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I was delighted to receive dozens of responses to my question about Granny Cams in the nursing home. Several of you cited HIPAA violations but, interestingly, nobody identified the specific part of HIPAA that is being violated. Sumner Rosenberg found the taping to invade the business privacy of the nursing home. Michael Van Cise raised concerns of contractual violations of the admission agreement.

A few of you queried why the resident's daughter would want to hide the camera? If she is trying to improve the quality of care (rather than trying to gather evidence for a law suit), why not put the camera in plain view? A nursing home administrator suggested that the family might want to find a new facility if it is concerned enough to secretly video tape.

Johnny Warren and Cheryl Richardson cited a Georgia criminal statute which provides:

It shall be unlawful for: (1) Any person in a clandestine manner intentionally to overhear, transmit, or record ... the private conversation of another which shall originate in any private place; (2) Any person, through the use of any device, without the consent of all persons observed, to observe, photograph, or record the activities of another which occur in any private place and out of public view. O.C.G.A. § 16-11-62.

Clearly the two residents of the nursing home room have the expectation of privacy in their room. But do the staff and management of the nursing home expect that their actions are private when they enter a nursing home room in their capacity as caregivers?

Becky Kurtz, the Georgia Long-Term Care Ombudsman, sent me an excellent article on this issue by Eric M. Carlson, Esq., of the National Senior Citizen's Law Center. He concluded that videotaping causes no damage to the nursing home or its employees. *The taping is not used to steal the facility's trade secrets or to identify and poach the facility's valued employees. The taping simply records what happens in one room so that a resident's family can be sure that the resident is receiving adequate care.* JOURNAL OF AMERICAN MEDICAL DIRECTORS, JANUARY/FEBRUARY 2001.

Clearly the daughter who wants to videotape her mother's nursing home, needs the consent of her mother and the roommate. If either party is not competent, it is not clear whether the next-of-kin or an attorney-in-fact has the right to grant this consent. And I agree that the daughter should carefully review the nursing home admission agreement to see if she is contractually prohibited from taping. If the contract is silent on this issue, a strong case can be made that the nursing home staff and management do not have the right to expect privacy when they enter a resident's room and therefore videotaping of them should be permissible.

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