family member’s cell phones. With COVID visiting restrictions making it more difficult for families to visit their loved ones in person, more and more people will be considering their options for keeping an eye on their family member living in a long term care facility.

Some states have passed legislation to establish certain regulations or parameters around the use of granny cams in the long term care setting. Others, including Iowa, are considering such legislation. Most states, however, do not have any statutory or regulatory requirements and thus, long term care facilities must determine how to deal with use of such cameras.

The first question a long term care facility must ask is whether it is advisable to have a written policy. If you are in a state with a statute or regulation on granny cams, you likely should have – and may be required to have – a written policy to comply with those requirements. If you are in a state without any statutory or regulatory provisions on electronic monitoring in long term care, your initial reaction may be that having a policy provided to residents and family members will only encourage them to obtain cameras. However, a resident or family member who wants a camera will likely place one anyway, and you may be better off to at least have a set of ground rules for everyone to follow with respect to such cameras.



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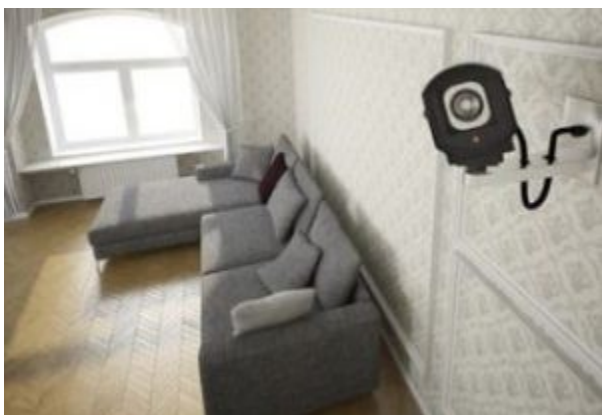
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There are numerous considerations for handling the use of family-placed electronic monitoring in your facility:

- Is the resident competent to decide if he or she wants a camera in the room? If not, who can make the decision for the resident as to whether a camera can be placed in the room? Financial and medical power of attorneys do not expressly cover the ability to consent to being videotaped, but such consent arguably falls under some of the broad powers generally given to a medical power of attorney. The decision-maker question gets messier if there is no designated medical power of attorney or if there are joint medical power of attorneys who do not agree.
- Does the resident have a roommate? If so, the roommate has privacy rights that must be considered and protected. A policy can provide restrictions on the direction the camera is pointing and also require that a roommate must give consent. The policy can also address the resident's options when a roommate does not consent to having the camera in the shared room.
- Should you require that the family disclose the existence of the camera to you? Any policy should require such disclosure so that proper signage could be placed on the doors to the room alerting people that they may be videotaped while in the room. This disclosure and signage will help reduce or eliminate liability to you (and the family) for possible illegal, covert recordings that may violate state or federal wiretapping and/or communication interception laws.
- Will the recording be video only or will it include audio? The inclusion of audio increases the complications and issues involved, because it may "pick up" discussions that are confidential or private in nature regarding the resident's roommate or other discussions that may occur in the hallway or near the room. This issue should be assessed in light of federal and state-specific laws regarding the recording of verbal conversations.
- Who is responsible for the camera set up and operation and the resulting video? A policy should clarify that the family is responsible for the camera, its operation and the videos that are created by it. If the facility were to take possession of the recordings, it unleashes a whole host of regulatory issues including HIPAA protections and possible self-reporting or disclosure requirements. The policy should place certain restrictions upon the camera, such as requiring a proper electrical connection (i.e., not using an extension cord or draping a cord across a room), where and how it can be mounted or placed and/or generally requiring that the camera be placed in a safe manner that will not cause safety or fire hazards. A facility may also consider whether the use of its private Wi-Fi (and any associated cost) versus public Wi-Fi would be allowed for cameras requiring an internet connection. The policy should also address what happens when the camera malfunctions. For example, if it goes off (like a fire alarm) due to low battery or other complications, can it simply be turned off? Does the family need to be notified when such issues occur? The best bet is to have the facility take little to no responsibility for the actual operation of the camera or its resulting video and rather simply provide parameters around its placement and safe use.
- What are the evidentiary rules and issues with the camera footage? While this question is not likely something that you can fully address or avoid with a policy, you should consider the possible uses of the video and inform your staff to be aware of these possibilities. Videos could be submitted to the state survey agency and used to confirm or dispute that certain cares were provided, they could be used in criminal actions, and they could be used in civil actions for malpractice. While every state's evidentiary rules and case law may differ and the facts of how the video was captured and maintained will impact its admissibility, everyone should be aware that their actions may be recorded. Hopefully, this awareness will encourage everyone to do

better and at the end of the day, improve the cares that are provided to your residents.



If you are operating an assisted living facility, the considerations are slightly different in that the space in which the camera is situated is usually considered more like a personal home and is typically subject to landlord tenant laws. However, some of the same considerations – especially those involving whether the camera is capturing video and audio, ensuring that use of the camera is

compliant with federal and state wiretapping and communication interception laws and avoiding fire and other safety hazards with the camera – will need to be addressed.

While these are difficult issues that can vary from state to state, facilities should not avoid this discussion. Granny cameras will likely only increase in use, especially as technology improves and as families tend to live further away from their parents or grandparents who are now living in your facility. A clear policy and transparent communications with families on this issue can actually result in a positive relationship. Families will realize that a facility who is willing to allow them to place a camera must feel confident about the good care that will be provided to their loved ones, and everyone will understand the “rules of the game” when using such cameras.