

Solutions for Risk Management

Issues directly or indirectly affecting the senior living industry can change overnight. *Solutions for Risk Management* provides the latest news, updates, trends and risk management tips.

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The Texting Debate: Friend or Foe?

Text messaging is fast becoming the preferred form of physician communication. But, is it safe? Long-term care providers have embraced the use of text messaging for physician communication. However, the use of unsecured text messaging methods are inconsistent with HIPAA standards that address privacy, confidentiality, and availability of medical records.

According to a 2014 survey regarding physician's work-related texting habits (Kuhlmann, et al.), the following was revealed:

- ◆ 60% sent and 61% received work-related text messages
- ◆ 12% sent and received work-related text messages more than ten times per shift
- ◆ 53% texted about work-related matters while not on duty
- ◆ 46% reported having concerns about privacy standards with texting
- ◆ 30% have received protected health information in a text message
- ◆ Only 11% said their organization offers a secure texting solution



The use of text messaging presents several types of risk to your organization. The short message service (SMS) is the most commonly used text-messaging platform. It does not encrypt text messages, thus making them vulnerable to interception from the moment you hit "send." Text messages that have been sent may also remain on your telecommunication provider's server for an indefinite amount of time, thereby placing the messages at risk for hacking or theft. While use of third-party messaging applications may provide some level of security, these applications also store data and have various levels of security and/or encryption built into the application itself, which can present a risk for unauthorized access and/or hacking.

One of the most common means of text messaging is the use of personal "smart phones." According to a 2017 survey conducted by the Institute for Safe Medication Practices (ISMP), 69% of participants reported that the facility allows use of standard cell phones for text messaging, while 42% indicated that standard cell phones were the only device from which texted orders had been received in the prior year. These types of devices have varying levels of security that may or may not include the use of a password. The recipient of the text message is limited in their ability to verify the identity of the sender. Knowing who is on the other end of the message is critically important when it comes to the healthcare of our residents and patients.

Text messaging also creates significant clinical concerns related to resident safety. The ISMP identified the following as significant clinical risks related to text message communications:

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1. Unintended phone and device auto correction leading to incorrect entries and resulting in clinically significant errors and/or a delay in treatment if orders must be clarified
2. Use of potentially confusing abbreviated text terminology (i.e., “BTW” vs. “BID”)
3. Potential for patient misidentification due to use of alternate identification methods rather than two specific resident identifiers (i.e., use of resident initials or room number in lieu of name and birthdate),
4. Misspelling of the resident’s name or drugs and doses
5. Incomplete orders
6. Failure to retain and document the text message in retrievable format
7. Distractions while texting from incoming calls, texts, and/or notifications
8. Lack of automated prescriber clinical decision support while texting medication orders (i.e., automated controls on dose ranges, drug interactions, allergies, etc.)
9. Delay in receipt, transcription, or carrying out of texted orders
10. Duplicate therapy



The Health Insurance Portability and Accountability Act (“HIPAA”) regulations establish requirements for protecting patient identifiable health information covering privacy, security and breach notification rules. HIPAA places the burden on covered entities and their business associates to implement or address a long list of required and “addressable” safeguards in determining how protected health information (PHI) will be created, stored, and transmitted.

While HIPPA does not specifically prohibit the use of devices, including text messaging communication systems, it does identify certain conditions pertaining to electronic healthcare communication. The HIPPA Security Rule requires that covered entities and their business associates implement appropriate technical security measures to protect against unauthorized access to PHI that is transmitted or stored over electronic communication networks in order to reduce the threat for unauthorized access and potential disclosure to unauthorized persons.

So, how can you ensure that your text messaging system meets HIPPA requirements?

1. Review your HIPPA Security Risk analysis to ensure that potential risks and vulnerabilities have been identified.
 - a. [Click here for an available resource.](#)
2. Review your HIPPA policy and procedure to ensure that the use of text messaging is addressed.
 - a. Preservation of text messages that contain PHI used in making medical decisions about residents should be addressed in the HIPPA policy and procedure.
3. Conduct staff training on the facility’s HIPPA policy and procedures for team members authorized to utilize text messaging as a means of physician communication.
4. Utilize end-to-end encryption systems. TigerText and WhatsApp are two examples.
 - a. End-to-end encryption is considered the gold standard.
 - b. Both the sender and the recipient must use the same end-to-end encryption system.
5. Ensure that text message communications are documented in the medical record by the person sending the message and receiving the response.

Resources:

- “Secure Messaging in Nursing Facility Patient Care: HIPPA Challenges, Survey Scrutiny, and Possible Solutions.” C. Mortier, Esq Shareholder Mellette PC Williamsburg, Virginia. nathan@mellettepc.com.
- “ISMP Survey Shows Provider Text Messaging Often Runs Afoul of Patient Safety.” ISMP, November 16, 2017. [Available here](#). Retrieved 3/31/2019.
- “Developing a mobile health app? Find out which federal laws you need to follow”. Federal Trade Commission. [Available here](#). Retrieved 3/31/2019.

How Well Are You Prepared for the Next Emergency?

Merriam-Webster defines an emergency as “an unforeseen combination of circumstances or the resulting state that calls for immediate action.”

Unfortunately, emergencies happen frequently in senior living health care facilities.

- ◆ They may be a singular resident event or may involve multiple residents.
- ◆ They may be man-made or a natural disaster.
- ◆ They may affect just the facility or it may affect the entire community.



In any case, senior living health care facilities are required to have policies and procedures in place that focus on managing disruptive events, i.e., active shooter, cardiac arrest, destructive behavior, elopement, hurricanes, tornados, fires, earthquakes, power outages, and any other disruptive events unique to the facility. Each potential emergency should have a policy statement indicating the facility’s desired outcome. The procedure should include systematic directions on what needs completed in order to achieve the desired outcome. The purpose of healthcare policy and procedures is to communicate to employees the desired outcomes of the organization and help them understand their roles and responsibilities. Policies and procedures need reviewed and revised periodically in order to ensure consistency with current standards of practice.

The facility should have a staff education program related to each type of emergency. Provide these educations upon hire, annually and at periodic intervals throughout the year, as necessary. To ensure staff competency, rehearse anticipated emergency scenarios on various shifts at various times. Drills and exercise are an opportunity to provide additional training, reduce confusion, and verify the adequacy of emergency response activities and equipment. With each drill, evaluate the staff performance and implement appropriate education or corrective actions as needed.

Remember, practice makes perfect! Therefore, the more a facility practices, the better their chance at doing it correctly when a real emergency arises.

Video Retention Policies in Long-Term Care

Video retention has become a hot topic in litigation. Without a written and executed Video Retention Policy, a facility is at risk for a “spoliation of evidence” claim should a lawsuit be filed by a visitor or resident. If you do not presently have a Video Retention Policy, below are our recommended best practices for your consideration.

- ◆ **Follow** your specific Video Retention Policy. Educate staff and assign a responsible party(ies) to retain video for the length of time addressed in your policy. Federal HIPAA laws address privacy and security, but they do not set record retention periods.
- ◆ **Retain** video capturing any event that may become a general or professional liability claim. Keep the original video, or make a copy of the video, to prevent accidental destruction. Examples of scenarios of which to permanently* retain video include the following:
 - A resident falls in the hallway and sustains a fracture
 - A visitor falls in the parking lot
 - A resident-to-resident assault with injury at the nurses’ station
- ◆ **Refuse** a family’s request to view your video surveillance. It is a HIPAA violation to share video that captures other residents’ activities. Refuse to provide video to a plaintiff attorney. Plaintiff attorneys can issue a Request for Records in which they request copies of any existing video. The video is not part of a resident’s record and should not be released to a plaintiff attorney. Only your defense attorney may release a video, most likely during litigation or to support your defense.



*Video of an event that you can reasonably predict a claim may arise from should be retained until the statute of limitations has expired. Contact AssuredPartners for your state’s specific statutes.

Strengthening your community’s establishment through the application of “follow, retain and refuse” will protect your business

Could This Be Your Facility?

The facility failed to initiate CPR for one resident who was found unresponsive, and without a pulse, respiration or blood pressure. The facility had this resident identified as a Full Code status. Life-threatening harm and death occurred when the resident did not receive ventilation along with chest compressions from staff. The LPN followed advanced directives of another resident whose do not resuscitate (DNR) advance directive was mistakenly put into this resident's chart. This action resulted in Immediate Jeopardy for the resident who had expired.

Alternatively, perhaps this one is your facility?

Immediate Jeopardy began when a resident was found unresponsive, and without a pulse, respiration, or blood pressure. Two RNs had initiated CPR compressions but failed to initiate ventilation because there was no Ambu bag on the crash cart. Eight minutes later, the emergency squad arrived and took over CPR. The hospital notified the facility that the resident had expired.

If you answered no, lucky you!

If you answered yes or maybe, following the guidelines below will put you in a better position to answer no the next time.

- Ensure licensed nursing staff are current with CPR certification.
- Train all licensed nurses regarding the facility's CPR policy and procedure.
- Train all licensed nursing staff about the location of a resident's code status in the medical record.
- Evaluate the current admission and discharge processes to identify if resident care needs can be provided not only for new admissions but also for those currently in the community. During the admission process, challenge your thoughts on the ability to provide the necessary care and services, as well as the family dynamics of future residents. Many times, the health of a current resident declines and the existing environment is no longer safe or care needs exceed the ability to provide quality care. How has your community planned to address discharge to a more appropriate setting?
- Ensure the medical record is maintained in the correct location and contains the accurate documentation related to code status.
- Train all staff on the location of the emergency cart.
- Ensure the emergency cart is equipped with all necessary supplies and equipment is operational at all times.

Remember, routine audits and exercises provide an opportunity to evaluate the facility's preparedness and ability to appropriately perform CPR when the need arises.



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