

## Long-Term Care Survey Alert

### READER QUESTION: Take A Look At Benefits, Risk Of Video Surveillance

**Question:** What are the pros and cons of facilities implementing video surveillance of common areas for monitoring or quality assurance purposes? Can prosecutors and surveyors access such tapes? Would using the tapes as part of the QA process protect the facility from surveyors obtaining the tapes?

Michigan facility

**Answer:** Doing video surveillance of the facility's common areas is a two-edged sword, says **Chris Lucas**, an attorney in private practice in Mechanicsburg, PA. For one, "there's a possibility that a tape could document substandard care or failure to follow care plans," he notes. "But sometimes the tapes establish facts that really help a facility." That most often occurs in an elopement case where, for example, a tape shows a family member or friend caused an elopement by taking a resident with dementia outside to enjoy the weather and leaving the person sitting on a bench or table outside, Lucas says.

As for government authorities' ability to get their hands on the surveillance footage, "certification surveyors (state or federal) can access the tapes because they have authority to cite facilities for noncompliance with state licensing regulations," Lucas notes. Facilities would have a "very difficult" time protecting the videotapes under a quality assurance privilege where the facility argues it uses the tapes to do root-cause analysis of accidents, for example, says Lucas. But "if there is a possibility of criminal prosecution, the Fifth Amendment protects the facility from voluntarily disclosing a videotape if the tape is an admission of criminal wrongdoing," says Lucas. "Because of the Fifth Amendment prohibition against compelled self-incrimination, no federal law can require self incrimination."

In such a case, the facility would not be required to turn over the tape without some type of court order. "Law enforcement authorities could obtain a search warrant and obtain the tape that way--if they can show probable cause to believe there was a crime and the facility was involved in it," says Lucas.