



## **LNHA Summary Nursing Home Virtual Visitation Act (Granny Cam)**

The [Nursing Home Virtual Visitation Act](#) passed into law during the 2018 Regular Legislative Session. The law gives residents or their legal representatives the right to install a monitoring device in their room. The effective date for the law is January 1, 2019. In anticipation of this date, read LNHA's summary of the requirements of the Act below.

### **Facility's Responsibility on January 1, 2019**

On January 1, 2019, each nursing facility licensed by the Louisiana Department of Health (LDH) shall provide to each resident of the nursing facility or, if applicable, the legal guardian or legally appointed substitute decision-maker authorized to act on behalf of the resident, a form prescribed by the department explaining the provisions of the Act and giving each resident or his legal representative a choice to have a monitoring device installed in his room. Each facility shall retain a copy of each completed form and shall make such forms accessible to the ombudsman's office if requested. It is LNHA's understanding that LDH will make the forms available prior to the effective date.

### **Facility's Responsibility Upon Admission**

At the time of the person's admission to the nursing facility, the facility shall notify the resident who has the capacity to consent or his legal representative of his/her right to install a monitoring device in his/her room and record the person's decision. The nursing facility shall keep a record of the person's authorization or choice to not have a monitoring device and make it accessible to the ombudsman's office if requested.

### **Determining Capacity to Consent**

A person's capacity to consent to the authorization and use of a monitoring device is presumed if the resident has not been interdicted and has no current documented medical diagnosis affecting capacity. Any question as to capacity of a non-interdicted resident shall be determined by the resident's admitting physician, the resident's personal physician or the medical director of the nursing facility. The nursing facility shall have a policy regarding capacity to consent and such policy shall include, at a minimum, the provisions above. Click [here](#) for the full text of the rule regarding "capacity to consent to virtual visitation."

### **Consent and Waiver Forms**

A form for the authorization of installation and use of a monitoring device shall provide for all of the following: (1) consent of the resident or his legal representative; (2) notice to the nursing facility of the resident's installation of a monitoring device and specifics as to type, function, and use of the device; (3) consent of any other resident sharing the room or his/her legal representative; (4) notice of release of liability of the nursing facility for a violation of privacy through the use of the monitoring device; and (5) waiver of resident's right to privacy in connection with the use of the monitoring device.

A resident or his legal representative may reverse a choice to have or not have a monitoring device installed and used at any time after notice of such reversal has been made to the nursing facility and to the ombudsman on a form prescribed by LDH. Again, it is LNHA's understanding that LDH will develop and make the forms available prior to the effective date.

## **Shared Rooms**

If a resident who is residing in a shared room wishes to install a monitoring device, the roommate who has the capacity to consent or his legal representative must also give consent. If the roommate refuses to consent, then the nursing facility shall make a reasonable attempt to accommodate the resident who wishes to install the monitoring device. A nursing facility is deemed to have met this accommodation requirement when, upon notification that a roommate has not consented to the use of the electronic monitoring device in his room, the facility offers to move either resident to another shared room that is available at the time of the request.

## **Private Room in Order to Facilitate Monitoring**

If a resident chooses to reside in a private room in order to accommodate the use of an electronic monitoring device, the resident shall pay the private room rate. If a nursing facility is unable to accommodate a resident due to lack of space, the nursing facility shall re-evaluate the request every two weeks until the request is fulfilled.

## **Monitoring Device Requirements**

After consent is obtained, a monitoring device may be installed if all of the following requirements are met:

- The resident or legal representative gives notice of the installation to the nursing facility.
- The device transmits and records activity and is not connected to the facility's computer network. A camera that records still images exclusively is not allowed.
- If the monitoring device records activity visually, the recordings made by the device include a record of the date and time.
- The resident pays for the monitoring device and all the installation, operation, maintenance, and removal costs associated with the device.
- The monitoring device shall be in a fixed, stationary position and shall only monitor the resident who consents either personally or through his legal representative.
- If the structure of the room must be altered in order to accommodate a monitoring device, then the renovation to the room may be done only by a licensed contractor subject to the approval by the facility.
- Any monitoring device installed shall be in compliance with the National Fire Protection Association Life Safety Regulations. The State Fire Marshal's Office interprets this provision of the Act as referring to the "the NFPA requirements in regards to pulling of electrical wire, wall penetrations, etc.." and not the type of monitoring device to be installed. Accordingly, facilities must ensure that the wiring used to install and operate an electronic monitoring must be in accordance with NFPA.

The nursing facility shall cooperate to accommodate the installation of the monitoring device unless doing so would place an undue burden on the facility.

## **Public Notice or Signage**

If a resident of a nursing facility conducts electronic monitoring, a sign shall be clearly and conspicuously posted at the main entrance of the nursing facility to alert and inform visitors. The sign shall be in large, clearly legible type and font and read "Electronic Monitoring" and "The rooms of some residents may be equipped with electronic monitoring devices installed by or on behalf of the resident." The facility is responsible for the cost, installation and maintenance of the sign.

A sign shall be clearly and conspicuously posted at the entrance of the resident's room where authorized electronic monitoring is being conducted. The sign shall be in large, clearly legible type and font and read "This room is electronically monitored." The resident or his legal representative shall be responsible for installing and maintaining these signs and the signage shall be in accordance with the written policy of the nursing facility.

### **Immunity for Unauthorized Use**

In any civil action against a nursing facility, material obtained through the use of a monitoring device shall not be used if the device was installed or used without the knowledge of the nursing facility or used without the prescribed form.

Compliance with the law shall be a complete defense to any civil or criminal action brought against the resident, legal representative or nursing facility for the use or presence of the monitoring device.

### **Reporting Abuse and Neglect**

Any person who views an incident which a reasonable man would consider abuse or neglect after viewing a recording made in a nursing facility shall report the incident to the facility as soon as is practicable after the viewing. The facility shall be provided with a copy of the recording in which the suspected incident of abuse or neglect occurred. If the recording must be transferred to a different format to be viewed, the transfer shall be done at the expense of the facility by a qualified professional who can certify that the contents of the recording were not altered.

### **Residents' Bill of Rights**

The right to have a monitoring device installed has been made part of the "residents' bill of rights." All nursing facilities should include the right in its statement of rights and responsibilities.

### **Questions**

If you have questions regarding this summary, contact LNHA's Legal and Policy Director, Wes Hataway at [whataway@lnha.org](mailto:whataway@lnha.org).