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Social Media Policy Considerations for Long Term Care Providers – A Sword or A Shield?

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A single photo of a resident's decubitus ulcer on Facebook and/or YouTube is perhaps one of a long term care facility's worst nightmares. However, an unsolicited posting praising the facility for the outstanding care and treatment of someone's family member is marketing that facilities cannot buy. Employers cannot ignore social media and its impact on the workplace. Employees tweet, text, instant message, blog and post status updates and photos on Facebook faster than employers can monitor them. Employers are increasingly focused on how they can use social media as a marketing tool while at the same time trying to control the information their employees post. Protection of residents' privacy rights, HIPAA considerations and nursing home malpractice claims pose unique challenges to the long term care industry. This article highlights some of those unique challenges and offers suggested trouble shooting in drafting the social media policy for your facility.

Policing of Employee Postings – Is it Possible?

Policing of employees' postings is possible, perhaps, in very limited instances. Certainly an employer can control employee use of its computer resources during work time. In fact, many employers block all employee access to Facebook and YouTube on their employees' computers. Employers can certainly retain the right to prevent employees from using work time for such activities – whether it be on a personal handheld device such as a Droid or iPhone or on company computers. Work time is for work.

Employers also can discipline employees for misuse or abuse of work time just as they would discipline them for spending excessive time on personal phone calls or sleeping on the job. However, according to recent guidance from the National Labor Relations Board, employers should be wary of mandating what employees can post about their company on their own time. Specifically, the National Labor Relations Act protects employees who are engaging in "concerted activity," which is an exercise of their right to speak out about the terms and conditions of their employment. This applies to all employees, regardless of whether a workforce is unionized. So, yes, your employee can post on his or her Facebook page that your facility is understaffed, thereby making them feel overworked and/or underpaid. Or even worse, your employee can complain about your tyrannical management style to all 2,347 of her closest "friends." Unfortunately, if those "friends" happen to include family members of residents or even prospective clients, the impact on your business can be devastating.

So What Can An Employer Do?

There are certain policies that an employer can put in place to control social media chaos. Below is a list of suggested best practices.

1. Require employees who identify themselves as employees of your facility to include a disclaimer on their social media page that states that any postings are their sole opinion and not the opinion of the facility where they are employed. (See a sample disclaimer below).

2. Draft a policy, mandate training and obtain a signed acknowledgement from each employee stating that he/she understands his/her obligations to keep the residents' confidential protected health information private, which includes refraining from posting specific status updates, comments or photos that could disclose this information. The policy should warn that violations will result in disciplinary action up to and including termination. (See a sample acknowledgement below).
3. Posts should never include any health information that could reasonably be used to identify a patient such as a first or last name, age, photo, locations, unique health conditions or any other personal or identifiable patient health or financial information.
4. Employees must refrain from posting information about residents that would disclose a resident's identity or health condition in any way. This could include the obvious photo where an employee intends to post a photo of a resident's decubitus ulcer or post-fall bruising or the not-so-obvious-posting of a photo of a resident at a company-sponsored party or event wherein the resident has his arm in a cast. This lesson is hard to understand for some employees who think that as long as they do not include the resident's full name, date of birth or social security number, then they are not disclosing "confidential" or "protected" health information.
5. Training should also include a suggestion that employees refrain from friending residents, clients or residents' family members. Remind employees that any postings may become public as they cannot control the dissemination after something has been posted on the internet.
6. Advise employees that the company's confidentiality and nondisclosure agreement or policy extend to social media in that they are not to disclose confidential, proprietary, trademarked or other non-public information. Doing so will result in disciplinary action up to and including termination.
7. Advise employees that they do not have permission to use the company's logo, graphics, trademarks, trade names or corporate slogans when posting online or elsewhere.
8. Prohibit employees from downloading shareware and freeware on company computers or hardware as they have the potential to seriously affect company network performance or cause an outage.
9. Remind employees to consider the impression that they create about themselves and the company when they post information relating to or identifying the company or its employees, residents or residents' family members on any electronic medium. Failure to act responsibly may have a detrimental effect on the company, its employees or others.
10. Remind employees that they have no expectation of privacy in information sent over company email, internet or phones.
11. Advise employees that harassing, discriminatory or defamatory conduct involving coworkers, residents' family members, residents, vendors or any other person associated with the facility will not be tolerated regardless of whether it is spoken, in print or posted online. Disciplinary actions noted in the company anti-harassment or discrimination policy apply to all social media.
12. Finally, remind employees that the company may monitor blogs or other electronic media. If the employee fails to abide by the above guidelines or the company's other policies while online, the employee may be subject to legal or disciplinary action by the company up to and including termination.

Company Facebook Page – A Do or A Don't?

Many long term care companies participate in online communities to promote better communication with their customers, the general public, staff, personnel, volunteers and other industry colleagues in a non-traditional, but ever popular medium. If your facility has its own Facebook page or blog, you should assign a management level employee to monitor postings (to remove offensive or inaccurate postings) and to post informative or other helpful information on behalf of the company. These duties should be part of a written job description which should require such monitoring at least once every 24 hours. Company-sponsored online pages can be a useful and low-cost marketing tool. Many facilities have their own Facebook pages where they can post upcoming events or activities and articles regarding topics that would be of interest to family members, residents and potential customers. The employee should monitor non-company sponsored postings such as comments from "friends" to ensure that they are not harassing, defamatory or discriminatory in nature.

Once your facility's page is up and running, remind employees that postings and comments about the company shall be ethical, honest and accurate. Reserve the right to remove/delete spam and other inappropriate content on the company's page. Consider linking to other websites, such as the American Healthcare Association site, that may be helpful or interesting resources for your readers.

If your facility chooses to post photos of residents enjoying various events, be sure to have either the resident or his/her guardian sign a disclosure statement allowing you to post their photos in the media.

Whatever you do online, DON'T GIVE MEDICAL ADVICE. Employees must refrain from giving medical advice or answering medical questions posted on the company social media site, as doing so could lead to possible malpractice claims.

Sample Acknowledgement:

I _____ understand that I am obligated to keep residents' confidential protected health information private, which includes refraining from posting specific status updates, comments or photos on social media websites, including but not limited to Facebook, Twitter, MySpace and LinkedIn, that could disclose this information. My failure to adhere to this policy may result in disciplinary action, up to and including termination.

Sample Disclaimer:

The views and opinions expressed here are my own and do not represent the views of the _____ company. They may not be used for advertising or product endorsement purposes.

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