

SURVEILLANCE CAMERAS

ISSUE: Should surveillance cameras be used to monitor nursing home care?

BACKGROUND:

Surveillance cameras have become a familiar part of today's scene. Some family members have suggested monitoring the care of their loved one in a nursing home using a TV camera. These can now be had at a reasonable price and can be monitored directly or recorded for later viewing. At the present time there is no law concerning the use of surveillance cameras in nursing homes. They are not against the law. They are not prohibited. Neither is there any law that regulates their use. Bills were introduced in the last two legislative sessions that would acknowledge the legality of their use and assure the privacy of residents other than the family member but they did not pass.

POLICY IMPLICATIONS:

The use of surveillance cameras in nursing homes has the potential to prevent mistreatment and abuse. Caregivers who know they are being watched may be more gentle and give better care. Evidence of neglect or abuse, caught on film, would be a potent enforcement tool.

The use of surveillance cameras in nursing homes raises questions about the possibility of invading the privacy of residents other than the resident whose care is being questioned.

Therefore there needs to be regulation of such equipment.

RECOMMENDATIONS:

The legislature needs to pass legislation regarding the use of surveillance cameras. Such legislation needs to address:

- * who can authorize such equipment
- * who can monitor such equipment
- * who is responsible for the cost of installation and maintenance
- * how the privacy of other residents can be maintained.
- * the legality of evidence obtained in this way, and how it can be used

Permit of Approval

ISSUE: Should the state regulate who can build a new nursing home?

BACKGROUND:

Before anyone can build a nursing home in the state of Arkansas they must get a Permit of Approval from the Health Services Commission, a state agency. The granting of such a permit is based on need for nursing home beds as calculated according to a formula based on elderly population in each county. There are several problems with this concept.

- 1) The need for new nursing homes may be influenced by many factors besides that of elderly population. Such factors may be availability of medical care, dissatisfaction with poor care at an existing facility, distance from an existing facility (even though still in the same county), sense of community and community involvement, and availability of a workforce from which to draw staff.
- 2) The commission is dominated by the nursing home industry and health care providers who are inclined not to encourage new competition.
- 3) It is not unusual for nursing home owners to apply for new beds before they actually need them or for them to receive permits for more beds than they actually provide. This gives a false picture of the occupancy rate in a county and skews the determination of bed need. This makes it more difficult for new owners to be granted a permit.

POLICY IMPLICATIONS:

The Permit of Approval process stifles competition, leaving consumers with little choice when searching for a nursing home.

The lack of competition encourages the giving of substandard care to residents. If nursing facilities had to survive the rigors of competition like other businesses, the home with a record of substandard care would have to improve their services or be forced out of business. Poor care results in increased disability and premature death.

RECOMMENDATIONS:

Encourage the 2005 Legislative Session to abolish the Permit of Approval process.

TORT REFORM

ISSUE: Are consumer rights violated by efforts to make it more difficult to sue for injury?

BACKGROUND:

The 2002 Legislature passed a general tort reform bill, now Act 649. This act places a cap of \$250,000 as the amount of punitive damages a plaintiff might receive. Additional provisions of the bill make it much more difficult than previously to sue a company for damages in the case of injury. The primary argument for the need for such a bill was that too many people were filing lawsuits, causing insurance premiums to soar. Whether this is indeed the cause of skyrocketing insurance costs was hotly debated. In any case, many feel that the restrictions of this bill greatly impinge upon an individual's right to get redress for injury in a court of law.

In that session, in addition to Act 649 which applies to all businesses including nursing homes, the nursing home industry lobbied strongly for HB 1213 which failed in the closing minutes of the session. This bill ostensibly would have required facilities to pay into an insurance pool from which nursing homes could obtain liability insurance. Interestingly enough, such a pool had already been authorized by the 2001 legislature but never came into being. However, HB1213 further mandated that any claim against a nursing facility would first have to be filed against the insurance pool after a series of lengthy procedures, and the validity of the claim would be decided by administrators of the pool (controlled by the nursing homes). Only after this process was exhausted would it be possible to have the case heard in a court of law.

POLICY IMPLICATIONS:

The act already passed, Act 649, carries grave questions about limitations being placed upon what has historically been considered one of our country's basic civil rights: civil justice under the law - the right to have disputes heard by a jury of one's peers. Whether this is even constitutional is a matter that will have to be decided by the courts.

Passage of HB 1213 would have given further protection to a single industry, the nursing home industry. This raises grave questions about protection of civil rights for nursing home residents. Should they, because of their place of residence, have fewer rights than if they lived in the community? Should the interests of the industry (lower insurance costs, freedom from lawsuits) outweigh the interests of residents?

RECOMMENDATIONS:

Any legislation which places further restrictions upon the right to apply for redress for injury in a court of law should be vigorously opposed.