



Electronic Monitoring and Recording in Long-Term Care Settings: Resources and Guidance

Wisconsin Ombudsman Program Resources

- [*Use of Electronic Monitoring and Recording Devices in Long-Term Care Settings*](#)
- [*Determining Privacy and Protection: Discussion Tool*](#)

State And National Guidance

- Wisconsin Department of Health Services (DHS): [*Assisted Living – Guidance for the Use of Electronic Monitoring, Video Monitoring, or Filming Equipment*](#)
- Centers for Medicare and Medicaid Services (CMS): [*Protecting Resident Privacy Related to Photographs and Audio/Video Recordings*](#)

Additional Education and Advocacy

- Rothschild Person-Centered Care Planning Task Force: [*A Process for Care Planning for Resident Choice*](#)
- The Consumer Voice: [*Balancing Privacy and Protection: Surveillance Cameras in Nursing Home Residents' Rooms*](#)

Questions about resident rights or advocacy?

- Board on Aging and Long Term Care Ombudsman Program (ages 60+)
1-800-815-0015 / www.longtermcare.wi.gov
- Disability Rights Wisconsin Family Care and IRIS Ombudsman Program (ages 18 – 59) 1-800-928-8778 / www.disabilityrightswi.org

Questions about the role or authority of legal representatives?

- Guardianship Support Center
1-855-409-9410 / www.gwaar.org/guardianship-resources

Regulatory Context

The following state, federal, and human rights authorities provide the legal and rights-based framework that informs discussions about privacy, dignity, consent, and the use of electronic monitoring or recording devices in long-term care settings. These references are provided for context and awareness and are not intended as legal advice.

Wisconsin State Law and Administrative Code

Residents' Rights in Long-Term Care Settings

- [Wis. Stat. § 50.09](#) – Residents' rights applicable to nursing homes and community-based residential facilities (CBRFs)
- [Wis. Admin. Code § DHS 83.32](#) – Residents' rights in CBRFs
- [Wis. Admin. Code § DHS 89.34](#) – Residents' rights in residential care apartment complexes (RCACs)
- [Wis. Admin. Code § DHS 88.10](#) – Residents' rights in adult family homes (AFHs)

Mental Health, Disability, and Substance Use Services

- [Wis. Stat. § 51.61](#) – Patients' rights for individuals receiving services for mental illness, developmental disabilities, alcoholism, or drug dependency
- [Wis. Admin. Code § DHS 94](#) – Patients' rights
 - § DHS 94.03 – Informed consent

Privacy and Recording Laws

- [Wis. Stat. § 968.31](#) – Interception of wire, electronic, or oral communications
- [Wis. Stat. § 942.08](#) – Invasion of privacy
- [Wis. Stat. § 942.09](#) – Representation depicting nudity

Federal Law and Regulations

- [42 CFR § 483.10](#) – Resident rights in nursing homes
- [Health Insurance Portability and Accountability Act \(HIPAA\)](#) – Informs providers responsibilities related to protected health information

Human Rights Framework

- [Universal Declaration of Human Rights \(UDHR\)](#) – International human rights principles related to dignity, privacy, autonomy, and the right to home

Electronic Monitoring and Recording: Reflective Scenarios Worksheet

How to Use this Worksheet:

Use these scenarios to explore how electronic monitoring decisions intersect with resident rights, expectations, and care planning.

These scenarios are designed to explore complexity, not to produce one “correct” answer. The goal is to identify risks, clarify purpose, and consider how to center the resident’s voice in complex situations.

Scenario 1: Consent and Understanding

A legal guardian discovers a camera in his mother’s memory care room that he was unaware of. He has questions about its purpose, access, and whether consent was provided.

1. What resident rights are implicated in this scenario?
2. In what ways would this resident benefit from the use of electronic monitoring in this situation?
3. What are the risks of monitoring in this situation?
4. How could those risks be reduced?
5. How should the provider approach the conversation with the resident and their legal guardian?

6. What information does the legal guardian need to make an informed decision?
 7. What should occur if the legal guardian disagrees with the facility's reasons for wanting electronic monitoring?
 8. What should be included in the care plan if electronic monitoring is used?
 9. How and when should this decision be revisited?
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Scenario 2: Roommate Rights

Two roommates want a camera in their shared room for different reasons. They are considering cost-sharing and purchasing one device together. Questions arise about ownership, access, control, and conditions.

1. What risks are each resident trying to manage?
2. Are there less intrusive ways to address those risks?
3. How can providers facilitate a conversation that ensures each resident fully understands: how the device works, what it records, who has access, when it is on or off?
4. How can facility staff ensure consent is voluntary and not influenced by pressure?
5. How does shared ownership affect control of the device?

6. How might financial differences influence decision-making or create unintended power imbalances?
 7. What conditions could be placed on use to ensure individual rights are protected while needs and preferences are heard?
 8. What happens if one resident later withdraws consent?
 9. How should consent and conditions be documented in each resident's care plan?
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Scenario 3: Purpose Drift

A camera installed for fall safety gradually begins to be used to monitor daily behaviors. Staff feel torn between honoring resident preferences and managing family requests.

1. What does the resident want in this situation?
2. What risk is currently being managed?
3. How has the purpose of the device changed over time?
4. Are there less intrusive options available?
5. What tools or conversations might strengthen the resident's voice?
6. How can staff respond when they feel caught between honoring resident choice and managing family demands?



DETERMINING PRIVACY & PROTECTION

USE OF ELECTRONIC MONITORING AND RECORDING DEVICES IN RESIDENT ROOMS IN LONG-TERM CARE SETTINGS

You, your family or legal representative might have thought about installing an electronic monitoring or recording device in your room, for a variety of reasons. An electronic device should only be installed in your room if you give permission. You should be aware of what aspects of your daily life will be monitored, recorded, and/or shared. Your wishes and your rights to privacy and dignity are important and must be thoroughly considered. This document is meant to help guide a discussion and make sure everyone is aware of the risks and benefits before an electronic device is installed. Please take the time to discuss the questions presented in this document. For additional information, see the companion document titled “Use of Electronic Monitoring and Recording Devices in Long-Term Care Settings.”

If the resident has a legal guardian or activated health care power of attorney, the resident still maintains their right to privacy. The resident’s personal preferences, history of privacy expectations, and right to dignity must be respected. Long-term care settings should consult with their attorney if seeking legal advice or direction. This document is not exhaustive. Each resident’s situation is different and may require asking different or additional questions.

This document does not constitute legal advice or direction.

CONSIDER YOUR PERSONAL HISTORY

Do you feel comfortable being photographed or recorded?

Is personal privacy important to you?

Do you often say “yes” to please others, even if it is different from what you really want?

Do you know how to turn off the electronic device?

If not, would you be comfortable asking staff or someone to help you?

Did you at any time in your own home use cameras or other electronic devices?

If so, what was your experience and level of comfort?

Are there any places where you live now where you are not comfortable being recorded or monitored? For example, while you are asleep, using the bathroom, having a visitor, etc.

Are there any activities that you do not want recorded or monitored? Consider things such as receiving personal care, getting dressed, using the bathroom, bathing, etc.

CONSIDER YOUR RELATIONSHIPS

Is the ability to spend time with others privately important to you?

Do you enjoy private, physical, or intimate interactions with others?

If so, is there a potential that these interactions could take place while the electronic device is in use?

Do you have conversations with relatives, friends, an attorney, and/or medical professionals that you would prefer be private and confidential, and not recorded or listened to by someone else?

Do you have relationships that could be negatively impacted if your conversations or visits with others are recorded or monitored?

Have you ever used electronic devices to connect with family and friends (i.e. an Alexa, Siri, Google Assistant, FaceTime, etc.)?

If so, what was your experience and level of comfort?

CONSIDER THE BENEFITS AND RISKS OF AN ELECTRONIC DEVICE

What is your goal for using this device?

Are there other ways to accomplish that goal?

What would be the benefits of having an electronic device in your room?

Would there be any negatives to having an electronic device in your room?

Are you aware that there is a risk personal video footage could be shared with others or hacked and used inappropriately?

Do you feel that the benefits of using the device outweigh any risks?

Is there a plan in place to stop the recording or monitoring when you want it to be stopped?

Do you know how long the device will be installed in your room?

Is there a chance that you may not remember or know that you are being recorded or monitored?

CONSIDER ALTERNATIVES TO AN ELECTRONIC DEVICE

Discuss the reason for installing an electronic device and if other options would meet your needs. Things to consider:

- Report concerns right away and work together to develop a solution to problems.
- Communicate openly and often, ideally before problems occur, and follow-up to make sure that conditions are improving.
- Make sure your care plan includes your preferences for your care, any specific needs you have, and approaches that best meet your needs.

- Be aware what resources are available when there is a problem. Be willing to consider creative and perhaps new solutions to resolve issues.
- Call your regional ombudsman if you want to talk about your rights or if you have any concerns that you haven't been able to resolve.

Electronic devices should not be considered a substitute for personal care, visitation, or direct involvement in the lives of people living in long-term care settings.

For more information on this topic or to contact a Long Term Care Ombudsman:

Wisconsin Board on Aging and Long Term Care

Serving persons 60 and over

Phone: 1-800-815-0015

Email: boaltc@wisconsin.gov

Website: <http://longtermcare.wi.gov>

Use of Electronic Monitoring and Recording Devices in Long-Term Care Settings

This paper reflects the understanding of the law being discussed and the position of the Ombudsman Program regarding resident rights in this context. This document is written from a resident rights perspective, which is the mandate of the Ombudsman Program. This document contains educational information meant to guide the conversation in a resident-focused way and should not be considered legal advice.

The use of cameras and other electronic monitoring or recording devices has become common in many people's day-to-day lives. These devices can take many forms, including digital assistants, video doorbells, nanny cams, smart phones, applications, smart watches, baby monitors, webcams, tracking devices, and more. Recognizing that technology is ever evolving, this list of examples is not exhaustive, and this document is intended to provide information on electronic devices of any kind. These devices have a variety of capabilities, including accessing and recording audio, visuals, or both. Some allow two-way communication while others track the location of an individual. Due to the increase in requests to use electronic monitoring and recording devices in long-term care settings, this paper focuses on devices which are placed in a private space or where there is an expectation of privacy from being monitored or recorded. Throughout this document, these electronic monitoring and recording devices will be referred to collectively as "electronic devices" or "device".

Because electronic devices have become prevalent and easy to use, there is often a desire for a resident, the resident's family, or their legal representative to install an electronic device in a resident's room at their long-term care home. Technology can offer great opportunities for social engagement, with easy access to music and movies or the ability to virtually connect with family and friends. With thoughtful choices, and knowledge of the resident's wishes, these devices can enhance the resident's quality of life. Sometimes electronic devices are placed for purposes of monitoring resident needs, verifying care and treatment, observing resident safety, or tracking the location of the resident. While electronic devices may provide insights into the resident's daily life and interactions with others, the trade-off could be the loss of the resident's privacy, dignity, and/or comfort.

State and federal regulations ensure all residents living in any type of long-term-care setting have the right to be treated with dignity and respect. These same regulations safeguard a resident's right to privacy and self-determination.¹ These rights are guaranteed, regardless of whether a resident has an activated power of attorney or guardian.

¹ See list of state and federal law and regulations at the end of this paper for reference.

It's important to remember that while living in a long-term care setting, a resident is in their home and maintains an expectation of privacy. This means that a resident should retain all the safety and freedoms anyone would expect in their home. Although adjustments may have to be made when living with others in a congregate setting, residents do not lose these rights because they live in a long-term care home. It is imperative that resident rights are always respected and upheld by every person involved in the resident's care.

Before deciding to place any electronic device, the resident, their family, the resident's legal representatives, and the long-term care home should discuss why they are considering the use of such equipment. There should be an understanding of the core concerns that are leading to this decision. Less invasive interventions should always be utilized first. Requesting a care conference, contacting the Ombudsman, or reaching out to a county Dementia Care Specialist may yield new, resident-focused ideas and interventions. Those making the decision (including the resident) should reflect upon whether use of the electronic device would improve the quality of the resident's life and, if so, if that benefit is worth the potential risks that could occur, including loss of privacy.

The Ombudsman Program advocates that before using any electronic devices, a resident should be aware of and be allowed to express their preferences about all the situations that may be recorded or monitored. Residents should consider how they may feel having their daily activities viewed, their conversations heard, or their location known by others. These electronic devices may capture personal cares, telephone and online discussions, visits with others, health care conversations, legal or other privileged conversations, and other private daily moments. Residents should be informed that conversations of any kind may not be private while the device is operating. The resident should be in control of whether the electronic device is in use during these conversations and have the ability to turn the device off if they wish. Consent to installation of an electronic device should not be perceived as blanket consent to record every conversation or interaction. The resident's personal preferences, history, relationships with others, and risk awareness all play a role in establishing understanding and consent regarding the placement of an electronic device. The Ombudsman Program has developed a discussion tool that the resident/resident representative can review to help determine if the resident would be comfortable with the electronic device in their home.

Placement of electronic devices with recording or visual components must be evaluated to ensure privacy during care and treatment. Bathrooms or other areas where intimate personal care occurs are not appropriate for placement of these devices. Residents should be able to turn off, or request to turn off the electronic device if and when they choose. Consider regularly scheduled times for the device to be on or off, based on resident wishes, needs, and preferences.

While a particular resident may have consented to the use of a device in their room, other residents must be protected to ensure their images are not being captured without



consent. All residents also have the right to privacy in their home, including during visits, medical treatment, or care. Electronic devices should not be placed where any hallways or other common areas may be viewed, or where conversations might be overheard. Signage should be used to notify others of the use of an electronic recording device, especially in any area where there is an expectation of privacy.² The long-term care setting may also have existing policies in place regarding the use of cameras and other electronic devices within the home, which should be taken into consideration before placing a device.

Individuals who share a room must ensure that their roommate's right to privacy is not violated. If an electronic device is considered, the roommate must consent to its presence, be aware of its placement, and have input on the use of the device if it is capable of capturing images or recordings of the roommate. Both residents should be assessed to ensure they understand any benefits and/or consequences of the device's use, both intended and unintended.

It is important to understand the nature of the technology that may be used, including who will have access to the footage or feed. The number of people who have access to the digitally captured material should be limited to protect the resident's privacy and dignity, and the resident should be informed of who those people will be. This would include limiting who can start, stop, or view the footage. Additionally, there are increased security risks with the use of electronic devices. There have been instances of hackers gaining access to visual and audio feeds, which are then shared. Evaluate how the recording may be transmitted or shared to minimize opportunities for privacy violations. Evaluate the security features of each device carefully and research the device and manufacturer to understand how the data captured is stored and protected. It is also important to note that two-way communication devices may cause confusion to some residents. Hearing voices from an unseen person, whether family, digital assistant, or hacker, can be frightening for some, for example someone with dementia or other cognitive impairment.

If the decision is made to install an electronic device, it should become part of the resident's care plan, which delineates what needs the device is being used to meet. Use of the device should be reviewed regularly by the resident, their representative, and the facility to ensure it is still appropriate and beneficial. Ideally, placement of an electronic device should be time-limited, based on the identified purpose or intent for use. Less intrusive options should be re-examined regularly, such as during care conferences, to see if alternative options are more appropriate to meet the resident's goals and preferences. The resident may also withdraw consent for placement of the electronic device at any time.

Any discussion of electronic devices and privacy must also consider the prevalence and ease of internet sharing. Residents or their families may be active on social media

² Refer to Wis. Stats. §§ 968.31 and 942.08 and/or consult with your own legal counsel regarding state and federal requirement related to third party recording, privacy, and obtaining of consent.



networks, discussion forums, or other online platforms. Any posting of a resident's name or photo should be done only with that resident's consent.

Persons living in any long-term care setting should be involved in all decisions regarding the use of electronic devices, including how their use improves or impacts their quality of life and care. All individuals involved should diligently weigh the pros and cons associated with their usage. These devices should not be considered a replacement for personal involvement, visitation, and direct communications between facility staff, families, friends, and residents. These devices should also not be considered or used as an alternative to proper care and treatment or as a replacement for adequate staffing.

This document cannot address every situation which may occur. There may be other situations not addressed by this informational paper. Long-term care providers are encouraged to consult with their own legal counsel regarding these issues.

For questions about this document, or to access the Ombudsman Program, you can reach us at 1-800-815-0015 or via e-mail at BOALTC@wisconsin.gov. For additional information, please refer to the Ombudsman Program's companion document, "Determining Privacy & Protection: Use of Electronic Monitoring and Recording Devices in Resident Rooms in Long-Term Care Settings."



RESOURCES

“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

(<https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertificationgeninfo/downloads/survey-and-cert-letter-16-33.pdf>)

“Balancing Privacy & Protection: Surveillance Cameras in Nursing home Residents’ Rooms,” The Consumer Voice

(<https://ltcombudsman.org/uploads/files/issues/cv-ncea-surveillance-factsheet-web.pdf>)

STATUTES & REGULATIONS

Licensed Adult Family Homes (AFHs):

Wis. Admin. Code § DHS 88.10

Community-Based Residential Facilities (CBRFs):

Wis. Stat. Ch. § 50.09

Wis. Admin. Code §§ DHS 83.01(2), 83.32

Residential Care Apartment Complexes (RCACs):

Wis. Admin. Code § DHS 89.34

Nursing Homes (NH):

42 CFR § 483.10

Wis. Stat. Ch. § 50.09

Wis. Admin. Code § DHS 132.31

Individuals receiving services for mental illness, developmental disabilities, alcoholism, or drug dependency may have additional protections:

Wis. Stat. § 51.61

Wis. Admin. Code §§ DHS 94.02, 94.18

Wire, electronic, or oral communications & privacy:

Wis. Stats. §§ 968.31, 942.08, 942.09

