



Guidelines for Electronic Monitoring

*Report Required By House Bill 149 - "Vera's Law"
of the 2003 General Assembly Session*

Release Date: December 1, 2003

Carol Benner, Director
Office of Health Care Quality
Maryland Department of Health and Mental Hygiene

Report on Guidelines for Electronic Monitoring
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INTRODUCTION

During the 2003 session, the Maryland General Assembly passed House Bill 149, entitled “Vera’s Law” (See Appendix A) which charges the Department of Health and Mental Hygiene with developing guidelines for nursing homes that elect to use electronic monitoring with the consent of a resident, or the legal representative of a resident, and reporting to the House Health and Government Operations and the Senate Finance Committees on the guidelines that are developed. The Department brought together representatives from the industry and the legal community to assist it in developing these guidelines.¹

PURPOSE

This document is intended to provide guidance to facilities that voluntarily elect to use electronic monitoring at the request of a resident or the legal representative of the resident and with the consent of a resident’s roommate. It is a general resource tool and is not intended to be all-inclusive, but is designed to assist in the facilitation and implementation of electronic monitoring requests. Facilities are encouraged to use this document to develop policies and procedures that suit their individual facility needs. Note however that there are certain elements, particularly those related to privacy and consent that are mandatory. These elements are noted throughout the guidelines.

BACKGROUND

The National Elder Abuse Incidence Study (September 1998) conducted by the U.S. Administration on Aging estimated that for every substantiated report of elder abuse and neglect by adult protective services, more than five additional cases of abused and neglected elders go unreported.

Family members, seeking to monitor the quality of care of their loved ones, are continuing to express an interest in placing video cameras or other means of electronic surveillance in bedrooms of nursing home residents. Advocacy groups have joined in this effort to propose federal laws that would explicitly permit a nursing home resident and/or family member to install a camera (or other equipment), with a facility’s knowledge.

Therefore, the interest in placing surveillance cameras in nursing homes residents’ rooms is increasing and at least 11 states have considered legislation to address electronic monitoring of nursing home residents, and they are: Arkansas, Florida, Louisiana, Maryland, Massachusetts, Mississippi, North Carolina, New Jersey, Ohio, Pennsylvania and Texas. Texas is the only state to have passed electronic monitoring legislation and implemented corresponding regulations.

¹ Representatives from the Department, the Health Facilities Association of Maryland, Mid-Atlantic Life Span, the legal community, and the Office of the Attorney General assisted in the development of these guidelines.

DEFINITION

Electronic monitoring is the consensual placement of an electronic monitoring device in a room of a resident of a nursing home and making tapes or recordings with the device. Electronic monitoring devices may be monitoring systems, video surveillance cameras, web-based cameras, or video phones installed in the room of a resident. These devices may be interactive or merely recording mechanisms. Permissible electronic monitoring under these guidelines may not include audio taping or the audio component of monitoring.

REQUESTS FOR ELECTRONIC MONITORING

The facility should determine who will handle requests for electronic monitoring. It may also want to consider developing policies and procedures for electronic monitoring. The request for electronic monitoring may be considered a contract executed between the facility and the resident for this type of service upon acceptance by the facility. The facility may also want to require that a resident, or the legally authorized representative of a resident, submit a request to the nursing home to conduct in-room electronic monitoring. It is suggested that all requests for electronic monitoring be made in writing to the facility and that the requests should be signed by the resident or the resident's representative. A sample request form can be found in Appendix B.

INFORMED CONSENT (REQUIRED)

A resident, or the legally authorized representative of a resident, who wishes to conduct electronic monitoring must obtain written, signed consent of other residents in the room prior to commencing electronic monitoring. The written consent agreement must be submitted to the administrator of the nursing home or his or her designee.

A resident in the room may condition his or her consent, such as requiring the camera to be pointed away, or limiting, or prohibiting the use of certain electronic monitoring devices. If limitations are placed on consent, then electronic monitoring must be conducted in accordance with those limitations and/or conditions.

NOTICE (REQUIRED)

When conducting electronic monitoring, the facility must post and maintain a conspicuous notice at the entrance to the resident's room stating that an electronic monitoring device is monitoring the room. Notice shall be posted in a prominent location in common areas that are being electronically monitored. Notice shall be given to staff and to the State when electronic monitoring is being conducting.

A sample resident consent form can be found in Appendix C and a sample roommate consent form can be found in Appendix D.

COST AND MAINTENANCE

The facility must determine who will be responsible for the cost, installation and maintenance of the electronic monitoring equipment. Facilities may require that the resident, or the legally authorized representative of the resident, requesting the electronic monitoring of a resident's room be responsible for the costs associated with conducting electronic monitoring, including the equipment and tapes and installation, maintenance or removal of the equipment.

INSTALLATION (REQUIRED)

A camera or any other electronic monitoring device must be installed in a fixed position and not able to rotate. Facilities should make reasonable physical accommodation for electronic monitoring which may include a reasonably secure place to mount the video camera or other electronic monitoring device and access to power sources.

The facility may require that an electronic monitoring device be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The electronic monitoring device should be visible and not hidden.

CUSTODY OF RECORDINGS

The facility may choose whether the facility or the resident's family is the custodian of the recordings. If the facility chooses to maintain the recordings, they are considered part of the resident's medical record and all state and federal rules and regulations pertaining to medical records are applicable. The facility is under no regulatory obligation to seek access to a tape in its possession or to have knowledge of its contents unless the facility has actual notice of a taped incident of suspected abuse, neglect, accident or injury, or the resident, the resident's legally authorized representative or a government agency seeks to use the tapes in any way that affects the facility.

DEPARTMENT ACCESS TO RECORDINGS

If the family chooses to maintain custody of the video records, the facility should encourage the family to report any suspected abuse, suspected neglect, accidents, or injuries of unknown origin discovered as a result of viewing a recording produced by an electronic monitoring device to the nursing home administrator and to the Department of Health and Mental Hygiene's Office of Health Care Quality as soon as possible. If tapes are kept by the facility any suspected abuse, suspected neglect, accidents, or injuries of unknown origin should be reported as well. In addition the recordings may be reviewed during the annual survey or complaint investigation process. The state may take regulatory action, as appropriate, after viewing the tapes.

APPENDIX A

HOUSE BILL 149

Unofficial Copy
J3

2003 Regular Session
(3lr0932)

ENROLLED BILL

-- Health and Government Operations/Finance --

Introduced by **Delegates Goldwater, Boutin, Bromwell, Bronrott, Conroy,
Conway, Cryor, ~~Donoghue~~, Dumais, Franchot, Haynes, Hubbard, James,
Kirk, Lee, Mandel, Marriott, McIntosh, Menes, Murray, Oaks,
Pendergrass, Petzold, Rzepkowski, and ~~Smigiel~~ Smigiel, Love, and
Weldon**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Vera's Law**

3 FOR the purpose of ~~creating an exception to the prohibition against willfully~~
4 ~~intercepting a wire or electronic communication for a person who intercepts~~
5 ~~wire, oral, or electronic communications in a related institution under certain~~
6 ~~circumstances; requiring a related institution to permit a resident or a resident's~~
7 ~~legal representative to monitor the resident through the use of video cameras or~~
8 ~~other electronic monitoring devices; requiring a resident who shares a room with~~
9 ~~another resident to obtain written consent before beginning electronic~~
10 ~~monitoring; requiring the related institution to provide power sources and~~
11 ~~mounting space to set up electronic monitoring devices; prohibiting a related~~
12 ~~institution from refusing to admit an individual to the related institution or~~
13 ~~removing a resident from the related institution because of a request to install~~

an electronic monitoring device; establishing certain penalties for violators; requiring that tapes created from electronic monitoring be admissible in criminal and civil actions brought in Maryland courts, subject to the Maryland Rules of Evidence; requiring the Department of Health and Mental Hygiene to develop guidelines for nursing homes that elect to use electronic monitoring with certain consent; requiring the Department to report on the guidelines to certain committees of the General Assembly on or before a certain date; and generally relating to guidelines for electronic monitoring in ~~related institutions~~ nursing facilities.

~~BY adding to~~

~~Article—Courts and Judicial Proceedings
Section 10-402(c)(10)
Annotated Code of Maryland
(2002 Replacement Volume)~~

~~BY adding to~~

~~Article—Health—General
Section 19-343.1
Annotated Code of Maryland
(2000 Replacement Volume and 2002 Supplement)~~

~~SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
MARYLAND, That the Laws of Maryland read as follows:~~

~~**Article—Courts and Judicial Proceedings**~~

~~10-402.~~

~~(C) (10) (I) IN THIS PARAGRAPH, "RELATED INSTITUTION" HAS THE
MEANING STATED IN § 19-343.1 OF THE HEALTH—GENERAL ARTICLE.~~

~~(H) IT IS LAWFUL UNDER THIS SUBTITLE FOR A PERSON TO
INTERCEPT A WIRE, ORAL, OR ELECTRONIC COMMUNICATION IN A RELATED
INSTITUTION IF THE PERSON:~~

~~1. IS A RESIDENT OF THE RELATED INSTITUTION OR THE
LEGAL REPRESENTATIVE OF A RESIDENT;~~

~~2. CONDUCTS THE ELECTRONIC MONITORING IN THE
RESIDENT'S ROOM IN THE RELATED INSTITUTION; AND~~

~~3. POSTS A NOTICE ON THE DOOR OF THE RESIDENT'S ROOM
STATING THAT THE ROOM IS BEING MONITORED BY AN ELECTRONIC MONITORING
DEVICE.~~

~~Article Health General~~

~~19-343.1.~~

(A) (1) ~~IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

(2) ~~"ELECTRONIC MONITORING DEVICE" INCLUDES A VIDEO SURVEILLANCE CAMERA, AN AUDIO DEVICE, A VIDEO TELEPHONE, AND AN INTERNET VIDEO SURVEILLANCE DEVICE.~~

(3) (I) ~~"RELATED INSTITUTION" MEANS AN ORGANIZED INSTITUTION, ENVIRONMENT, OR HOME THAT:~~

1. ~~MAINTAINS CONDITIONS OR FACILITIES AND EQUIPMENT TO PROVIDE DOMICILIARY, PERSONAL, OR NURSING CARE FOR TWO OR MORE UNRELATED INDIVIDUALS WHO ARE DEPENDENT ON THE ADMINISTRATOR, OPERATOR, OR PROPRIETOR FOR NURSING CARE OR THE SUBSISTENCE OF DAILY LIVING IN A SAFE, SANITARY, AND HEALTHFUL ENVIRONMENT; AND~~

2. ~~ADMITS OR RETAINS THE INDIVIDUALS FOR OVERNIGHT CARE.~~

(II) ~~"RELATED INSTITUTION" INCLUDES A NURSING FACILITY OR VISITING NURSE SERVICE THAT IS CONDUCTED ONLY BY OR FOR ADHERENTS OF A BONA FIDE CHURCH OR RELIGIOUS ORGANIZATION, IN ACCORDANCE WITH TENETS AND PRACTICES THAT INCLUDE RELIANCE ON TREATMENT BY SPIRITUAL MEANS ALONE FOR HEALING.~~

(B) (1) ~~A RELATED INSTITUTION SHALL PERMIT A RESIDENT OR LEGAL REPRESENTATIVE OF THE RESIDENT TO MONITOR THE RESIDENT THROUGH THE USE OF ELECTRONIC MONITORING DEVICES.~~

(2) (I) ~~A RELATED INSTITUTION SHALL REQUIRE A RESIDENT WHO ENGAGES IN ELECTRONIC MONITORING TO POST A NOTICE ON THE DOOR OF THE RESIDENT'S ROOM.~~

(II) ~~THE NOTICE MUST STATE THAT THE ROOM IS BEING MONITORED BY AN ELECTRONIC MONITORING DEVICE.~~

(3) ~~BEFORE BEGINNING ELECTRONIC MONITORING, A RELATED INSTITUTION SHALL REQUIRE A RESIDENT WHO WISHES TO ENGAGE IN ELECTRONIC MONITORING AND SHARES A ROOM WITH ANOTHER RESIDENT TO OBTAIN THE WRITTEN CONSENT FROM THE OTHER RESIDENT OR THE LEGAL REPRESENTATIVE OF THE OTHER RESIDENT.~~

(4) ~~MONITORING CONDUCTED UNDER THIS SECTION SHALL:~~

(I) ~~BE NONCOMPULSORY AND AT THE ELECTION OF THE RESIDENT OR LEGAL REPRESENTATIVE OF THE RESIDENT;~~

1 (HI) ~~BE FUNDED BY THE RESIDENT OR LEGAL REPRESENTATIVE OF~~
2 ~~THE RESIDENT; AND~~

3 (HII) ~~PROTECT THE PRIVACY RIGHTS OF OTHER RESIDENTS AND~~
4 ~~VISITORS TO THE RELATED INSTITUTION TO THE EXTENT REASONABLY POSSIBLE.~~

5 (5) ~~A RELATED INSTITUTION MAY NOT REFUSE TO ADMIT AN~~
6 ~~INDIVIDUAL TO RESIDENCY IN THE RELATED INSTITUTION OR REMOVE A RESIDENT~~
7 ~~FROM THE RELATED INSTITUTION BECAUSE OF A REQUEST FOR ELECTRONIC~~
8 ~~MONITORING.~~

9 (6) ~~A RELATED INSTITUTION SHALL MAKE REASONABLE PHYSICAL~~
10 ~~ACCOMMODATION FOR ELECTRONIC MONITORING, BY PROVIDING:~~

11 (I) ~~A REASONABLY SECURE PLACE TO MOUNT THE ELECTRONIC~~
12 ~~MONITORING DEVICE; AND~~

13 (HI) ~~ACCESS TO POWER SOURCES.~~

14 (7) ~~A RELATED INSTITUTION SHALL INFORM A RESIDENT OR THE LEGAL~~
15 ~~REPRESENTATIVE OF THE RESIDENT OF THE RESIDENT'S RIGHT TO ELECTRONIC~~
16 ~~MONITORING.~~

17 (8) ~~A RELATED INSTITUTION MAY REQUEST A RESIDENT OR A~~
18 ~~RESIDENT'S LEGAL REPRESENTATIVE TO CONDUCT ELECTRONIC MONITORING~~
19 ~~WITHIN PLAIN VIEW.~~

20 (C) ~~A RESIDENT WHO WISHES TO INSTALL AN ELECTRONIC MONITORING~~
21 ~~DEVICE MAY BE REQUIRED BY THE ADMINISTRATOR OF THE RELATED INSTITUTION~~
22 ~~TO MAKE THE REQUEST IN WRITING.~~

23 (D) ~~SUBJECT TO THE MARYLAND RULES OF EVIDENCE, A TAPE CREATED~~
24 ~~THROUGH THE USE OF ELECTRONIC MONITORING SHALL BE ADMISSIBLE IN EITHER~~
25 ~~A CIVIL OR CRIMINAL ACTION BROUGHT IN A MARYLAND COURT.~~

26 (E) (1) ~~A PERSON WHO OPERATES A RELATED INSTITUTION IN VIOLATION~~
27 ~~OF THE PROVISIONS IN THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON~~
28 ~~CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$2,000 OR IMPRISONMENT NOT~~
29 ~~EXCEEDING 5 YEARS OR BOTH.~~

30 (2) ~~A PERSON WHO WILLFULLY AND WITHOUT THE CONSENT OF A~~
31 ~~RESIDENT HAMPERS, OBSTRUCTS, TAMPERS WITH, OR DESTROYS AN ELECTRONIC~~
32 ~~MONITORING DEVICE OR TAPE SHALL BE GUILTY OF A MISDEMEANOR AND ON~~
33 ~~CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$2,000 OR IMPRISONMENT NOT~~
34 ~~EXCEEDING 90 DAYS OR BOTH.~~

35 ~~SECTION 1. AND BE IT FURTHER ENACTED; BE IT ENACTED BY THE~~
36 ~~GENERAL ASSEMBLY OF MARYLAND, That:~~

1 (a) The Department of Health and Mental Hygiene shall develop guidelines
2 for a nursing home that elects to use electronic monitoring with the consent of a
3 resident or the legal representative of the resident.

4 (b) On or before December 1, 2003, the Department of Health and Mental
5 Hygiene shall report on the guidelines developed under subsection (a) of this section
6 to the Senate Finance Committee and the House Health and Government Operations
7 Committee of the General Assembly, in accordance with § 2-1246 of the State
8 Government Article.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 ~~October~~ July 1, 2003.

APPENDIX B

SAMPLE REQUEST FOR IN-ROOM VIDEO MONITORING

I, <Insert Name of Resident>, or I, <Insert Name of Requestor>, legally authorized representative of <Insert Name of Resident>, wish to conduct in-room electronic monitoring, in accordance with the Facility's policies, of the resident's room at <Insert Facility Name>.

In requesting the use of video equipment, I agree that the facility will not be held liable for violating my/the Resident's privacy rights, absent malice or gross negligence in the use of equipment.

I/the Resident agrees to indemnify the facility and its employees or agents against reasonable expenses incurred in defending the facility, its employees or agents, and against any damages levied against the facility, its employees or agents, for all actions or claims alleging violations of privacy interests in the use of the video equipment, absent malice or gross negligence on the part of the facility, its employees or agents.

I understand that if I/the Resident reside(s) in a multi-person room, this Request cannot be honored unless the consent of any roommates is obtained by the Facility. If such consent cannot be obtained, I/the Resident may be relocated to the first available, appropriate multi-person room where roommate consent can be obtained.

I understand that placement of the requested camera, use of the camera, and use and disposition of any recordings made by the camera will be governed by the Facility's policies, and that use of the camera that does not comply with those policies may result in termination of this electronic monitoring arrangement, at the sole option of the Facility.

I agree to pay the initial service charge for electronic monitoring, as set in Facility policy, and, so long as I wish the electronic monitoring to continue, I agree to pay the monthly service charge as set forth in Facility policy, and as may be modified, with 45-days notice, from time to time.

Signature

Date

APPENDIX C

SAMPLE RESIDENT CONSENT REGARDING ELECTRONIC MONITORING

It is the policy of <Insert Facility Name> (“the Facility”) to allow residents or their legally authorized representatives (together described in this Policy as “the Resident”) to arrange for the placement of a video camera in the Resident’s room, upon request of the Resident, and in accordance with Facility policies relating to this subject.

In-room video cameras must be affixed to the wall, and only facility staff may attach a camera to facility property. Cameras are to be immobile. Cameras may not record sound. Audio-taping, whether through the use of a video camera or other means, is not covered by this Policy.

If the Resident has a roommate, the roommate must consent to the placement of the camera in their room. If consent is granted, the camera must be placed in a manner that is intended not to capture the normal activities of the roommate. If consent is not granted, the Resident seeking placement of the camera will be provided the opportunity to move to another room where the roommate’s consent is available – as soon as is reasonably possible.

In any room in the Facility where there is video camera placement under this Policy, a Facility-approved notice will be placed in plain view on the outside of the room door. While Facility staff will not be provided the option to refuse to enter when appropriate, other visitors may have that option.

Whether the camera is a video camera or a computer-based camera, the Resident is solely responsible for the operation and maintenance of the camera. If both the Resident and the Facility agree, however, the Facility may undertake, in writing, to accept certain maintenance responsibilities, for a fee. The Facility is responsible for the initial placement and mounting of the camera, regardless of whether or not the Facility undertakes to provide the Resident with maintenance services for a camera placed under this Policy.

Whether and when “recordings” (whether on video tape or through electronic means) are made by a video camera placed under this Policy is within the sole judgment of the Resident. If recordings are made, the Resident will provide to the Facility, at the Facility’s cost, copies of a given day’s recording, at the request of the Facility, so long as the recordings are maintained in a manner that allows the Resident to identify recordings made on a particular day. The Facility undertakes no obligation to make such requests. The Resident understands that copies of any recording in the possession of the Facility may be subject to inspection by government agencies. The Facility is not responsible for Resident’s use of any recordings made and in the possession of the Resident. The Resident acknowledges that it is possible that other individuals may be captured on any recordings made, and that legal protections available to those individuals with respect to their privacy must be respected.

Appendix C – Sample Resident Consent Regarding Electronic Monitoring

If the Resident requests placement of an in-room video camera, the Resident is agreeing to pay the Facility charges for this service.

- a. \$_____ initially to cover one-time Facility expenses; and
- b. \$_____ monthly to cover recurring Facility expenses.

The above fees may be changed upon 45-days written notice. The Resident may request removal of a video camera placed under this Policy, at any time.

The Facility and its employees or agents are not responsible for the maintenance of a Resident's video camera (unless and to the extent agreed to in a separate contract), such equipment being the sole property of the Resident. Nor are the Facility or its employees or agents responsible for the use that a Resident chooses to make of any image, picture or recording in any form made through a camera placed in-room under this Policy.

Agreed to by:

Resident's Name

Signature of Resident or Legally Authorized Representative

Date

Witness

Date

APPENDIX D

SAMPLE CONSENT BY ROOMMATE FOR IN-ROOM ELECTRONIC MONITORING

I understand that another resident of <Insert Facility Name> (“the Facility”), with whom I share my room at the Facility, has requested the placement of a video camera (with no or with sound-recording capabilities) in our room.

I understand that the placement and use of a video camera in my room can only occur if I give permission, and that I do not have to give my permission.

I understand that the placement and use of the video camera in my room would occur only within the scope of the Facility’s policies concerning its use, and that the camera would be fixed to the wall, and would be operated in a manner intended to not capture my routine activities within the room. It would be intended to only capture my roommate’s routine activities. Despite this intention, I understand that the Facility cannot guarantee that the camera will not capture any of my activities.

If a camera is placed in my room, I understand that it is owned and operated on behalf of my roommate, not the Facility, and that there may or may not be recordings made on behalf of my roommate of the events captured by the camera. The Facility has no control over these activities – they are determined on behalf of my roommate. I agree not to hold the Facility, or its employees or agents liable for a breach of my privacy rights due to the placement of a camera in my room, so long as the Facility and its employees or agents do not act in a deliberate or grossly negligent manner.

I also understand that if I consent to the placement of a video camera in our room, the Facility will place a notice on the outside of our door indicating that activities within the room may be subject to electronic monitoring. This is for the benefit of visitors and other who may enter the room.

With respect to my consent for the placement of a video camera in my room subject to the conditions stated above:

_____ I consent.

_____ I do not consent.

Signature of Resident or Legally
Responsible Individual

Date

Printed Name of Resident

APPENDIX E

CHECKLIST FOR ELECTRONIC MONITORING

- ☐ Does the facility want to provide for electronic monitoring? If so, what devices will the facility use – monitoring systems, video surveillance equipment, web-based cameras, video phones, or audio devices? Will the devices be interactive or merely recording mechanisms?
- ☐ Has the facility developed policies and procedures for electronic monitoring?
- ☐ Has the facility developed consent agreements for the resident and the roommate? This is a required element.
- ☐ Has the facility developed appropriate notices for staff and for posting in prominent locations? This is a required element.
- ☐ Has the facility considered:
 - Who will be responsible for the cost of the equipment?
 - Who will be responsible for the installation of the equipment?
 - Who will be responsible for the maintenance of the equipment?
 - Who will be responsible for the removal of the equipment?

Some facilities may want to do the installation and charge the requestor a fee and other facilities may provide permission to the requestor to install the electronic monitoring equipment.

It is a requirement that the camera of an electronic monitoring device be installed in a fixed position and not be able to rotate.

Who has custody of the records? If the facility has custody of the recordings they are considered to be part of the resident's medical record and all state and federal rules and regulations pertaining to medical records apply to the recordings. Then providing for adequate storage of these records at the facility must be addressed.

It is a requirement that State agencies may have access to tapes for review as necessary to carry out their duties.