

Report on Medicare Compliance Volume 30, Number 6. February 15, 2021 Magnified by COVID-19, Social Media Posts Risk HIPAA Violations, Allegations of Abuse

By Nina Youngstrom

In a tweet that went viral, an emergency room physician complained about a patient with COVID-19 who had Thanksgiving dinner with 22 family members. The doctor posted that the patient told her everyone at the gathering had “developed symptoms, some severe.” There was backlash against the physician on Twitter from other physicians and others for shaming her patient, and the event wound up in newspapers.

“It’s really important to educate employees and contractors about what is and isn’t OK,” said Margaret Scavotto, president of Management Performance Associates in Saint Louis, who told the story of the now-deleted tweet. “We see a lot of health care professionals with a lot of followers, and they are in a unique position working on the front line of COVID-19, but we have to be careful.”

The use of social media has implications for HIPAA and, in the case of nursing homes, could potentially result in allegations of patient abuse, Scavotto said at a webinar sponsored by her company.^[1] There’s also the risk of reputational harm. “I am seeing organizations using social media more” during the pandemic, she said. Hospitals and other covered entities are connecting with patients and families and providing information on COVID-19. But some employees may use social media sites, including Facebook, Twitter and TikTok, to share patient stories or vent about a range of things, including personal protective equipment (PPE). Their words and/or videos could violate HIPAA or social media policies.

Before covered entities post patient photos or any other protected health information (PHI), they must get a written authorization from the patient. The privacy rule is very specific about what must be included in the authorization. For example, the authorization must describe the PHI that will be used and disclosed and the person to whom the disclosure may be made. That’s different than a consent and liability waiver, which states something to the effect of, “I, John Smith, consent to Happy Holiday Nursing Home taking my picture and posting it to Facebook. I release Happy Holiday Nursing home from any liability involving said picture or posting”—and isn’t adequate for HIPAA compliance, Scavotto noted.

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