



Iowa Health Care Association  
Iowa Center for Assisted Living  
Iowa Center for Home Care

# **Guidance Regarding Prohibiting Use of Surveillance Cameras in Resident Rooms in Iowa Nursing Facilities**

*IHCA's Regulatory & Legal Team Work Group  
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## **GUIDANCE REGARDING PROHIBITING USE OF SURVEILLANCE CAMERAS IN RESIDENT ROOMS IN IOWA NURSING FACILITIES**

The use of surveillance cameras and other electronic monitoring technologies has become more common as technologies improve. Prices of such devices have decreased, sizes of the devices have gotten smaller and have been incorporated into other objects (e.g. stuffed animals, clocks, picture frames) to hide their existence. Photo resolution has improved, access to devices has become easier and stories relating to such surveillance are more common in the media. The use of these devices is expected to increase in the future.

Facilities need to acknowledge that it is rare that a family member or responsible party installs an electronic monitoring device simply to communicate with a resident. These devices are usually installed due to suspected situations of theft, neglect, abuse or concerns that a facility is failing to provide expected services.

No federal or Iowa law specifically prohibits or authorizes the use of surveillance cameras in residents' rooms.

Based on the current status of the law, facilities may institute policies that prohibit the use of surveillance cameras installed in a resident room.

Facility policy can further provide that any identified surveillance cameras located within a resident's room can be disconnected and removed.

Responsible family/legal surrogates will be notified of the facility action, and the equipment will be returned, with demand that it or other devices may not be installed in the resident's room, with directives that continued failure to comply with these directives will result in potential visitation restrictions based on failure to comply with facility policy. Facilities are cautioned to not take any other action that could be construed as retaliation against a resident or their families/legal representatives.

These policy directives are recommended to be implemented based on concerns that cameras in resident rooms may violate resident privacy and rights under the federal certification guidelines and the Health Insurance Portability and Accountability Act (HIPAA), violate the privacy of roommates, other residents, staff and visitors and/or violate other laws, such as eavesdropping, or wiretapping laws.

Specifically, the State Operations Manual guidance provides, **“Photographs or recordings of a resident and/or his or her private space without the resident's or designated representative's written consent is a violation of the resident's right to privacy and confidentiality.”**

The issue of capacity to consent to the use of surveillance cameras is also a serious issue. With a significant number of nursing facility residents suffering from dementia, including Alzheimer's disease as well as other cognitive limitations, there is a serious concern as to whether a nursing facility resident can provide legally binding consent to use of a

surveillance camera being placed in his or her room. Even if initial consent is given, there are concerns as to whether a resident retains the ability to recall on an ongoing basis whether a camera is in place and whether ongoing consent is valid.

Finally, there are legitimate concerns as to whether a decision by a family member, or an attorney-in-fact under a durable power of attorney for health care, to install a camera in a resident room falls within their authority of a legal surrogate making “health care decisions” under Iowa law. This is defined as “any care, treatment, service, or procedure to maintain, diagnose or treat an individual’s physical or mental condition.”

In addition to potential violations of law, the facility also has concerns that the use of cameras may undermine resident dignity, given the personal nature of care and likelihood of exposure. In addition, there are concerns that use of cameras may have a chilling effect on staff interactions, sending a negative message about mutual trust and demoralizing dependable and honorable staff, who may choose to work elsewhere.

Video cameras placed by facilities in hallways, lounges and doorways are allowed, as unlike resident rooms, there is no expectation of privacy when residents, family, visitors or staff are in common areas of the facility.

With the increased use of surveillance cameras in resident/tenant rooms, even where the use of such cameras is prohibited, staff should be trained to assume they are being monitored at all times, including in all their interactions with residents. Staff needs to be trained to maintain professional behavior at all times.