

**State of Illinois
Department of Human Services
Division of Developmental Disabilities**

**Current and Potential Uses of Electronic
Monitoring and Recording**

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I. Introduction

The Illinois Department of Human Services (DHS), Division of Developmental Disabilities (DDD) engaged Navigant Consulting, Inc. to assist them with the completion of this report, which has been developed in response to the 95th Illinois General Assembly direction that the Department conduct the following work through Public Act 95-0427, Senate Bill 1245 (20 ILCS 1705/70, Revised):

The Department shall study current and potential uses of electronic monitoring and recording for the purpose of preventing and identifying abuse and neglect within State-operated developmental centers and developmental disabilities services programs funded, certified, or licensed by another State agency, and shall report to the General Assembly on or before January 1, 2008, with recommendations on the feasibility of increasing utilization of electronic monitoring and recording for purposes of preventing and identifying abuse and neglect.

An interim report was previously submitted on December 31, 2007. This is the final report. Service settings in Illinois included within this study of current and potential uses of electronic monitoring and recording consist of: Developmental Training day program sites, agency-owned and operated Community Integrated Living Arrangement sites (CILAs), State Operated Developmental Centers (SODCs), and potentially, home-based waiver services sites. Specifically excluded from this study are Intermediate Care Facilities for Developmental Disabilities (ICF/DDs) and Long Term Care under age 22 facilities, both of which are licensed by the Illinois Department of Public Health.

II. Report Methodology

The Navigant Consulting team completed the following steps in January of 2008 to produce this study for the Illinois Department of Human Services:

- Reviewed existing Federal statutes, regulations and guidance related to electronic monitoring and recording
- Reviewed existing State of Illinois statutes, regulations and guidance related to electronic monitoring and recording
- Reviewed statutes, regulations and guidance related to electronic monitoring and recording from Texas, Indiana, Maryland, Virginia, Missouri and New Jersey
- Completed literature review pertaining to electronic surveillance and monitoring
- Facilitated discussions with members of the National Association of State Directors of Developmental Disabilities Services regarding electronic monitoring and recording
- Facilitated discussion with members of the Developmental Disabilities Statewide Advisory Council regarding electronic monitoring and recording
- Placed phone calls to select states and providers to obtain experience regarding electronic surveillance and monitoring

- Contacted Human Service Research Institute (HSRI)
- Contacted the Centers for Medicare & Medicaid Services (CMS) National Quality Contractor for technical assistance and quality management for HCBS waivers (no response received)

Accordingly, the information presented within this report and the recommendations suggested to DDD stem from our review of the above-referenced resources and information pertaining to electronic monitoring and recording. Findings have been categorized by the type of resource reviewed.

III. Findings

Federal Guidance

While there are CMS requirements for the protection of individuals' rights and privacy and the reporting and disposition of allegations of neglect or abuse, an extensive review of CMS statutes, policy guidelines and regulations yielded no guidance specifically related to the use of electronic surveillance.

This lack of federal guidance with respect to electronic surveillance and monitoring was substantiated by one of the resources interviewed, Tec Chapman, Deputy Division Director from the Missouri Department of Mental Health, Division of Mental Retardation and Developmental Disabilities. Mr. Chapman reported that about a year ago, Missouri had considered the placement of video cameras in all of their state-operated facilities. They, too, had done an extensive search for federal guidance regarding electronic surveillance and monitoring and found none. However, the State held conversations with CMS officials to discuss the topic. Missouri was told by CMS that electronic monitoring could be done in public areas such as living rooms, kitchens and halls but not in consumer bedrooms or bathrooms. They were also told that all policies and procedures regarding rights restrictions and privacy must be complied with.

Illinois State Law

There are currently no existing statutes in the State of Illinois that delineate specific guidance on the issue of electronic surveillance and monitoring.

Previously, House Bill 3119 of the 93rd General Assembly (2003-2004) was introduced but did not pass. This Bill proposed voluntary, selective use of electronic monitoring for individual residents of nursing facilities, with the related expenses and the monitoring of the device(s) being the responsibility of the resident or their legal representative. The Bill, included below, also addressed the issues of covert use, notices, liability, etc.:

AN ACT concerning nursing homes. Be it enacted by the People of the State of Illinois, represented in the General Assembly: Section 5. The Nursing Home Care Act is amended by adding Article IIIB as follows:

ARTICLE IIIB. ELECTRONIC MONITORING OF RESIDENT'S ROOM

Sec. 3B-5. Definitions. As used in this Article:

"Authorized electronic monitoring" means the placement of an electronic monitoring device in the room of a resident of a facility and making tapes or recordings with the device after making a request to the facility to allow electronic monitoring.

"Electronic monitoring device" includes (i) video surveillance cameras installed in the room of a resident or (ii) audio devices installed in the room of a resident designed to acquire communications or other sounds occurring in the room, or both. "Electronic monitoring device" does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

Sec. 3B-10. Criminal and civil liability.

(a) It is a defense to prosecution under any law of this State under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in the room of a resident of a facility.

(b) This Article does not affect whether a person may be held to be civilly liable under any other law in connection with placing an electronic monitoring device in the room of a resident of a facility or in connection with using or disclosing a tape or recording made by the device except as specifically provided by this Article or to the extent that liability is affected by a consent or waiver signed under this Article or the fact that authorized electronic monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this Article concerning authorized electronic monitoring is not considered to be an oral communication as defined by Section 108B-1 of the Code of Criminal Procedure of 1963.

Sec. 3B-15. Covert use of electronic monitoring device; liability of Department or facility.

(a) For the purposes of this Article, the placement and use of an electronic monitoring device in the room of a resident is considered to be covert if (i) the placement and use of the device is not open and obvious and (ii) the facility and the Department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The Department and the facility may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of a resident.

Sec. 3B-20. Required form on admission.

The Department by rule shall prescribe a form that must be completed and signed on a resident's admission to a facility by or on behalf of the resident. The form must state all of the following: (1) That a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another. (2) That a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device. (3) That a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under this Article and that, if the facility refuses to permit the electronic

monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring, the person should contact the Department. (4) The basic procedures that must be followed to request authorized electronic monitoring. (5) The manner in which this Article affects the legal requirement to report abuse or neglect when electronic monitoring is being conducted. (6) Any other information regarding covert or authorized electronic monitoring that the Department considers advisable to include on the form.

Sec. 3B-25. Authorized electronic monitoring; who may request.

(a) If a resident has the capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this Article, notwithstanding the terms of any durable power of attorney or similar instrument.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this Article.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this Article. The Department by rule shall prescribe (i) guidelines that will assist the facility, family members of residents, advocates for residents, and other interested persons in determining when a resident lacks the required capacity and (ii) who may be considered to be a resident's legal representative for purposes of this Article, including persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity and persons who may become the legal representative for the limited purpose of this Article under a procedure prescribed by the Department.

Sec. 3B-30. Authorized electronic monitoring; form of request; consent of other residents in room.

(a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the facility on a form prescribed by the Department.

(b) The form prescribed by the Department must require the resident or the resident's guardian or legal representative to do all of the following: (1) Release the facility from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device. (2) Choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident. (3) If the resident resides in a multi-person room, obtain the consent of other residents in the room, using a form prescribed for this purpose by the Department.

(c) Consent under item (3) of subsection (b) may be given only by the following: (1) The other resident or residents in the room. (2) The guardian of the other resident in the room, if the person has been judicially declared to lack the required capacity. (3) By the legal representative who under Section 25 may request electronic monitoring on behalf of the other resident in the room, if the person does not have capacity to sign the form but has not been judicially declared to lack the required capacity.

(d) The form prescribed by the Department under item (3) of subsection (b) must condition the consent of another resident in the room on the other resident also releasing the facility from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may (i) when the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident and (ii) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this Section.

(g) The Department may include other information that the Department considers to be appropriate on either of the forms that the Department is required to prescribe under this Section.

(h) The Department may adopt rules prescribing the place or places that a form signed under this Section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring may not commence until all request and consent forms required by this Section have been completed and returned to the facility and must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

Sec. 3B-35. Authorized electronic monitoring; general provisions.

(a) A facility shall permit a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

(b) The facility shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this Article is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) A facility may not refuse to admit an individual to residency in the facility and may not remove a resident from the facility because of a request to conduct authorized electronic monitoring. A facility may not remove a resident from the facility because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) A facility shall make reasonable physical accommodation for authorized electronic monitoring, including (i) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device and (ii) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for all costs associated with the installation of the equipment and maintaining the equipment.

(g) A facility may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The Department may adopt rules regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the facility may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) A facility may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

Sec. 3B-40. Reporting abuse and neglect.

(a) For purposes of the duty to report abuse or neglect under Section 2-107 of this Act, a person who is conducting electronic monitoring on behalf of a resident under this Article is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the fourteenth day after the date the tape or recording is made.

(b) If a resident who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring under this Article gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording for purposes of the duty to report abuse or neglect under Section 2-107 of this Act.

(c) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.

(d) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording shall provide the facility with a copy at the facility's expense.

Section 99. Effective date. This Act takes effect upon becoming law.

Policies and Practices in Other States

To date, no states have been identified that have developed guidelines, standards, or policies regarding state-funded electronic monitoring in developmental disabilities residential and day program service settings or in community-based settings; however, several states have issued inquiries and requests for information on this subject. These states are profiled below.

1. Texas

The State of Texas, Department of Aging and Disability Services, has issued guidance covering the use of electronic monitoring devices in the state's assisted living facilities in its "Licensing Standards for Assisted Living Facilities Handbook." A resident or legal representative must be permitted to monitor the resident's room through the use of electronic monitoring devices, with cost at the resident's or legal representative's expense, except for electricity. Consent must be given by other residents in the room, who may require conditions (pointing the camera away from the consenting resident). Conspicuous notices must be provided when electronic monitoring is present. Requirements are provided for reporting abuse or neglect based on electronic monitoring tapes or recordings. Covert monitoring may not be a cause for discharge, but must be brought within the licensing standards for authorized monitoring, if discovered.

Texas also has written guidance on the use of Authorized Electronic Monitoring (AEM) in Nursing Facilities. This guidance addresses who may consent to AEM, the right to refuse, the use of covert monitoring, installation of monitoring equipment, and notification of the use of AEM.

This information may be helpful to DDD; however, assisted living facilities and nursing facilities are generally not covered by the same federal regulations that apply to settings for people with developmental disabilities.

2. Indiana

The State of Indiana is developing a policy statement on electronic surveillance and monitoring, but currently has nothing available for review at this time. It is reported that Indiana includes video monitoring as part of its waiver settings.

3. Maryland

Maryland has issued guidance on this topic similar to that published by Texas. The State of Maryland, Office of Health Care Quality, Department of Health and Mental Hygiene has issued a "Report on Guidelines for Electronic Monitoring" that suggests approaches for contractual understandings between residents and nursing homes that are similar to the Texas standards, but allow facilities and residents more latitude in the areas of cost and maintenance, custody of recordings, and methods of handling requests for electronic monitoring. Audio taping or the audio component of monitoring is prohibited in the Maryland definition.

4. Virginia

Virginia's guidance on this issue also shares features of the Texas standards. The Virginia Department of Health, Center for Quality Health Care Services and Consumer Protection has issued a document for nursing facilities providing guidance on "Electronic Monitoring of Resident's Rooms." The guidance is dated August 1, 2004 and includes the principle statement: "A resident has the right to live in a safe and secure environment and to personal privacy." The document discusses measures to protect resident rights that must be in place, including documented consent by anyone residing in the room, prior to installation of an electronic monitoring device. The guidance also specifies that families cannot insist on monitoring over the objections of the residents in the room. Like Maryland's, Virginia's guidance document excludes the monitoring of oral communication, which it says would be subject to both federal and state wiretap laws. The Virginia document places responsibility with the facility for determining whether the facility shall retain custodial ownership of the recordings (with accommodations for family viewing) or designate ownership to the resident's family.

5. Missouri

The State of Missouri, as mentioned earlier, studied the idea of the potential use of electronic surveillance in their state operated settings a year ago and decided not to pursue this approach. Their decision appears to have been based on the factors of a lack of qualitative and quantitative evidence that surveillance makes a difference and the cost of the installation of such devices. Missouri indicated that they have invested in a prevention strategy, which includes the

provision of staff and consumer training focused on how to identify neglect and abuse, how to report neglect and abuse, and how to monitor and collect better data. Much of the training for consumers is facilitated by People First of Missouri. When monitoring devices are used with any of their consumers, they are reviewed by Human Rights committees and they must have a justification for their use, a regular schedule of review, and a plan to diminish or eliminate the use of the device.

6. New Jersey

As of February 11, 2008, we are still waiting to hear from the State of New Jersey, Division of Developmental Disabilities.

Finally, the National Association of State Directors of Developmental Disabilities Services was contacted with a request to post a question regarding the use of electronic surveillance on their list serve in an attempt to gather information from as many other states as possible. NASDDDS had previously posted such a request with the information going directly to the New Jersey Division of Developmental Disabilities. NASDDDS also suggested the contacts with Missouri and Indiana.

Input from the Statewide Advisory Council (Consumers, Family Members, and Providers)

At a meeting of the Illinois Statewide Advisory Council on Developmental Disabilities held on January 24, 2008, participants were asked for input on Public Act 95-0427 (Senate Bill 1245), as summarized in the Introduction section of this paper. Comments received fell into the following three categories: comments in support of / beneficial outcomes of electronic monitoring; comments expressing concern / problematic outcomes of electronic monitoring; and analytical comments.

Comments in Support (Beneficial Outcomes of Electronic Monitoring)

- Support was raised by one consumer for placing cameras in Developmental Training (DT) Centers. "It would get rule breakers in trouble...that's good."
- A former DT provider indicated cameras there with protections in place helped a lot. The video feed went only to the Executive Director's office and was reviewed only in response to reported incidents. The former employee said that knowing they were observed motivated staff to do a good job.
- Support was raised for monitoring "everywhere, except, perhaps, in the toilet stall, to prevent abuse." "It's better to reduce privacy, than be abused." (Parents of individuals with minimal communication abilities who had been subjected to abuse.)
- Another consumer comment was in support of monitoring in case of sickness or injury, for purposes of communicating a need for assistance.
- When appropriate, monitoring may be used to support consumer independence by lowering the need for staff to always be immediately present. Independence may be enhanced at a lower cost than having staff always present.

- Electronic monitoring can be used for staff training purposes. (If staff are observed carrying out a procedure improperly, for example, the staff may be re-trained.)

Comments Expressing Concern (Problematic Outcomes of Electronic Monitoring)

- Appropriate and allowable consumer behaviors that some persons frown on may be inhibited due to awareness of ongoing surveillance.
- Feelings of consumer fear and invasion of privacy due to monitoring were expressed. Statements were made that private conversations and private areas of homes (bathrooms, showers, clothes changing areas, etc.) must not be monitored.
- Concern was raised that audio or video recordings not end up on the “black market” due to lack of security.
- Consumers should not be subjected to electronic monitoring. Rather, consumers who feel they have been abused or neglected could place their written complaint in an accessible lock box for review.
- The “privacy versus protection” issue could be used as a smokescreen to impinge on the rights of the disabled.
- “People can get around electronic monitoring. A camera in my parking lot didn’t keep my car window from being broken. The camera was tilted up” [while the crime was committed].
- People should be against abuse and neglect, but self determination is important, too. This could unempower individuals who want privacy. Guardians could ask to monitor their wards to prevent any expression of sexuality, for example.
- Resolution for conflicts between an individual’s wishes and a guardian’s wishes must be explicitly addressed.
- Electronic monitoring should not be used as an excuse to reduce staff interaction with consumers or paying attention to what’s happening in the home.
- “Surveillance cameras tend to ultimately become utilized for everything possible.”

Analytical Comments (Neutral Statements Clarifying the Issue)

- It must be very clear as to where, when and to whom specific monitoring devices are to be used (monitoring for abuse and neglect only), and how much audio and/or video sensitivity will be utilized. Monitoring in common areas could be appropriate, but not in private areas. “These are peoples’ homes, not institutions, and there should be no wiggle room in monitoring applications.” “Rules need to be spelled out to prevent the monitoring system itself from being abused.”
- Monitoring in the DD system should mirror that utilized in the community at large. “When I go into the grocery store (public area), I know I’m going to be monitored.”
- Privacy versus protection needs to be analyzed. “Consider the level of independence/communication abilities exhibited by consumers when deciding where cameras go.” “Bathrooms are where abuse often happens. If privacy concerns preclude surveillance there, maybe cameras could be placed outside bathroom doors to monitor when and by whom bathrooms are utilized, in case of reports of abuse.”
- Consent should be given by consumers prior to use of monitoring.
- A cost/benefit analysis should be undertaken to determine if money spent will yield

- sufficient results in reducing abuse and neglect.
- Individuals are polarized on the issue, depending on their experience. Consumer self-advocates indicate their desire to be treated the same as the general public. Surveillance must mirror what's happening in the general society.
 - Reviews of surveillance tapes should be done by an entity other than the agency in control of the equipment.
 - A question was raised if video tapes of an incident would stand up in court.
 - A comprehensive approach to this issue is needed. There is no easy answer. "One size does not fit all." Research into other factors promoting neglect and abuse needs to be made, such as excessive staff overtime. No part of this issue can be undertaken in isolation. Most actions generally have a downside to be examined.
 - An analysis might be made to see if funds could be spent in ways, other than electronic monitoring, to reduce abuse and neglect.
 - Some individuals volunteered to provide names of programs currently utilizing electronic monitoring. Others volunteered to provide additional information to assist in the development of the report.

[NOTE: Entries in quotation marks, above, represent the Division of Developmental Disabilities' concerted effort at reproducing actual verbalizations of participants in the Statewide Advisory Council discussion, but may not be exact in every detail.]

Contacts with Illinois Providers

Phone interviews were held with two providers in Illinois who have experience with using electronic surveillance equipment in their day and vocational program settings. One of the providers had the cameras and motion detectors installed as a requirement for one of the contracts they performed where security was required; the equipment has been present for four years. The cameras are not in the classrooms or the bathrooms, and are located up high so that it would be difficult to move or reposition them without being noticed. The film from the cameras is only reviewed if a problem has presented itself and is filmed over every fourteen (14) days; however, if needed, a DVD can be created and maintained indefinitely. While the original intent of the cameras was to insure security of the materials used at the facility, the cameras have also been used when there are other types of concerns expressed. For example, the films were reviewed to determine if staff intervened appropriately when an individual had a seizure. The films were also reviewed to verify that a person had been given access to the restrooms. Neither consumers nor staff sign releases regarding the use of the surveillance equipment, but they are notified of their use during orientation efforts at the facility. The administrator did say the equipment was very expensive to install and consideration of how this cost would be paid must be addressed, should any mandate for use of electronic surveillance equipment be put in place. The other provider also uses electronic surveillance cameras in work and classroom areas, but not in bathrooms or changing rooms. The monitor is kept in the Executive Director's office and she reviews the tapes when an issue or problem is raised. The tapes have been reviewed to substantiate staff performance and interaction with consumers. The equipment is mounted high up and there has not been any issue concerning tampering with the cameras.

The cameras have been in place for two and half (2 ½) years and the film is kept for 14 days and then automatically taped over; however, a DVD can be created if there is a need to keep a record. The tapes have also been used as a training tool to teach staff how to appropriately and consistently intervene with behavior issues displayed by consumers. The tapes were also once used in regard to a specific worker's compensation case. Neither consumers nor staff sign releases with regard to the use of the surveillance equipment in the facility. The director said staff members have expressed positive feelings about having the cameras present, as an assurance that they are protected from false claims.

A third provider sent written comments regarding the use of electronic monitoring devices. These comments reflected that electronic and other adaptive equipment should not only prevent abuse and neglect, but have a role in supporting people to be as independent as possible. The provider expressed an opinion that in order to achieve effectiveness, a 24-hour, seven-days a week (24/7) monitoring of the video display needs to be in place. In addition, the capacity to contact law enforcement when something is detected, as well as the capacity to inform the violator that they are being watched and to stop what they are doing need to be requirements. The provider's comments propose that cameras would have to be everywhere, including bathrooms, bedrooms, and garages, because otherwise potential abusers would know where the cameras were not screening their behavior and actions. The provider also expressed concern related to the constant monitoring of the video display. If monitoring were not constant, the provider forwards, it would be known and therefore provider agencies would then be back to relying on allegations made with the tapes serving as potential substantiation.

A fourth provider, from a Community Integrated Living Arrangement (CILA), said electronic monitoring has been in place for two (2) years in common areas, but not in bathrooms or bedrooms. This provider indicated that the process is beneficial for training and the prevention of abuse, because it allows supervisors to have remote access during all shifts.

IV. Policy Considerations

The topic of electronic surveillance and monitoring presents a large number of multi-faceted policy and potential legal considerations. Among the issues to bear in mind are: liability, privacy and dignity, rights restrictions, review, approval, monitoring procedures, and employee/union rights. For DDD to adopt a position on the use of electronic surveillance and monitoring, each of these issues would need to be thoroughly thought through and discussed with consumers, advocates, families, providers and employees prior to the finalization of decisions.

Specifically, policies would need to be developed that address each of the following questions:

- What criteria must be met before the use of electronic monitoring devices can be used?
- Who monitors the information from the devices?
- How often is the information from the device reviewed?

- What types of training will staff, clients and others need to have regarding the use of electronic monitoring devices?
- What protections are in place to assure people's privacy and dignity are not violated?
- Will Human Rights Committees need training to effectively make decisions regarding the use of these devices?
- How will consent be obtained and where will it be maintained?
- Can consent be revoked?
- How often is the use of the device monitored or reviewed to be sure it is working effectively and the information gathered by the device is reviewed?
- If used, should the devices be placed in bedrooms and bathrooms?
- If some individuals or guardians desire this monitoring and if others object, how can the differences be resolved?
- Are the policies unnecessarily restrictive?
- Can these be used to lower staffing ratios?
- How will we ensure persons with developmental disabilities are able to understand and use these devices properly?

From a fiscal point of view, there are also considerations that must be considered, as they have an impact on system infrastructure costs. Among these considerations are: initial implementation, the rates of technological advancement versus obsolescence; replacement and repair costs; supportable strategic use levels; and equitable distribution of resources.

V. Types of Available Technology

The following are types of electronic surveillance and monitoring equipment available in the marketplace for use in healthcare facilities:

- Video Monitoring/Audio-Sensory Monitoring
- Bracelets/Necklaces to Signal "Wandering"
- Buttons for Summoning Caregivers in Emergencies
- Motion Detectors
- Door Alarms/Window Alarms

VI. Conclusion

Before allowing the use of electronic monitoring or surveillance in residential settings or day programs, it is essential that the intent and purpose for their use be thoroughly thought through and effective safeguards put in place to assure compliance with the intended purpose. From the information gathered for this report, it is clear that there is a splintered vote on whether or not the use of electronic surveillance and monitoring devices is a good idea as a means of protecting people from abuse or neglect. It seems there is little qualitative or quantitative data to review related specifically to people with developmental disabilities and the use of such devices. There

is the concern that the placement of such equipment or devices in service settings for individuals with developmental disabilities can provide a false sense of safety; in addition, if the equipment or the information resulting from the use of the monitoring devices is not monitored and reviewed, then the mere fact of its presence is meaningless.

Some of the resources used for this paper indicated that the use of electronic and other adaptive equipment can have benefits when used to support people in living as independently as possible, but were skeptical of the equipment's use as a mechanism for preventing abuse or neglect. An important aspect of preventing abuse and neglect is providing training to consumers on how to recognize abuse or neglect, how to report issues, and to whom to report issues. This type of training can result in an informed and empowered group of people who will be comfortable reporting allegations of abuse or neglect, who look out for others by monitoring behaviors of staff and who know their concerns will be addressed. Many of the resources used for this paper discussed the importance of investing in training and infrastructure support for both consumers and direct care staff. Having a well-trained, supervised and monitored work force has a direct correlation to incidences of abuse and neglect.

In conclusion, the use of electronic monitoring devices in preventing abuse and neglect is a complex issue with little known national experience to draw upon. Direct consumers, family members, providers, and other advocates differ widely in their views on this subject. Some direct consumers, many capable of speaking up for their own protection and rights, are strongly concerned about the invasion of privacy and the feeling of being continually watched. Some parents and other family members, many with loved ones who cannot verbalize or otherwise communicate their fears and experiences, view such devices as a welcome and much needed tool for safety.

Given the complexity of the issue, the lack of consensus among consumers and advocates, the absence of federal directives specific to the use of such devices, and the limited experience by other states, the Division does not intend to move toward full statewide implementation of electronic monitoring technology at the present time. Nor does the Department have the financial resources to do so. As funds become available, however, we will explore opportunities to pilot available technology. In any such pilot, individuals, guardians, and family members would have full knowledge and understanding of the project and its components.

VII. Recommendations

1. Any policies developed regarding the use of electronic monitoring devices must address a broad number of complex issues. Many of these issues are outlined in the section titled, "Policy Considerations," above.

2. Any fiscal considerations in developing such policies must include the impact on system infrastructure costs, including initial implementation, rates of technological advancement versus obsolescence; replacement and repair costs; strategic use of scarce resources; and equitable distribution of resources.
3. Any policies developed regarding the use of electronic monitoring devices must have clearly-defined goals and outcomes that will serve as guides for usage of these devices and will provide a means for measuring the quality and effectiveness of their use.

VIII. Additional Resources Reviewed

Edwards, Douglas J. "All Eyes are on Granny Cams." *Nursing Homes*. November 1, 2000.

Kohl, Tracey. "Watching Out for Grandma: Video Cameras in Nursing Homes May Help to Eliminate Abuse." *Fordham Urban Law Journal*, Vol. 30, 2003.

Mooman, Jane. "Granny Cam Protects Residents, Nursing Home Staff from Abuse." *New Bulletin Staff Writer*, July 24, 2004.