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DQA Memo 16-004

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[Home Health Agencies](#)
[Hospices](#)
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[Nurse Aide Training Programs](#)
[Nursing Homes](#)
[Residential Care Apartment Complexes](#)

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**Guidance Reminder Regarding Handheld Devices
and the Potential Misuse of Such Devices**

This memorandum provides guidance to healthcare facilities and nurse aide training programs (further referred to as entities) on the fast-changing landscape of the internet and the misuse of handheld devices as a communication tool for social media such as Facebook, Twitter, Instagram, YouTube, LinkedIn, and Snapchat. Wireless handheld devices such as cameras on cell phones, PDAs, and laptops provide instant access to the internet and allow information to be transmitted electronically or maintained in another form or medium.

Background

Social media platforms such as Facebook, Twitter, Instagram, YouTube, LinkedIn and Snapchat enable people to communicate easily via the internet and to instantly share information and resources. Problems arise when handheld devices are used to share information, personal photographs, or videos of residents/patients/clients that may violate resident rights, HIPAA violations and may constitute Caregiver Misconduct. Social media content, including personal or private information can be rapidly disseminated and readily accessed by others including unintended recipients. One new outlet that is growing in popularity is **Snapchat.com** which is a photo messaging application that allows a person to snap a photo or a video, add a caption, and send to a friend. Photos appear for a few seconds and then

disappear with no lasting record. Inappropriate use of handheld devices in healthcare settings is growing nationwide.

Resident and Patient Rights

Wisconsin state statutes and administrative rules for regulated healthcare providers consistently address resident and patient rights to privacy in care, treatment and accommodations. All entities have an obligation to protect the rights of their residents/patients/clients. In addition to Department sanctions, the failure to protect a resident or patient's privacy and confidential information could also form the basis for civil or criminal liability.

HIPAA Protections

If an entity is a "covered entity" under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, the entity has a duty to protect Individually Identifiable Health Information. Covered entities that violate HIPAA can face significant penalties, including fines and/or imprisonment for knowingly misusing Individually Identifiable Health Information. Please note that the Division of Quality Assurance (DQA) does not enforce HIPAA; HIPAA is under the jurisdiction of the federal Office of Civil Rights (OCR). However, Wisconsin statutes and administrative rules include privacy protection requirements that must be followed by licensed providers.

Caregiver Misconduct Issues

Along with resident rights violations and possible HIPAA violations, the misuse of handheld devices including distribution of photos and videos may also constitute caregiver misconduct.

The Office of Caregiver Quality (OCQ) has primary responsibility for receiving, screening, and investigating allegations of caregiver misconduct and maintaining the Wisconsin Caregiver Misconduct Registry. Since 2009 the OCQ has seen an increase in the number of caregiver misconduct issues related to the increased use of wireless handheld devices such as cameras on cell phones, PDAs, and laptops. OCQ continues to receive reports of misconduct involving handheld devices and has substantiated several instances of caregiver misconduct related to the misuse of handheld devices.

A review conducted by Pro Publica (Policing Patient Privacy) revealed 35 cases since 2012 in which nursing home or assisted living workers surreptitiously shared photos or videos of residents on social media. At least 16 cases involved Snapchat.

Entity Responsibility

To protect the safety of residents/patients/clients, it is recommended that entities adopt a written policy that defines the accepted appropriate use and the unaccepted inappropriate use of personal handheld devices in that entity's healthcare setting. This policy may be included as part of the entity's human resource policy and procedure manual and may incorporate the following:

- That personal devices are never to be used to record images of residents/patients/or clients. If such images are needed for purposes of care or training, they should be obtained by authorized persons only and use only the equipment specified in the policy.

- Indicate that any authorized photographs or images are the sole property of the entity and that the distribution of these photographs or other images to any person outside the entity's setting without written authorization for a permissible use is prohibited.
- Define the areas of the entity and the circumstances in which personal cell phone and other wireless handheld devices may be used, i.e. on breaks or lunch in the break room or outside, etc. Specify the consequences for failure to abide by the entity's policy.
- Inform residents/patients/clients (or designated responsible agent) and family/visitors about privacy considerations and the use of personal cameras, cell phones and wireless handheld devices.
- Ensure that all staff, contract/pool agency staff, students and volunteers are aware of and trained on the entity's written policy on the use of personal cell phone and other wireless handheld devices.

Entities are strongly encouraged to regularly review and update policies and handbooks to assure that they are reflective of current (and future) technologies in order to assure resident/patient/client protection and privacy. Policies currently in place may not be reflective of the current usage/availability of cell phones/cameras. Consideration should also include that the use of personal devices can cause disruption and distraction to the caregiving process, aside from the privacy considerations.

Articles and Resources

Pro Publica Article: Nursing Home Workers Share Explicit Photos of Residents on Snapchat
https://www.propublica.org/article/nursing-home-workers-share-explicit-photos-of-residents-on-snapchat?utm_campaign=sprout&utm_medium=social&utm_source=twitter&utm_content=1450706926

Social Media and Health Care Professionals: Benefits, Risks, and Best Practices Article:
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4103576/>

For information regarding HIPAA requirements, please see the US Department of Health and Human Services website at <http://www.hhs.gov/hipaa/index.html>.

If you have questions regarding Caregiver Misconduct issues, contact the OCQ at DHSCaregiverIntake@wisconsin.gov or (608) 261-8319