



# New Law will Allow Cameras in Illinois Nursing Homes

BY TARA R. DEVINE

**N**ursing home abuse is a growing problem, and as the number of nursing home residents surges, so does the potential for neglect and harm. Unfortunately, fighting against improper, negligent, or even criminal conduct in facilities can be challenging. Many times elderly victims may not be able to speak up on their own behalf. They may suffer from conditions that make it difficult for them to recall abuse or communicate what happened. Further, even if witnesses to the improper conduct exist, their memories of events may fade, or they may be reluctant to come forward. Family members may sense that a loved one is being mistreated, but without sufficient details to file a formal complaint, they may feel powerless to help protect their loved ones and ensure they are receiving the care they deserve.

A new law could help change this by providing evidence for cases of abuse and arming elderly residents and their families with a tool to deter abuse in the first place. Set to take effect January 1, 2016, Public Act 099-0340 (the “Act,” formerly House Bill 2462) allows Illinois nursing home residents to install audio and video monitoring equipment in their rooms. Illinois Attorney General Lisa Madigan helped author the new law, which arose in response to public complaints concerning elder abuse, and seeks to

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ensure the proper quality of care for Illinois nursing home residents.

## VIDEO TAPES CAN HELP EXPOSE ABUSE AND NEGLECT

A recent elder abuse case our firm handled against a suburban Chicago nursing home underscored the critical role video can have in providing evidence of neglect—and how crucial it is that families have access to this information. At a routine visit with her mother, Lisa, the daughter of a resident of a suburban nursing home, noticed that the whole side of her

mother's hip was bent and protruding. Lisa was immediately concerned and demanded answers. However, it was only after filing a lawsuit and fighting to get access to video that she learned the truth. What she discovered was horrifying. Although the resident was wheelchair bound, the nursing home staff ignored this and moved her mother to a regular chair. Frail and unable to support herself, the elderly resident fell out of her chair, fracturing her hip. She died less than 6 months later. It was only after hiring a lawyer and demanding access to the video that the family learned the details surrounding their mother's injury. Under the new law, our client would not have had to fight to get the answers she deserved. Pursuant to the Act, the video and audio tapes are the property of the resident and his or her family, and as such, they would be able to review the tapes at their discretion. This provision protects both residents and facilities by revealing the truth surrounding a resident's care.

Illinois will be the sixth state to allow video and audio monitoring in nursing home facilities. Other states with similar legislation include New Mexico, Oklahoma, Texas, Maryland and Washington. Missouri is reportedly considering similar legislation as well.

Such a law is a major victory for nursing home residents, their families, and their advocates.

#### **THE STATISTICS REVEAL WIDESPREAD CONCERNS**

Illinois is not the only state struggling to address elder abuse. Statistics show that nursing home abuse is growing, with an estimated 1.6 million people living in nursing homes today. One survey by the National Center on Elder Abuse reports that 44% of 2000 nursing homes surveyed reported abuse (defined as "any physical injury, sexual abuse or mental injury inflicted on a resident other than by accidental means"), and 95% of residents indicated that they had been neglected by nursing home staff. In Illinois, the most recent statistics concerning elder abuse reveal that more than 76,000 citizens have suffered some form of elder abuse or neglect.

Many more instances of nursing home abuse and neglect may go unreported. Sometimes the victim may be too scared, intimidated, or embarrassed to report abuse to anyone—whether to the nursing home administrators, health officials, police officers, or even their own families or friends. Family members may have no idea that their loved one is being mistreated, or they may suspect poor treatment, but lack the concrete evidence necessary to file a complaint.

#### **SURVEILLANCE WILL HELP ENSURE NURSING HOME SAFETY**

Allowing monitoring in residents' rooms serves two very important purposes. First, the electronic video footage can provide objective proof concerning a resident's treatment. Specifically, Section 50 of the Act, regarding admissibility of evidence, provides:

Subject to applicable rules of evidence and procedure, any video or audio recording created through authorized electronic monitoring...may be admitted into evidence in a civil, criminal or administrative proceeding if the contents of the recording have not

been edited or artificially enhanced and the video recording includes the date and time the events occurred.

Further, because the video and audio footage will be the property of the resident and his or her family members, it may be possible to determine whether abuse or neglect exists prior to initiating litigation, which may be a critical step toward stopping abuse. Video and audio monitoring equipment will not only expose abusive and neglectful treatment, but will also depict healthcare providers and other staff treating residents as they should. Thus, it could be used to defend against fraudulent accusations and clear a worker's name, just as it can be used to shed light on bad behavior.

Video monitoring also deters bad conduct. Where people know their actions will be "caught on tape," they are less likely to engage in illegal, abusive, or negligent actions.

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## ALLOWING CAMERAS IN RESIDENT'S ROOM IS NOT A VIOLATION OF PRIVACY

While many of the law's dissenters assert that the placement of cameras in residents' rooms may constitute an invasion of a roommate or worker's privacy, the law addresses such privacy concerns by requiring that facilities obtain the consent of any roommates before installing a camera. If the roommate refuses consent, the nursing home must move the resident who wants the monitoring to a different room. (Section 15(e)). Further, the facility must also notify others that a particular room may be monitored. This includes posting signs at the facility's main entrance that "the rooms of some residents may be monitored electronically by or on behalf of the residents." The law strictly forbids "hidden cameras" by requiring that placement of the camera be in a "conspicuously visible location" in the room. (Sections 30(a) and (b)).

Additionally, roommates may limit the surveilling by prohibiting audio monitoring or by directing where the camera can be pointed. The purpose of the Act is specifically to protect the resident, so any recording made from the device may only be shared for the purpose of addressing concerns related to the health, safety or welfare of

residents in civil, criminal and administrative proceedings. (Section 45(c)).

## HAVING CAMERAS IN NURSING HOMES WORKS

Several recent cases underscore how powerful video evidence can be in exposing nursing home negligence. In *Racher v. Westlake Nursing Home, LT*,<sup>1</sup> members of an Oklahoma family installed a hidden camera in the room of their 96-year-old mother after they had caught nursing home workers rifling through her belongings and abusing her. The footage ended up revealing far worse than what they imagined. Staff was caught on camera stuffing latex gloves into the elderly woman's mouth, taunting and laughing at her, throwing her on the bed and giving her mock chest compressions. Soon after these events, she died. Today, Oklahoma law expressly permits residents and their families to install cameras in their rooms. Similar laws exist in Texas and New Mexico.<sup>2</sup>

Similarly, in Illinois, two aides at a St. Charles nursing home actually recorded themselves hitting and taunting a 96-year-old resident. The duo showed the film to friends, who reported the abuse. Video evidence was critical to bringing justice to the resident and ending the mistreatment.<sup>3</sup>

Other significant provisions of the Act include: making nursing home residents or their representatives responsible for the purchase, installation and maintenance expenses of the devices, as well as setting forth provisions for assistance (Sections 25 and 27); prohibiting facility retaliation for the use of the devices (210 ILCS 47/3-318(a)(8)); and providing misdemeanor and felony penalties for any person or entity that intentionally hampers, obstructs, tampers with, or destroys a recording or an electronic monitoring device (Section 40).

The entire text of the law can be found on the Illinois General Assembly website, <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0430>. This law will also amend the Nursing Home Care Act (210 ILCS 45/1-101 et seq.) by changing Section 3-318 and by adding Section 2-115.

Passage of this law is a critical step in helping end elder abuse and neglect in nursing homes.

*Jennifer Dolan, Esq. of Salvi, Schostok & Pritchard P.C. also contributed to this article.*

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1 Case No. 5:13-cv-00364.

2 See Tex. Health & Safety Code Ann. Secs. 242.841-242.851 (2006) and N.M. Stat. Ann. Secs. 24-26-1 - 24-126-12 (2006).

3 <http://www.kcchronicle.com/2015/01/09/plea-deal-reached-in-elder-abuse-case/a7eimsn/>