

Clarifying the Legislation

Can facilities that are only private pay (i.e. do not accept Medicaid) deny a resident's request to install a camera?

No, regardless of the resident's form of payment, they are entitled to install a camera.

Are there any situations in which hidden cameras are allowed?

No, that is not legal in any situation. The facility must post signage alerting visitors to the presence of a camera, so there can be no hidden cameras.

Can a facility discharge a resident for unauthorized electronic monitoring (i.e. hidden cameras)? If not, what consequences are allowed?

Currently, there are only 6 scenarios for which a resident can be discharged, and monitoring is not one of them.

However, residents may be discharged for a "behavioral issue" that may be threatening to residents. An unauthorized recording is a gray area here, and it may be considered a "behavioral issue" on a case by case basis. Additionally, since unauthorized recordings are against the law, civil suits may be filed against anyone participating.

Is there any guidance on privacy issues for memory care residents wandering into rooms with cameras, not realizing that they are not in their own room?

Not currently. The HIPAA requirements are met through posted signage on each room with a camera. In fact, with a camera, the facility may be better able to monitor resident interactions.

Are nursing homes required to advise new or incoming residents of their right to have a camera installed?

There is no written requirement in the current regulations that a facility educate or inform residents about this policy. The law only specifies that the facility must allow electronic monitoring, not that they promote it.

May the facility limit the monitoring in any way once the camera is installed?

No. The resident/family has the right to control the monitoring.

Does the nursing home have any right to view the resident recordings?

The facility has dual ownership of any recorded footage. This means that the nursing home can request to see the footage and the family cannot legally deny access to the specific parts of footage requested. The facility cannot access the live stream of the camera, but they can request stored footage.

If Resident A has a camera that records an incident of abuse towards Resident B, can Resident B use the audio or visual recording belonging to Resident A as evidence of their abuse/neglect?

Short answer: maybe.

Long answer: Resident A has ownership of both the camera and its footage. If Resident B needs the footage to support their case, they can certainly approach Resident A with their request. But Resident A is not obligated to hand over any footage, and in some cases the facility must also agree with this exchange. We recommend that you work closely with facility administration to coordinate the sharing of information.

Can you clarify the regulations on the 7-day reporting period?

To our knowledge, if you suspect an instance of abuse or neglect has been recorded, you have 7 days ***from the time you view the footage*** to report the abuse/neglect. The language of the law is somewhat difficult to understand, so we continue to seek clarification on this statute.

Working with the Facility

Once a resident requests a camera in their room, what is a reasonable amount of time to wait for a reply, and what are the next steps?

This is a brand-new law, and a lot of other important things are affecting nursing homes right now! We hope you will have some patience as administrators try to figure out all the details of the policy.

Legally, there is no official timeline requirements, so the key here is “reasonable.” We think 3-5 days is a reasonable amount of time to wait for a response. After about a week or more, call the ombudsman program and we can help engage the facility. If you still are unable to receive a response after a couple weeks, call the Missouri State abuse and neglect hotline.

Can the nursing home charge the resident to help with installation and setup?

There is no written guidance about charging for installation and setup. Therefore, it is technically legal for the facility to charge for this. Facilities should try to create an official, written policy on these costs to provide transparency and consistency.

Again, “reasonable” is the key. You can always ask for an itemized list of charges associated with installation! It is **not** reasonable for the facility to charge hundreds of dollars for installation. The ombudsman can help if you feel that you are being unreasonably charged; however, since there is no legal statute on how much a facility may charge, this would be a good-will negotiation.

If a facility is already providing free WIFI to residents, can they claim that camera use increases use of bandwidth and charge residents to upgrade?

Access to WIFI is not one of the three things a facility must provide for the resident. Therefore, they can charge for any additional WIFI usage associated with camera installation. Video streaming will take up quite a bit of bandwidth, so a charge for the upgrade is not unreasonable. Again, the charge needs to be consistent, reasonable, and should be in an official written policy.

With all the paperwork that needs to be done, is it easier to just go to the social worker right away?

Yes, that is a great idea. The paperwork should not be a huge challenge for the facility social worker to work out for you, and it is advisable to keep open communication with the facility from the beginning.

Have all nursing home administrators in the VOYCE service area been educated about this law?

We do hope that all the administrators and social workers in Missouri have a good understanding of this law! We have provided this Crash Course and a conference webinar specifically just for professionals to do our part in educating facility management. We do know that all facilities have received the memo about this law from the Missouri Department of Health and Senior Services.

Obtaining Roommate Consent

How can you find information on the roommate to ask for consent, and how should you approach the roommate?

If you are not familiar with the roommate, connect with them through the facility staff. We suggest reaching out to the social worker to coordinate a meeting between the two parties.

I do not understand why a roommate might give consent to a camera being installed, but then revoke that consent later. Why might this happen?

Simply, people can change their minds! Roommates might not foresee any inconvenience when signing the consent, but at any point may decide that they are uncomfortable with a camera being in their room. Some may feel that they are being watched, even if the cameras are not directly pointed at their part of the room. If audio is enabled, this may cause some feelings of disrupted privacy as well.

That said, if your loved one still wants a camera installed, the nursing home and interested resident should collaborate to find a more ideal roommate situation.

Must a resident obtain consent for a suite-style room, where “roommates” have a shared bathroom, but their living spaces are separated by a wall rather than just a curtain?

No, suites are not considered shared rooms, so the consent rule would not apply in that situation. However, you cannot put the camera in any shared living rooms without consent!

How do I get consent from a roommate that cannot consent because they have a Guardian or enacted Power of Attorney?

In this case, the legal representative (Guardian or enacted Power of Attorney) should be the one approached regarding consent.

What if the facility does not allow you to get the information about the roommate's guardian to get the consent signed?

The facility needs to help you connect with the guardian in this situation. The requesting roommate does not even need to speak directly with the legal representative/family of the roommate – the social worker or administrator can handle initiating communication.

If the social worker is the only one talking to the roommate, will they try to discourage the roommate from giving consent? How can the resident be sure they have a voice in the conversation?

We encourage the facility to host an open discussion with both parties whenever possible. If there are reservations about privacy, contact the ombudsmen and we can be an advocating voice in the discussion.

What if a resident moves rooms and wants to bring their camera?

There is nothing written about this in the regulations. The camera can follow from room to room if each new roommate is asked for and gives consent for installation.

Is it the functionality of the device or the intent that makes it a monitoring device? For example, if the intent is only to play music, does the resident still need consent?

It is the functionality. You still need consent to place any device that can be used for monitoring, even if you do not intend to use it for that purpose.

If a resident obtains consent from their roommate to install a camera but the roommate later withdraws consent, and another rooming situation is not available to the resident, what recourse does that resident have to keep their camera?

There is no legal recourse if the resident withdraws consent. The law does state that the camera cannot be turned on if the roommate does not give consent, including from the moment the roommate withdraws consent. However, the facility must make all reasonable attempts at finding a new roommate that does agree to the camera installation. This is a situation that would require a lot of collaboration and maybe some creative re-rooming.

Infrastructure and Devices

If the facility does provide WIFI, does that give them the right to turn it on and off and interfere with recording in the residents' rooms?

Reach out to your ombudsman if you think this is happening. We will probably ask for a log of WIFI usage before camera installation to ensure that the facility is not acting unfairly.

Can we use an Echo Dot, Google Home, etc. for audio recording if it is permanently mounted, to allow for both two-way communication and music playing?

The state does not specify what types of devices are allowed, so that should be fine. Consent would still be required and be sure to consider your roommate. You can exercise your right, but you may not infringe upon the roommate's rights!

COVID-19 Concerns

Nursing homes are letting staff go in and out every shift and they are in direct contact with staff, but they are not allowing outside contractors in to install cameras. Why are staff allowed in and out, potentially bringing in COVID-19, but not contractors to install cameras?

The facility is concerned with *anyone* who comes in to do maintenance or work in their facility, staff and outside contractors alike. It is up to the facility to designate a thorough and rigorous testing procedure to keep COVID out. You should reach out to facility administration to clarify their policies on testing, admitting outsiders, and camera installation. Call your ombudsman if you think you are receiving unfair treatment because of your request to install a camera.

Can the facility deny installation of cameras until 1) nursing homes reopen to the public and/or 2) the state releases an Approved Vendor List?

Regarding reopening, the Missouri Department of Health and Senior Services has stated that the facility does not have to let outsiders in, including contractors that can perform the installation. However, you still have a legal right to have a camera installed. This has created a bit of a confusing situation! We urge facilities to try to work with family members rather than flat out deny installation during this time.

Regarding the approved vendor list, we have heard that it might exist, but we don't have any definite knowledge of this.

If you have additional questions regarding installing a camera in your loved ones' room, check out the recording of our Community Crash Course (available on our website) or reach out to your ombudsman!