

Nursing Homes and Social Media Related HIPAA Violations on Congressional Radar

Last Friday, U.S. Senator Thomas R. Carper sent a Letter to the U.S. Department of Health and Human Services, Office for Civil Rights ("OCR") asking what OCR is doing to address incidents of nursing home employees posting inappropriate photos or videos of residents on social media. The letter cited a recent investigation by ProPublica that identified 35 incidents, across 19 states, in which nursing home employees shared photos of residents on social media, some of whom were not fully clothed or were suffering from dementia. According to the ProPublica report, as of December 2015, OCR had not taken any corrective actions against nursing homes for violations related to social media.

In his letter, Senator Carper asked OCR to report back by March 18 regarding:

- the number of complaints received by OCR related to social media use at nursing homes;
- whether any civil monetary penalties have resulted from such complaints;
- whether there have been any compliance reviews of nursing homes related to the use of social media;
- whether OCR plans on issuing guidance to nursing homes on the use of social media;
- the requirements of nursing homes to address or report potential HIPAA violations, including those related to social media; and
- the number of breaches reported to OCR with respect to social media at nursing homes.

In addition, Senator Carper asked whether OCR has had any discussions with the Centers of Medicare and Medicaid Services related to the use of social media in nursing homes, including any discussions in connection with the proposed rule *Reform of Requirements for Long-Term Care Facilities*.

This development underscores the need for long term skilled nursing facilities to ensure the effectiveness of their current HIPAA compliance program. Facilities would be well-advised to consider taking the following immediate action steps:

- Review HR policies related to the use of social media, including any related disciplinary policies.
- Review and update training materials as necessary to address the use of social

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media.

- Consider options for raising awareness (g., postings on bulletin board, staff meetings, etc.) of the importance of resident privacy and the prohibition of posting resident information or photos on social media sites.

Reinhart's Health Care team is available to assist you in reviewing your social media policies and procedures, and addressing other issues related to social media. Please feel free to contact Heather Fields or Nicole Dermer, or any member of Reinhart's Health Care team, or your Reinhart attorney to discuss any questions or concerns related to your skilled nursing facility.

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