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# Balancing Privacy & Protection: Electronic Monitoring & Recording Devices

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State of Wisconsin Board on Aging and Long Term Care

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It is the philosophy of the Ombudsman Program of the Board on Aging and Long Term Care that all clients, including those with activated powers of attorney and/or guardians, have the right to participate, to whatever extent they may be capable, in all decisions impacting their choices, care, safety and well-being.

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# Rights of Residents

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Residents living in long-term care settings have the same rights as persons living in any community, plus additional protections related to their status as living in a long-term care setting.

These rights relate particularly to freedoms from abuse, neglect and exploitation, and the entitlement to quality, individualized care and treatment.

# Electronic Monitoring and Recording Devices & Resident Rights

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State and federal laws offer residents of long-term care settings specific rights to privacy in managing a resident's property, health care, and living arrangements, including relationships.

- Privacy in receiving care, medical service, counseling
- Privacy in receiving and sending mail, including email, text messages and other electronic communications
- Privacy in visits, phone calls and communications with others, including when in groups such as a resident council meeting
- Privacy to speak with an advocate, regulator, physician, or any other individual who may assist with resolving concerns, arranging for legal, financial or medical services

# State Laws/Guidelines Regarding Privacy Rights & Electronic Monitoring and Recording Devices

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- Media reports have portrayed instances where abuse has been captured on a camera or electronic monitoring device, leading some states to propose rules for how such devices are managed in long-term care settings.
- As of 2020, Illinois, Kansas, Louisiana, Minnesota, Missouri, New Mexico, Oklahoma, Texas, and Washington have laws that permit the installation of cameras in residents' rooms, if the resident and roommate have consented.\*
- Other states, such as Maryland, have issued “guidelines” to direct the conversation around device use, consent and accountability.\*

*Source: Consumer Voice: Balancing Privacy & Protection: Surveillance Cameras in Nursing Home Residents' Rooms*

# State Law Components\*

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- Written notices to various entities (survey agency, primarily) by the nursing home.
- Cannot involuntarily discharge or decline to admit based on device use.
- Require posting of device use in surrounding areas, resident bedroom doors.
- Law includes description of tampering with devices as being a criminal act.
- Inability to alter or intercept any image or recording without resident consent.
- Recordings admissible as evidence in criminal or civil proceedings.

*Source: Oklahoma Nursing Home Care Act*

# State Law Resident & Decision-Maker Powers & Limitations\*

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- Requires written consent from both the resident and roommate before installing the device.
  - Roommate can designate limitations
  - Roommate can deny use, and resident requesting the device may be offered a room change
- Requires written notice to the nursing home of the use of the device before installing.
- Installer assumes responsibility for all costs and liabilities.
- Posting of device use on the resident's bedroom door.

*Source: Oklahoma Nursing Home Care Act*



# Why Are Electronic Monitoring Devices Used?

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From a resident's perspective:

- “Alexa” often provides music, news, weather, even a joke at a touch or voice command
- Listening devices can offer a desired immediate (virtual) connection to family or friends
- May provide some sense of security, “a quicker response than a call light”
- Some devices might turn lights or TVs on/off, make a call that residents might otherwise wait for a staff to assist with

# Why Are Electronic Monitoring Devices Used?

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From a family member's or other's perspective:

- Lack of trust in caregivers or systems due to past negative experience
- Prior use in other ways (able to watch kids, pets in home or day care settings)
- Intention to provide direction to the resident remotely (time for meds or bed)
- Alert if the resident gets out of bed or exits a room
- Perceived proof of allegations of abuse, neglect or theft
- Control
- Intentional identity theft, abuse or exploitation
- Peace of mind, day to day connection

# Initial Findings from Oklahoma

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- Deterrence of incidents of abuse, irrefutable evidence for law enforcement
- Findings of obstruction against some nursing homes
- Residents report feelings of safety and security, feeling empowered
- Residents also report concerns about personal privacy, concerns with disagreements/retaliation with/from staff and family members of differing views
- For residents with dementia, some increased challenges described as paranoia, exacerbated auditory hallucinations
- *“Statistically the numbers of substantiated abuse and neglect remain relatively unchanged.”*

# Electronic Monitoring Devices – Potential Resident Impacts

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Risks and benefits of audio and video devices are dependent upon perspective:

- Security, social and community connection, immediate virtual access to family & friends
- Potential invasion of privacy when unable to consent
- Can impact privacy in intimacy (personal care, emotions, intimate or personal relationships)
- Possible vehicle for abuse when used to observe personal care, sexual expression
- Perceived loss of privacy and personal control over the most intimate moments and care
- Lack of acknowledgement for former preferences about being filmed, having images shared in ways the resident does not control
- Potential for increased disorientation, dis-ease with “random voices” with no presence of a person, especially for those with a diagnosis of dementia or mental health concerns

# Electronic Monitoring Devices – Potential Staff Impacts

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- Depending on approach and reason for use, could lead to strained relationships between residents, decision-makers and staff. CNAs report feeling as though they're not trusted.
- Staff report feeling that their privacy is also at risk.
- Some report feeling more prone to make mistakes due to feeling as though they're being watched.
- CNAs or resident assistants report feeling a lack of support by supervisors or the home's leadership staff.

# Electronic Monitoring Devices – Use With Caution & Permission

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## Questions to ask and things to remember:

- What does the resident want?
- “Nothing about me without me.” Please don’t leave the resident out of the discussion or the decision and be mindful to avoid undue influence.
- **NEVERS:** never in a bathroom, never aimed at an unclothed resident, never during personal care, never when a resident says no, and other “nevers” determined by the resident.

# Electronic Monitoring Devices – Use With Caution & Permission

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More questions to ask, and things to remember:

- If used without the resident's input or consent, terms of use must be defined: time and place-limited, frequently evaluated from the resident's point of view.
- Know who will have access to tapes, streams, and how controls will be managed to protect from unwanted or unauthorized "hacking," public viewing such as on social media.
- Inform and discuss with room-mates, visitors and others if a device is to be used and address concerns.
- Highly encourage the use of signage to inform others that electronic monitoring devices are in use.

# Ongoing Discussion

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- What's the “why” behind the request to use an electronic monitoring device?
- Electronic monitoring devices should always be a resident benefit, never a substitute for personal visits and engagement.
- Electronic monitoring devices should never replace a person who is vigilant and care that is individualized and caring.
- Conversations about device use should be continuous, and with all involved.
- Electronic monitoring device use should be a part of new staff onboarding, including when agency staff are used, so rights and responsibilities are clear.
- Engage the ombudsman if communications aren't clear, discussions need a facilitator, potentially.



# Summary

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- Reason(s) for use, risks and benefits from all perspectives, with the emphasis on that of the resident.
- What does the resident understand about the intended use of the device(s), if the request for use isn't the resident's?
- Person-centered planning, this is their home
- Ask: Do you have listening or video devices in your home that you don't control?
- Can others watch you or listen to you without your permission or control?
- If you do use these devices, for what purposes do you use them?
- What's your "why?"

# Summary

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## Assess:

- The resident's personal history and preferences regarding photographs, shared images, and social media.
- What is the resident's risk awareness, and do they find the risks to be acceptable?
- The resident's relationship with those requesting the monitoring device.
- What alternatives might there be to installing video or audio devices?

# Resources

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- Board on Aging and Long Term Care Ombudsman Program  
800-815-0015 / <http://longtermcare.wi.gov>
- Disability Rights Wisconsin  
800-928-98778 / [www.disabilityrightswi.org](http://www.disabilityrightswi.org)
- Guardianship Support Center  
(855) 409-9410 / [guardian@gwaar.org](mailto:guardian@gwaar.org)
- “Balancing Privacy & Protection: Surveillance Cameras in Nursing home Residents’ Rooms,” The Consumer Voice  
<https://ltombudsman.org/uploads/files/issues/cv-ncea-surveillance-factsheet-web.pdf>

# More Resources

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- “A Process for Care Planning for Resident Choice,” Rothschild Person-Centered Care Planning Task Force

<https://www.pioneernetwork.net/wp-content/uploads/2016/10/Process-for-Care-Planning-for-Resident-Choice-.pdf>

- “Protecting Resident Privacy and Prohibiting Mental Abuse Related to Photographs and Audio/Video Recordings by Nursing Home Staff,” CMS Memo S&C: 16-33-NH

[www.cms.gov/medicare/provider-enrollment-and-certification/surveycertificationgeninfo/downloads/survey-and-cert-letter-16-33.pdf](http://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertificationgeninfo/downloads/survey-and-cert-letter-16-33.pdf)

- Wire, electronic, or oral communications & privacy: Wis. Stats. §§ 968.31, 942.08, 942.09

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