

Smile (or Don't)! You're Still on Camera!

New Illinois law allows residents to install cameras in long-term care facilities

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ADMINISTRATORS of long-term care facilities in Illinois must now allow residents and their family members to record activities in a resident's room. The Illinois legislature recently enacted the *Authorized Electronic Monitoring in Long-Term Care Facilities Act*, which became effective Jan. 1, 2016. This Act makes Illinois only one of a handful of states that permits residents to install a camera and/or audio recording device in their room within a long-term care facility, which includes nursing homes.

The types of electronic monitoring devices permitted under the Act include video cameras and audio recording devices, so long as the device is installed in a fixed position in the resident's room in a conspicuously visible location. Such devices could range from a simple battery-operated camera that records action on a memory card to a more sophisticated Internet-connected device that allows live streaming.

Healthcare providers in long-term care facilities need to be aware of the Act's requirements in order to identify situations where a resident's room is being monitored, comply with any restrictions a resident has placed on the electronic monitoring, refrain from purposefully obstructing the monitoring device, and understand how recordings made under the Act can be used.

Facilities subject to the Act are required to post signs that notify visitors in the event a resident is conducting electronic monitoring. Signs must be posted at all entrances accessible to visitors stating, "Electronic Monitoring: The rooms of some residents may be monitored electronically by or on behalf of the residents." Additionally, a sign must be posted at the entrance to the resident's room stating, "This room is electronically monitored."

Residents or authorized parties under the Act are required to complete the Electronic Monitoring Notification and Consent Form published by the Illinois Department of Public Health prior to conducting electronic monitoring.

The Consent Form contains a list of restrictions a resident can place on the monitoring device, which include turning off the device or blocking the visual recording component during any exam or procedure. A copy of the completed Consent Form, which includes any restrictions selected by the resident, must be placed in the resident's clinical record.

Obstruction of a Device is Criminal. The Act precludes any person from knowingly hampering, obstructing, or tampering with the electronic monitoring device or any video or audio recording obtained from the electronic monitoring device. A

person who violates this requirement is guilty of a Class B misdemeanor under the Act.

It is important to note that healthcare providers are not required to change the manner in which they render care to residents so that the electronic monitoring device is unobstructed at all times. However, the facility should work with residents to install the device in such a way as to provide maximum unobstructed views of providers' normal treatment locations. By doing this, healthcare providers can continue to render care in the same manner they did prior to implementation of the Act, and the electronic monitoring device will be unobstructed to the extent possible.

Even though facilities must permit installation of the electronic monitoring device, the facility does not have access to the audio or visual recordings from the device. The Act provides that a recording or copy of the recording made from an electronic monitoring device may be disseminated only for the purpose of addressing concerns related to the health, safety or welfare of a resident or residents. Additionally, the resident is required to provide a copy of any video or audio recording in a civil, criminal or administrative proceeding if the video or audio recording was made during the time period that the conduct at issue in the proceeding allegedly occurred.

Outstanding Concerns Abound

There are many questions the Act does not address. Health care providers need to consider how to comply with HIPAA while implementing the Act. They also need to respond to employees who express concerns about being subject to video recording while providing patient care. Issues also exist related to the management of contractors hired by residents or their families during the installation process.

The Illinois Department of Public Health is developing administrative rules for implementation of the Act, so further guidance will be forthcoming. However, given that the Act is currently effective, healthcare providers should exercise diligence in complying with the Act when rendering care in facilities subject to the Act.

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