

Granny Cams In Long-Term Care: Rights, Responsibilities And The Law

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Technology has impacted all of our lives in a profound way. There is no question that advances in technology have had substantial impact in the healthcare field, but that is not limited to treatment alone. With the increase in social media, coupled with the use of “granny cameras,” elder neglect and abuse has become a frequent headline. Like most technological advances, there are tradeoffs. The use of granny cameras opens up a panoply of issues that must be discussed when authorizing or prohibiting the use of granny cameras in your long-term care facility. I recently had the opportunity to speak at the [Health Care Association of New Jersey's Annual Convention](#) in Atlantic City, New Jersey, to address this growing issue in assisted living facilities, nursing homes and rehabilitation centers.

As one can imagine, there are many perspectives that must be considered regarding the use of granny cameras. Often, family members of residents champion the use of granny cameras, while healthcare providers resist the use of this technology in their facilities, often for good reason. Although granny cameras can be an effective tool for loved ones to monitor a resident, or to mitigate elder neglect and abuse, there are legal and practical considerations to be explored as well.

Although some states have enacted regulations and statutes regarding the use of granny cameras, New Jersey has not. New Jersey did introduce legislation in 2014 which would have permitted video and audio recording upon request of a resident or his/her family. However, the legislation failed, largely because it simply went too far and did not take into consideration the manner in which it would impact resident privacy and other existing legislation.

The use of granny cameras in the healthcare setting poses significant challenges as a result of other laws. For example, the Health Insurance Portability and Accountability Act (“HIPAA”) includes a privacy rule which prohibits healthcare providers from sharing health information without written consent of the resident or his authorized representative. To the extent that the granny camera

transmits audio, it may result in a breach of the “privacy rule” since people with access to the granny camera may not be authorized to receive confidential healthcare information. In addition, State and Federal wiretapping laws may prohibit the audio recording of communications without the consent of either party to the communication. This poses the risk of criminal and civil penalties, to the extent that the communication is not authorized.

Granny cameras also raise other concerns for long-term care facilities. The privacy of residents who are unaware that their loved ones may be watching them, raises concerns, particularly as the video recording may be done surreptitiously and may capture changing, bathing or private communications.

Healthcare providers must be aware of other considerations, including employee rights and morale, marketing and reputation, policies, costs and the use of recording devices in shared rooms. Although employees in New Jersey have no specific rights with regard to the use of surveillance equipment, the use may impact employee morale. Policies authorizing or prohibiting the use of granny cameras will likely impact the reputation of the facility and ability to market. Furthermore, although the cost of the surveillance equipment would likely be the responsibility of the resident/family member, upgrades to the electrical system or internet network may be required to facilitate the use of granny cameras. In addition, costs associated with the preparation and implementation of granny camera policies, must be considered, including changes to room assignments to facilitate the use of granny cameras when a roommate refuses to share a room with audio/video recording.

New Jersey Attorney General, Christopher Porrino, recently announced the Safe Care Cam Program, which permits participants to borrow a micro-surveillance camera. As there is no specific statutory/regulatory authority for the Attorney General to monitor healthcare organizations, the existence of the Safe Care Program has been challenged by several organizations.

Long-term care facilities (including rehabilitation centers, skilled nursing homes and assisted living facilities) must be prepared to adapt to changes in technology that impact the operation of its facility. Policies, either authorizing or prohibiting, granny cameras in their facilities, must be carefully crafted, implemented and adhered to.