

Time For A Check-Up On Social Media Practices

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Perhaps there is no profession that has been more affected by social media than health care. Long term and post-acute care (LT/PAC) providers often pose these recurring questions: What is social media? Why should our facility use social media? Can the facility restrict the use of social media? Why do I need a social media policy?

Chances are that employees are already using social media, and it is possible that it could be hurting the facility. Likewise, if the facility is not taking advantage of social media, it could be missing a valuable marketing opportunity.

There are many implications affiliated with social media in LT/PAC facilities. Social media substantially impacts employee rights and relations, including privacy via the Health Insurance Portability and Accountability Act (HIPAA), free speech, and issues related to the National Labor Relations Board (NLRB). Moreover, social media and a facility's social media policies (or lack thereof) can have longstanding impacts on the reputation of the facility.

Below are the answers to some of the most common questions of LT/PAC providers with regard to social media.

What is social media?

Social media is not made up of any one website or online media. Social media broadly describes an electronic means of social networking through the exchange of ideas and information.

Some of the more popular social networking websites include Facebook, LinkedIn, Twitter, YouTube, Instagram, and Snapchat. This is not just a fad that will disappear in months or years. Social media is pervasive in society and constantly evolving.

Are there any benefits of social media for a company?

The benefits from social media are endless. It can result in increased website traffic, enhanced brand recognition, and an excellent marketing opportunity. The exposure is far greater than more traditional means of marketing and can vastly improve a facility's visibility in the broader health care marketplace.

As an added benefit, there is little to no expense to use social media, although it can be time-consuming. Social media can not only broadcast the many attributes of the facility to current and prospective residents, but also is often used as a tool to attract qualified candidates for employment.

Why is a social media policy necessary for LT/PAC providers?

Social media policies are legally necessary to outline the permitted versus prohibited use of social media for employees. Health care providers have heightened privacy concerns as a result of the nature of the business, as well as state and federal laws.

For example, HIPAA contains the well-known "privacy rule" that prohibits health care providers from disclosing protected health care information, regardless of the medium that is used to share the information. Social media policies should summarize the facility's position on social media use and define what is considered confidential and proprietary information. These policies can also limit the use of company equipment and networks for purposes of social media usage.

Is it possible to prevent employees from using social media to talk about the company?

No. Prohibiting employees from posting information related to work and working conditions is unlawful. Employees are afforded protection to discuss disputes with their employers. Blanket restrictions from using social media are unlawful. A policy that prohibited employees from using social

media “with employer resources and/or company time” was recently struck down since employees have the right to do so during break times and in non-work areas. However, a social media policy may restrict an employee from speaking on behalf of an employer or discussing certain private information.

What restrictions can an employer place on an employee's use of social media?

An employer can lawfully restrict employees from using social media during actual work time and in work areas. In addition, employers can restrict employees from disclosing confidential and proprietary information, provided that the restriction is not overly vague.

Confidentiality provisions are essential to a well-drafted social media policy, specifically outlining what is to be characterized as confidential or HIPAA-protected information. An effective social media policy should have a provision prohibiting posts that are harassing, discriminatory, or retaliatory toward colleagues, vendors, and clients.

Specificity with regard to this conduct is essential to effective enforcement. Such prohibitions are enforceable even if the posts are made outside of work.

Can a facility require that employees turn over their user name and password for their social media accounts?

Generally, no. Many states have enacted legislation prohibiting employers from requesting usernames and passwords from employee and prospective employees' private social media accounts. Violations may result in fines, damages, and attorneys' fees for a successful employee/prospective employee. The laws also preclude employers from retaliating against employees who refuse to provide usernames and passwords. Even if a facility's jurisdiction does not have a specific law prohibiting these requests, it is likely that such requests would be tested on the grounds of free speech and unlawful NLRB restrictions.

What other provisions as to how employees interact with each other can be included?

Requiring or prohibiting employees from “friending” colleagues is not permissible. Policies requiring that co-workers interact with each other in a certain manner are closely scrutinized and are prohibited to the extent that they stifle an employee's ability to complain about the employer. Recent decisions have even struck down provisions requiring employees to be cordial and respectful of their colleagues.

It is recommended that within the social media policy is a provision that addresses the use of cellphones and digital and audio recording devices. Without the express consent of a resident or responsible party, the policy should restrict the employee's ability to record or photograph residents.

Can a company restrict who has the ability to post on social media websites on behalf of the company?

Generally, the answer is yes. Employers can limit or specify which employees can post on behalf of the company. It is important for owners and administrators to monitor the content that is posted on behalf of the facility. If an employee with access to social media profiles for the company is terminated, be careful. Change social media passwords and monitor the accounts closely.

Can the facility limit the use of social media by residents and family members?

The relationship between a facility and the resident is governed by an admission agreement. In large part, facilities have freedom to contract with residents, so long as it does not run afoul of other statutes and regulations.

LT/PAC facilities can place certain limitations on a resident's or family member's ability to use social media. In some circumstances, a facility can restrict the resident or family member of a resident from using social media to broadcast certain information, particularly if it is confidential. Certainly, false statements about the facility may be defamatory and to the extent that they are false, are unlawful.

Moreover, a facility may be able to restrict the use of audio and video recording devices, particularly as it relates to the recording of other residents.

Respecting Ground Rules

While a facility cannot restrict employees from being on social media, there are ground rules that a company can include in a social media policy to protect the facility.

The social media policy should be included in the company's updated employee handbook. Likewise, the facility's admission agreement should outline permitted uses of social media for residents and/or family members of residents.

Social media is here to stay and often evolves more rapidly than employment policies. As a result, LT/PAC providers must be vigilant not only in monitoring employee/resident use of social media, but also in updating the policies used to be current with the law and to enforce perceived violations.

Click [here](#) to read the article on the Provider Magazine website.