

NOTE TO MEDIA: Nancy Reynolds and other members of LeClairRyan's Long Term Care industry team are available as resources for bylined articles or interviews on various issues impacting the industry.

For: LeClairRyan, Roanoke, Va.

From: Parness & Associates, Aberdeen, N.J.

FOR IMMEDIATE RELEASE

Long-Term Care Facilities Can't Ignore "Granny Cam" Legislation Says LeClairRyan Attorney

Louisiana latest to pass laws on surveillance equipment; regulations go beyond other states' statutes, warns Nancy Reynolds

ROANOKE, Va. (6/27/18)— As more states pass legislation to govern the use of "granny cams" and other surveillance devices in long-term care (LTC) facilities, "LTCs can no longer hide their heads in the sand over the issue," says Nancy Reynolds, a Roanoke-based member of national law firm LeClairRyan. "Active engagement with residents and their responsible parties is essential, as is developing policies to respond to requests for cameras."

Louisiana is the most recent state to enact in-room surveillance regulations, joining Texas, New Mexico, Washington, Oklahoma, Utah, Illinois and Florida, which previously passed similar legislation. But certain aspects of the Bayou State's initiative go beyond other states' requirements, says Reynolds, leader of LeClairRyan's Long-Term Care industry team. She addresses the issue in a blog, [Video Surveillance Can No Longer Be Ignored](#). The post appears in [Long Term Care Counsel](#), which provides insights and commentary on management and legal issues for long term care providers.

Louisiana's Nursing Home Virtual Visitation Act, which passed on May 31, reflects many standard conditions concerning resident-surveillance equipment, including a requirement that a resident must provide notice of installation to the facility; visual recordings must include date and time; the device must be stationary and fixed, not oscillating; and that the resident pays all costs for installation, upkeep and removal.

But the Louisiana Act also exceeds other states' requirements, including one that says surveillance is addressed at admission as a resident right. Consequently, Louisiana LTCs have to provide notice, at admission, that residents have a right to monitoring devices. Further, the facility's resident-rights statements must include notification of a right to surveillance.

"The admission papers must include an opt-in or out form, which must offer a release of liability of the LTC for violations of resident rights to privacy and a waiver of those rights by the resident," Reynolds adds. "The apparent intention is to avoid any claims of HIPAA or other violations of law in relation to medical care documented in the recordings."

Significantly, she says, the Act fails to appropriately address documentation of abuse, which is the main reason why surveillance is used. The Act's abuse provision does require any person who views an incident on a recording to report such abuse to the LTC and provide a copy of the recording as soon as practicable after the viewing. "But the term 'as soon as practicable' is not defined and could mean after consulting with an attorney or sharing the recording with the press," Reynolds explains. "The intention was probably to provide notice so the LTC could immediately address any problems documented on the recording, but the effect may be quite different."

Reynolds is concerned that "waiting to decide what to do about the documented abuse" before notifying the LTC could allow the condition to go unaddressed by the facility. "Whether that still constitutes 'as soon as practicable' will most likely be litigated," she notes.

She also takes issue with the fact that “The Act clearly establishes that recordings are not in the control or possession of the LTC. For the facility to remain vigilant in addressing potential abuse, it must be informed immediately. No LTC wants to first learn about abuse of residents on the evening news channels.”

Reynolds says some families may believe that LTCs will hide abuse when it happens, but in fact the facilities are required to report — to the appropriate agencies and responsible parties — any incident that causes harm to a resident. “There is no hiding the recorded facts, especially when the family is aware of the use of a recording device and can ask to see the footage,” she says. “At the very least, the LTC should obtain a copy of the recording before it leaves the building.”

Louisiana’s Nursing Home Virtual Visitation Act is another example of why LTCs must address video cameras in resident rooms sooner rather than later, Reynolds concludes. “The number of states with legislation on video cameras in LTC resident rooms will probably increase, and LTCs should be aware of the current state of the laws and how they should appropriately lobby their legislators,” she says.

The full column is available at: <https://ltccounsel.com/video-surveillance-can-no-longer-be-ignored/>

About LeClairRyan

As a trusted advisor, LeClairRyan provides business counsel and client representation in corporate law and litigation. In this role, the firm applies its knowledge, insight and skill to help clients achieve their business objectives while managing and minimizing their legal risks, difficulties and expenses. With offices from coast to coast, the firm represents a wide variety of clients nationwide. For more information about LeClairRyan, visit www.leclairryan.com.

###

Press Contacts: At Parness & Associates Public Relations, Bill Parness, (732) 290-0121, bparness@parnesspr.com or Lisa Kreda, lkreda@parnesspr.com