

Minimizing Legal Risks Of Social Media And Technology

Have your employees mentioned a resident by name or posted a photograph of a resident on their Facebook or MySpace page? Does your community have an employee policy addressing cell phone or other hand-held devices in your community or while driving your residents?

If you don't know the answer or aren't sure, it's time to review and revise employee and resident policies to cover social media Web sites and other advancements in technology.

Without policies and procedures addressing social media websites, cell phones, hand-held devices, the Internet, or e-mail, assisted living communities are vulnerable to litigation, regulatory penalties, and harm to their reputations.

"It's time to review them because of the widespread use of cell phones with cameras, social media, and other wireless devices to make sure current policies cover these new mediums," says Brian Purtell, executive director of the Wisconsin Center for Assisted Living and an attorney. He recently hosted an NCAL webinar titled, "Minimizing the Legal Risks of Social Media and Technology in Assisted Living."

During the webinar, he cited incidents already reported to the Wisconsin Department of Health, which

included residents in health care facilities being photographed while going to the bathroom or a combative resident taking a shower. One employee's boyfriend started an online



Brian Purtell

smear campaign against another employee. And everybody's read about the dangers of texting or talking on the phone while driving. But, if your community doesn't expressly prohibit using devices while driving and the community van ends up in an accident, the community will have minimal legal protection, Purtell said.

Administrators and operators should assume that their staff are using social media websites, such as Facebook, MySpace, Twitter, and YouTube. Policies can't prohibit employee use of these sites; however, the policy should prohibit staff from mentioning residents' names, posting resident photographs, or discussing any information that would be resident-identifiable.

"The simple rule to use for employees is, 'Do not discuss any work-related matters online, especially resident information of any kind,'" Purtell says. Employees should also be prohibited from posting photographs, video, or audio recordings of residents on social media websites. Before developing the policies, Pur-

tell recommends providers become familiar with social media websites and how they operate.

The assisted living community should consider developing a social media policy. AHCA/NCAL has a policy that can be used as a template. In general, all policies, terms, and conditions of the association's employee handbook apply to the employees' activities online. In addition, the policy states that only "staff authorized to do so" can speak on the association's behalf. An assisted living community should consider adopting a similar policy because it helps the community manage its online reputation.

In addition, Purtell recommends adopting specific policies addressing the appropriate and inappropriate use and possession of cell phones, cameras, or personal hand-held devices while on duty. Given that these present distractions from work as well as opportunities for privacy/confidentiality violations, he suggests policies that prohibit possession of such devices unless specifically authorized by management.

Some positions may require possession as part of their job, and certain exceptions, for example, when a relative is sick and needs immediate contact with the employee, may allow for an employee to have such devices while on the clock; however, in most instances, your staff should have no need to even have these on their person while their attention should be to the community and residents.

Once the policies have been revised, the community should educate

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the staff about the new rules through inservices.

Another aspect of technology is that more communities, vendors, and medical offices are using e-mail or the Internet for payments or the transfers of resident health information. Purtell recommends assisted living providers conduct analysis to determine if the assisted living company qualifies as a "covered entity" under the Health Information Portability and Accountability Act.

"A lot of assisted living companies may not have been considered a covered entity in 2003" when the regulations began to be issued, Purtell says. "But a lot has changed in seven years, and ALF providers may now fall within the definition of 'health care provider'. The recent passage of the Health Information Technology

for Economic and Clinical Health in the American Recovery and Reinvestment Act, which includes additional expectations and enhanced penalties for violation, increases the need for ALF providers to review their status under these laws."

In addition to employee policies, reviewing and revising resident and family policies should also be considered. A resident or visitor Internet usage policy should consider access controls, network security, and the community's technological capacity issues. The policy should make a distinction on whether the community provides the access or the resident provided access. If residents have webcams, the resident policy can explain the privacy and confidentiality rules that protect other residents and staff members and encourage resi-

dents not to capture fellow residents or employees on these cameras.

"Technology offers its advantages such as improved productivity efficiencies and enhanced communication for staff, residents, and families, but not without added risks," says Purtell. "Developing policies can help communities minimize those liabilities." ♦

For more information:

- Visit NCAL.org, click on "Events," then "Webinars" to replay "Minimizing The Legal Risks Of Social Media And Technology In Assisted Living." Download PowerPoint to obtain the customizable inservice for your community
- Visit AHCA/NCAL's social media Web page: AHCANCAL.org/News/Pages/SocialMedia.aspx.

Occupancy

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inventory had grown 11,826 units during the previous four quarters, while the number of occupied units during that time was 6,108 units.

"We've seen a general theme develop over the past few years," says Michael Hargrave, NIC MAP vice president. "There's been erratic absorption over the last four quarters, and inventory growth has outpaced demand, but overall absorption has developed a marginally positive trend."

During first quarter 2010, rent growth was positive, but the pace was slow. The average monthly rent per unit for assisted living was \$3,528, up 1.4 percent on a year-over-year basis.

"Although rent growth has slowed, it has continued to remain positive," says Hargrave. "This is in sharp contrast to what we have seen in other forms of commercial real estate, and it indicates that seniors housing continues to grow and perform as a real estate asset class."

For more information, visit NICMAP.org. ♦

Parkinson's Specialty Care

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This requires heavy case management performed by RNs," she says.

RNs perform case management for each resident and oversee the LPN and home health aides at each home. At each PSC site, there is one awake, night staff person present. One activities director visits every site and plans outings that are both recreational and therapeutic.

PSC's activities director oversees the exercise, voice, speech, and movement regimens. Artistic expression is important. Drawing and painting are activities that help residents improve their outlook.

"Music is especially helpful because when the brain processes music there is synchronization between rhythm and step frequency, helping us to manage gait patterns," Dooner says.

"This is a sustainable business model. There is a pervasive need in the community to care for these individuals as well as other opportunities for specialized care. Providers should not be afraid of providing niche services," she says. ♦