



Are you being watched? The risks of "nanny-cams" in residential aged care

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28 Mar 2018

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There has been commentary advocating the increased use of hidden cameras in the aged care industry.

With the increased availability and affordability of nanny-cams, many families are choosing to install these in their loved ones' rooms. It is perhaps understandable that many family members feel the need to monitor their loved ones in their rooms by installing cameras in the facilities. In the current climate, it is also easy to see how aged care providers who take steps to restrict the use of these devices are seen as simply trying to protect themselves by "covering up" their actions.

However, there are a range of legal issues associated with the installation of "nanny-cams" in residents' rooms, whether these are installed with or without the approved provider's permission.

As such providers need to be prepared for how to respond to a request to install a nanny-cam from a family member and also, what to do in the event that they find a hidden camera in a resident's room.

What if the family ask first?

If providers receive a request from a family member who wants to install a monitoring device such as a camera, it is important to be aware of the rules regarding the use of such devices.

First, there are a range of offences associated with surveillance devices, particularly where these are installed without the consent of all those filmed including both staff and other residents. Each state and territory has its own surveillance legislation which restricts the use of listening, optical and tracking surveillance devices. For example, in Victoria and NSW, it is an offence for a person to knowingly install, use or maintain an optical surveillance device to record or observe an activity to which the person is not a party to, without the consent or permission of each party to the activity.

More broadly, residents have a right to privacy, and to live in a home-like environment. The presence of cameras in residents' rooms, whether with or without the knowledge of the provider, clearly has the potential to infringe these rights unless the provider receives appropriate consent from the resident.

The requirement for consent by the persons being filmed is particularly

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The requirement for consent by the persons being filmed is particularly problematic when the resident has a cognitive impairment. Having a power of attorney does not give a family member the right to install a camera in a resident's room. It would only be a guardian with specific powers who has the right to give consent on behalf of a resident to do this. A family member may need to seek a Tribunal appointment to install a camera in their loved ones' room.

There are also staff rights to consider. While giving staff warning may be generally sufficient to gain consent, it is easy to see how they may feel uncomfortable.

In light of the above, when you receive such a request, you should ensure that the use is consistent with the relevant surveillance devices legislation, and also take steps to explore the reasons why the request has been made and potential alternatives. For example, most providers operate CCTV in communal areas of the facility (eg hallways) but not in private areas like residents' rooms.

What should you do if you find a device secretly hidden?

If staff find a device that has been installed without management approval, you will need to carefully consider how to respond. The appropriate response will depend on various factors such as whether the resident knows it is there, and whether or not they have capacity. It may also depend on the activities captured by the camera and the extent to which this impacts the resident's privacy.

Depending on the situation, the provider may need to consider immediately turning the device off and even reporting the matter to authorities if it constitutes some form of abuse. At the same time, providers will need to be mindful of not unlawfully interfering with someone's personal property. Providers may also need to alert staff to the presence of the device.

These risks will need to be carefully considered in the circumstances. Where the covert installation of cameras has the potential to impact the resident's privacy, you may also wish to support from the Office of the Public Advocate and other elder rights advocacy services or, in more extreme situations, the police.

Preventative steps

If family members are frequently installing devices secretly or asking to install them, providers may wish to make this issue a part of the admission process.

Where a well-founded concern is raised, providers may wish to consider alternative solutions such as ensuring there are two carers present during ADLs.

In accordance with a commitment to best practice, providers should as always, encourage families and residents to raise any concerns and complaints and actively work to address these. Ultimately, fostering a culture of trust and transparency will be the best way of mitigating the risk families will resort to covert tactics that may infringe the rights of residents and staff.

If you require any assistance in this area, or any other aged care matter, please contact [Anita Courtney](#) or [Victor Harcourt](#).

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