



Social Media: Bare Naked Information

By Denette Lothspeich, Health Facilities Surveyor

Social media is defined by the Merriam Webster online dictionary as “forms of electronic communication (Web sites for social networking and micro-blogging) through which users create online communities to share information, ideas, personal messages, and other content (such as videos).” This could include Facebook, MySpace, LinkedIn, Twitter, YouTube, Wikis, etc. The ease of using these sites, along with our need for social interaction and love of gossip, however, can lead to legal and ethical problems for the user.



Posting personal, resident or facility information on a networking site exposes that information to the world. There is a great need to be cautious and think things through before pictures, gossip (true or otherwise), etc. are posted to prevent the person or facility from feeling naked.

The Health Insurance Portability and Accountability Act (HIPAA) requires a resident’s identity and personal health information be protected. Personal health information is also Protected Health Information (PHI). With the widespread use of smart phones, digital cameras and social networking interfaces, such as Facebook, the invasion of a resident’s privacy can occur within seconds and with minimal effort. The instantaneous circulation of material posted online is impossible to retract, lays bare that information, and can spread much like gossip through the grapevine. The main difference between oral and online gossip is that the number of people with access to online gossip is innumerable. For example, an employee taking a picture of a resident’s unique birthmark and posting it online would be an invasion of that resident’s privacy. An employee sending a tweet about her bad day and how a particular resident’s behavior contributed to her bad day is another example of a breach of confidentiality. Details of a resident’s care posted on Facebook, even without mentioning names, could include enough

information for someone to identify the resident. Disgruntled employees posting negative comments about residents, coworkers, the facility, licensed healthcare providers or administration could have repercussions. These postings create the potential to contain HIPAA or other violations, and to harm the reputation of the facility. Some of these postings could lead to legal consequences not only for the employee, but also for the facility.

The State Operations Manual defines the federal regulation F164, Privacy and Confidentiality. This regulation addresses a resident’s right to “personal privacy and confidentiality of his/her personal and clinical

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Records. . .” “Keep confidential” is defined as “safeguarding the content of information including video, audio or other computer stored information from unauthorized disclosure without the consent of the individual.”

Facilities have received a citation at F164 for breach of resident privacy, such as staff failing to close the resident’s door during personal cares. A breach of confidentiality occurs when a staff member leaves the Medication Administration Record open to a resident’s information, unmonitored and in an area residents or visitors have access to. A violation at F164 in relation to social media would occur if a staff member posted PHI, such as a picture of a resident’s pressure ulcer or medical diagnosis, on Facebook or other social media site.

John E. Lyncheski noted in “Social Media in the Workplace” that “more than 25% of employees admit to having changed the settings on their workplace computers to circumvent employer communication policies. According to Cisco, one of the leading U.S. network providers, almost one-half of all employees age 30 and under have visited social media sites on employer time, some for more than an hour per day on meaningless interactive digital games . . . Only about 1 in 5 employers have a policy governing social media access and usage.” This becomes a problem not only in employee productivity, staff availability to meet residents’ needs, work not getting done, but also in the possibility of staff posting PHI on a social media site, leading to a potential HIPAA violation.

Mark W. Peters in his paper on Triaging Social Media in the Healthcare Workplace encourages employers to develop a “Workplace Technology” policy, keeping the following in mind:

- 1) Educate employees about the firm’s culture and values, to facilitate employees considering what their boss or customers might think before posting material online.
- 2) Set reasonable expectations about employee privacy: Facility computers are for work

purposes, the facility has the right to review any information created or transmitted, including emails, downloads and websites visited.



Comments posted on social media are public and can result in disciplinary action. Revealing PHI can result in personal implications for violating HIPAA. Prohibit the use of cell phones with cameras in resident areas or areas where resident information is stored.

- 3) Understand how careless disclosures might occur. “Friending” of residents on social media sites is probably a bad idea.
- 4) Reinforce the special importance of confidentiality for healthcare providers, especially when logging into social networking accounts.
- 5) Consider whether personal use of social media at work should be limited or prohibited. While at work, the primary focus for employees should be their job duties.
- 6) Don’t forget to address management’s use of social media. “Friending” of subordinates may put the supervisor in a awkward position if the subordinates post negative comments about their work environment.

With the widespread use of social media comes unlimited benefits and opportunities. On the flip side, many challenges and pitfalls may arise if social media use is unmonitored. Facilities would be wise to develop a policy related to social media and to communicate the facility’s expectation to its employees.

References:

- *Merriam Webster Dictionary (m-w.com)
- *The State Operations Manual, Appendix PP-Guidance to Surveyors for Long Term Care Facilities, October 2010
- *John E. Lyncheski, “Social Media in the Workplace,” Long-Term Living, October 2010
- *Mark W. Peters, “Triaging Social Media in the Healthcare Workplace: Assessment, Analysis and Action,” Weller, Lansden, Dortch & Davis, LLP, 2011



Emergency Medication Kit (E-kit) Licensing Tag 1810

By Lisa Fries, Health Facilities Surveyor

Chapter 61-03-02 Consulting Pharmacist Regulations for Long Term Care Facilities states the facility must assure, when a pharmacist is unavailable, safeguards are in place for the provision of medications by use of an E-kit located in the facility. Quarterly, a pharmacist must review all emergency medications provided by the facility. The consulting pharmacist and the physicians representing the facility will determine the medication and the quantity of medications contained in the E-kit. The E-kit must be stored in an area to prevent unauthorized access.

The exterior of emergency kit must be clearly labeled to indicate it is an emergency drug kit to be used only in emergencies. The label must contain a listing of the name, strength and quantity of the drugs contained in the kit and an expiration date.

Upon opening the emergency kit and using the medications, the facility will notify the pharmacist to replace the medications. The expiration date of the E-kit will be the earliest expiration date on any of the medications in the E-kit. When a medication expires, the pharmacist will open the E-kit and replace the expired medication.

Commonly cited practices related to the E-kit are the lack of or inaccurate label on the exterior of the E-kit, and expired medications within the E-kit.

References:

Chapter 61-03-02 Consulting Pharmacist
Regulations for Long-Term Care Facilities section 61-03-02-02

Surveying LTC Facilities That Use Electronic Health Records (EHR)

By Bruce Pritchet, Director, Health Facilities and Lucille Rostad, Manager, Health Facilities

The Centers for Medicare & Medicaid Services (CMS) recognizes the importance of the use of EHRs and the benefits for better resident care and reduced costs. Surveyors in North Dakota have not been issued portable computers, so it is important your facility provides each surveyor a computer to access the electronic record in your skilled nursing facility during your on-site survey.



If surveyors are unable to access the electronic medical record directly, the length of the on-site survey time will increase. If any certified facility is impeding the survey process by unnecessarily delaying or restricting access to the electronic medical records, it may lead to the facility's termination from Medicare participation. The surveyor is allowed to see any portion of the medical record necessary to determine compliance. It makes no difference if the record is electronic or paper.

The state surveyors are required to provide safety, security and confidentiality for all information needed to conduct the skilled nursing facility survey. There is no need for surveyors to sign any facility HIPAA forms since they are held to strict confidentiality by the state and CMS. In addition, they are not employees of your facility and therefore not under your facility's control.

Electronic access to records will not eliminate the need for a surveyor to print a copy or to request a paper copy of certain parts of certain records. The surveyor should print a paper copy of only those parts of records that are needed to support findings of noncompliance.

I hope this information is helpful and allows for a smooth survey the next time the team arrives at your facility. If you have questions related to surveyor access to electronic medical records, please contact our office.

Paid Feeding Assistant Program

By Lucille Rostad, Manager, Division of Health Facilities

Approval of your Paid Feeding Assistant Program remains in effect unless the state determines that any of the applicable requirements of North Dakota Administrative Code Section 33-07-03.2-16 are not met by the facility's program.

Please notify our Department to receive approval of any changes in the curriculum or primary instructor of the course. The Department will determine continued compliance of your paid feeding assistant program during your yearly recertification survey.

Nurse Aide Registry

By Bruce Pritchet, Director, Health Facilities and Cindy Kupfer, Nurse Aide Registry

Did you know the North Dakota Department of Health's nurse aide registry website renewal process is available for the online renewal of the following types of registrants?

1. Certified Nurse Aides (CNAs)
2. CNAs that are also Medication Assistants 1 (CNA/MA 1)
3. CNAs that are also Medication Assistants 2 (CNA/MA 2)
4. Nurse Aides (NA)
5. Nurse Aides that are also Medication Assistants 1 (NA/MA1)
6. Home Health Aides (HHAs)

Follow this link to the nurse aide registry:

http://www.ndhealth.gov/HF/North_Dakota_nurse_aide_registry.htm.

In addition to online renewals, fees can be paid using credit cards online for the following types of registrants. Types of credit cards accepted include Visa, MasterCard and Discover. **Debit cards are not accepted.**

1. Nurse Aides - \$25
2. Medication Assistants 1 - \$25
3. Medication Assistants 2 - \$25
4. Home Health Aides - \$25
5. Nurse Aide and Medication Assistant 1 - \$50
6. No charge for CNAs
7. Remember you cannot be registered as a Nurse Aide and Medication Assistant 2; you must be a CNA to be a Medication Assistant 2.

If you are applying for a certified nurse aide position in North Dakota and you are certified in another state, please contact the Nurse Aide Registry staff at 701.328.2353. After visiting with an applicant, the Department of Health can usually endorse your certification into the North Dakota Nurse Aide Registry for two years.

Just a reminder: When you are checking to see if an application has been renewed or an applicant has been placed on the Department of Health's registry after testing, please check the nurse aide registry website at

http://www.ndhealth.gov/HF/North_Dakota_nurse_aide_registry.htm

before calling the registry phone number. It is full of useful information.

Please note:

- ◆ When renewing your certified nurse aide (CNA) status on the Department of Health's website or your nurse aide (NA) status, the "Employers contact name" should be a unit manager's name, director of nursing's name, or another manager or supervisor's name. This is **NOT** meant to be an emergency contact name of a parent or spouse or the name of the facility where you are employed.
- ◆ Online renewals: "Employer Information," please type in **City Only**, the state is not required.
- ◆ A person is eligible to renew **up to but not including** his or her expiration date. If a person renews on his or her expiration date and a message comes up saying he or she is not eligible to renew, please contact the North Dakota Department of Health.

Remember:

- ◆ The Nurse Aide Training, Competency Evaluation and Registry Rules (Article 33-43) addresses expiration dates beyond six months as follows:
4. (c)
If an individual on the department's nurse aide registry is identified as performing nursing related services for pay with an expired registration of more than six months, the department will notify the state survey agency, the employer, and the registrant. They will be informed the individual must immediately cease to work. The individual's registry status will no longer be recognized by the department. To obtain current registry status again, the individual must follow the process for initial application for registry status.

This applies to nurse aides, certified nurse aides, home health aides and medication assistants 1 and 2.



Things to Consider When Reporting/Investigating Allegation of Abuse/Neglect Involving a Certified Nursing Assistant (CNA)

By *Bobbie Houn, Health Facilities Surveyor*

1) Did you know the number of allegations of abuse/neglect has increased by 28% in 2012 compared to 2011? This year, the State survey and certification agency is on pace to see a 22% increase over 2012.

2) The definition of neglect does not include the word “willful.” A CNA’s actions may be considered neglectful if he/she failed to follow the facility’s policy, the resident’s care plan, and/or the manufacturer’s recommendations. . . even if he/she did not intentionally set out to harm the resident.

Carefully consider the definitions of abuse and neglect. Some actions by the staff fail to meet the definition of abuse/neglect, but rather would be considered a failure to comply with the facility’s Human Resource policy.

* A CNA fails to work his/her assigned shift. This does not involve the infliction of injury, confinement, intimidation or punishment of a resident, nor does it involve the failure to provide a specific service as per the resident’s care plan and/or manufacturer’s recommendation. The facility’s Human Resource policy should guide you through the next steps.

3) The same requirements apply no matter if you are submitting the initial report via phone, fax or email. Please include the caller’s first and last name, the name/phone number of the facility reporting the incident, the name of the CNA being investigated, the name(s) of the resident(s) involved in the incident, the date/time of the incident, and a brief description of the incident/injury. The description should also include the type of abuse being alleged (neglect, physical abuse, verbal abuse or mental anguish, injury of unknown origin, or theft of property).

Consider the credibility of the person making the accusation. Is the person’s story plausible?

*A demented resident repetitively reports his/her clothing missing. This is not reportable unless there is reason to believe someone took his/her clothing items. Are his/her clothes simply being laundered?

*A CNA reports a demented resident’s dentures are missing. Would the staff person being investigated benefit from a pair of fitted dentures? This is not

reportable until you have a credible allegation of abuse or theft.

4) The facility must thoroughly investigate all allegations of abuse/neglect. When reviewing the information gathered during the investigation, determine if:

*Initial and subsequent resident and/or staff interviews are consistent. Are there inconsistencies between the two statements?

*The individual making the allegation did so in a timely manner. Did the individual report the incident immediately or did he/she wait to report the incident?

*The individual making the allegation intervened at the time of the alleged abuse/neglect. Was the accused CNA allowed to continue working his/her shift? Was he/she supervised? Was he/she moved to another unit/wing?

*The accused CNA followed the care plan. Did the resident experience a recent change of status? Was the CNA made aware of the change in status?

*The accused CNA used the equipment according to the manufacturer’s recommendations. Did the CNA receive education related to the equipment prior to the incident?

*The accused CNA received assistance from other staff. Were other staff members available at the time of the incident?

*Was there a “resulting outcome” or harm to the resident? If these questions remain unanswered, the investigation should continue.

*The facility should draw conclusions based on the information gathered during their investigation, not based on the outcome of the State survey and certification agency’s investigation.

*Carefully consider the information gathered during the investigation. Do patterns arise that require further action?

5) The initial report and the results of the investigation should be submitted separately. The initial report alerts the State survey and certification agency of a

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Psychoactive vs. Antipsychotic Medications

By Kara Steier, Health Facilities Surveyor

A psychoactive medication (or psychotropic) is a chemical substance that affects brain function, resulting in alterations in perception, mood consciousness, cognition and behavior.

A psychiatric medication is a class of psychoactive drugs used to treat mental disorders. There are six main groups of psychiatric medications:

Antidepressants, which treat disorders like clinical depression and anxiety.

Stimulants, which treat disorders like attention deficit hyperactivity disorder. Not commonly used in nursing homes.

Antipsychotics, which treat psychoses like schizophrenia and mania.

Mood stabilizers, which treat bipolar disorder and schizoaffective disorder.

Anxiolytics, which treat anxiety disorders.

Depressants, which are used as hypnotics, sedatives and anesthetics. ^[1]

As identified above, antipsychotic medications are part of the larger group of psychoactive/psychotropic medications.

On August 31, 2012, CMS issued Survey & Certification 12-42 NH regarding a “Partnership to Improve Dementia Care in Nursing Homes” to “promote comprehensive dementia care and therapeutic interventions for nursing home residents with dementia-related behaviors. . . . The goals are to focus on person-centered care and the reduction of unnecessary antipsychotic medication use in long term care settings.” This partnership not only includes CMS and state survey agencies, but also national organizations like the American Medical Directors Association (AMDA) and the American Health Care Association (AHCA).



The AMDA sent a letter encouraging nursing home medical directors to join the Partnership in reducing the unnecessary use of antipsychotic drugs. The letter is located on the AMDA website at:

http://www.amda.com/advocacy/antipsychotic_msg.pdf.

The members of LeadingAge, which is a network of organizations focused on advocacy, education and research, developed a presentation to discuss steps nursing homes can take to evaluate the use and reduction of unnecessary antipsychotic medications. LeadingAge also conducted a webinar, *Improving Dementia Care: Reducing Anti-Psychotic Medications*, which provides an overview of the Partnership and offers resources and non-pharmacological, person-centered approaches to manage dementia-related behaviors in long term care settings. To review the information provided by LeadingAge, go to website: http://www.leadingage.org/phillips_antipsychotic_checklist.aspx.

With the above Partnership initiative came changes to the survey process. Not big changes, but changes none the less. Upon entering your facility, the survey team provides administrative staff with a requested list of information. The third item on this list is a 4 page document requesting several areas of additional information. One of the items requested on this document is a list of residents who have a diagnosis of dementia (any type) and who are receiving or received (within the past 30 days) any antipsychotic medications (this includes PRNs); or who presently have, or had (within the past 30 days) PRN orders for antipsychotic medications (this does not include psychoactive medications). The new survey protocol directs surveyors to assure that, at a minimum, 4 residents in the Phase 1 sample are receiving or have received an antipsychotic medication in the past 30 days. This list can be extensive. Therefore, it may be helpful to keep a list of resident receiving antipsychotic medications so when the survey team arrives at your facility it is one less piece of information you need to gather.

References:

1. Wikipedia
CMS S&C: 12-42 NH



No Charge for Photocopies

By Bruce Pritchet, Director, Division of Health Facilities

Reminder - the information below was sent to all nursing homes on August 20, 2012

Effective July 1, 2012, the North Dakota Department of Health State Survey Agency will no longer pay for copies requested during the survey process completed for Medicare and/or Medicaid providers.

The North Dakota Department of Health State Survey Agency (SSA) conducts surveys of Medicare and/or Medicaid providers under agreement with the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) and the North Dakota Department of Human Services State Medicaid Program (DHS). Regulations promulgated by these two entities, as well as the state licensure requirements and federal HIPAA requirements, allow the State Survey Agency as the regulatory agency and agent working on their behalf the right to access information.

In addition, the regulations cited below specifically provide the SSA the authority to obtain photocopies from providers and at no charge.

- ◆ The Code of Federal Regulations, Title 42: Public Health, Part 489 - Provider Agreements and Supplier Approval, § 389.53 Termination by CMS. (a) Basis for termination of agreement with any provider. CMS may terminate the agreement with any provider if CMS finds that any of the following failing is attributable to that provider: (13) It refuses to permit photocopying of any records or other information by, or on behalf of CMS, as necessary to verify compliance with participation requirements.
- ◆ North Dakota Administrative Code 75-02-05-04 (2), Provider's Responsibility. (2) Each provider agrees to retain documentation to support medical services rendered for a minimum of seven years and upon request, to make the documentation available to persons acting on behalf of the department and the United States department of health and human services. A provider shall provide the records at no charge. (Effective July 1, 2012)

Please contact our office if you have questions regarding this information.

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concern. The final report summarizes the results of the investigation and identifies the steps taken by the facility to protect the resident and includes a conclusion by the facility indicating the allegation of abuse/neglect/theft was substantiated or not substantiated.

For those in skilled nursing facilities that are sending allegation of abuse/neglect reports (both initial reports and final reports), continue to follow the process as required by CMS. If you send in your initial report by using the online form submission process, you do not need to fax or mail the same report.

This also applies for the final report. Choose a method to submit your initial report and within 5 days choose a method to submit your final report. Do not send the same report twice. An original signature is not required, so your faxed or emailed report is sufficient.

If you have questions regarding this information or would like more help with investigating potential abuse allegations, please contact the North Dakota Department of Health, Division of Health Facilities.



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