Nursing & Assisted Living Facility *Professional*

"NEWS AND VIEWS YOU CAN REALLY USE"

JUNE 2019
ISSUE 6, VOLUME 9

SENT EACH MONTH TO YOU AS A MEMBER OF THE HEALTHCARE HEROES

THE ADELMAN ADVANTAGE

by Rebecca Adelman

HIPAA Compliant Text Messaging – Best Practices and Policies

Use of text messages or short message service (SMS) has significantly increased as a communication tool in the health care environment. Health care providers are communicating by text with patients and with other health care providers. It is a fast, convenient way to communicate and collaborate. With the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act enforcement environment, it is important to be aware of the risks associated with texting and to develop the proper use of safeguards and policies to mitigate adverse legal consequences.

What Are the Compliance Regulations?

The HIPAA Security Rule requires organizations to address text messages as part of their comprehensive risk analysis and management strategy. Based on the risk analysis, the organization must determine the appropriate administrative, physical and technical controls to mitigate the risks of sending Electronic Protected Health Information (ePHI) via text messaging.

In order to determine the technical security measures necessary to comply with this standard, covered entities must review the current methods used to transmit ePHI. The covered entity must then identify the available and appropriate means to protect ePHI as it is transmitted, select appropriate solutions and document its decisions. The Security Rule allows for ePHI to be sent over an open, electronic network as long as it is adequately protected.

Another area of compliance impacted by texting is the HITECH requirements for breach notification. The HIPAA Final Rule states that "breach" is defined as the acquisition, access, use or disclosure of PHI in a manner not permitted by the HIPAA Privacy Rule which compromises the security or privacy of such information. Devices used for texting, such as smartphones and tablets, may be lost or stolen, so the importance of ensuring HITECH compliance in the event of a breach is an area that must be reviewed in the context of text messages that may reside on the compromised device.

What Are the Risks?

- Security: Texting medical orders may violate HIPAA if the system does not restrict access, protect its integrity and prevent unauthorized access to protected health information (PHI). Most text messaging systems do not include measures such as encrypting, sender/receiver authentication and are stored in unsecure servers. If a phone is lost or stolen, a password is decoded or the text is accidentally forwarded to a personal contact, PHI may be exposed.
- Sender and receiver authentication: Text messages do not allow the recipient to verify the identity of the person sending the text which could lead to fraudulent orders. In addition, if the sender mistypes the receiver's phone number, there is no way to verify the intended recipient or confirm that the message was received. If cellular service is not available, the message may not transmit.
- Documentation: There is no mechanism to store the original message to validate what should be transcribed into the medical record.
- Order clarity and completeness:
    - Abbreviations and acronyms are often used in text messages which can lead to miscommunication of orders;
    - Free texting and lack of drop-down menus can result in misspelling the drug or patient name leading to the wrong drug dispensed or wrong patient name entered;
    - Autocorrection on cell phones may result in incorrect entries;
    - Voice recognition technology may cause transcription errors in the text message.
- No clinical decision support: Orders that are sent via text message bypass the clinical decision support and alerts provided by computerized prescriber order entry (CPOE) systems which often take into consideration the

Continued on page 2

The Adelman Advantage continued from page 1

patient's current medications, medical conditions, age, weight and allergies. Many CPOE systems also provide prompts to prevent incomplete orders from being entered.

- Transcription errors: Texted orders must be transcribed manually by nurses or pharmacists into the patient's electronic medical record which increases the risk of errors. In addition, a delay in order transcription could result in a delay in patient care.

- Distractions from incoming texts or phone calls: Cell phones constantly receive simultaneous messages at once from multiple sources such as calls, texts, social media notifications, emails and other alerts which can be very distracting when attempting to compose a medical order via text.

What Are Some Best Practices?

Consider the following best practices to have in place before allowing text messages to be sent or received by providers who work in your organization:

- Ensure all mobile devices are secure: The first priority must be to ensure the security of every device used to send and receive mobile text messages that contain PHI. Identify all the mobile devices that providers are using within the organization and how you are keeping track of them. Your health care organization should have a policy that either forbids the use of personal mobile devices for work-related reasons or which requires those mobile devices to be securely encrypted by your facility prior to being used for text messaging. Mobile encryption software is critical to reduce the risks associated with sending text messages on mobile devices, particularly when it comes to preventing unauthorized users from accessing a patient's health care or financial information.

- Establish texting policies: In addition to encryption standards, it's important to set guidelines for the type of health care information that may be shared via secure text message, who should send and receive such texts, and on which mobile devices.

- Educate staff about your texting policies: Because violations of secure text message policies or the inability to put the safeguards in place can compromise patient safety, it is important that all health care staff involved with sending or receiving text messages be trained on texting policies, the types of content used in text messages and how to ensure that text messages containing health care information are sent securely.

- Use a third-party, HIPAA-proof, secure texting solution: Engage secure text messaging applications and technology that enables secure, encrypted communication between doctors, nurses and other health care providers. It should connect your organization with health care workers inside and outside of your facility – even if they aren't part of your organization.

- Establish a policy on whether to allow providers to text patients: Patients are unlikely to have encrypted mobile devices, so a text sent to a patient may not be secure based on the patient leaving the mobile device unattended. As a result, the text message could be viewed by someone other than the recipient, and the provider might unwittingly compromise the patient's privacy.

- Communicate your policy to patients: Whether or not patient communication is part of your texting policy, be sure to inform patients about how their health care information will be used. The texting policy can be part of the HIPAA acknowledgment that patients sign, and it is also the chance to let patients know that the health care provider takes patient security seriously and that only secure, encrypted text messages will be sent.

- Ownership of messages: It's important to make clear that all messages transmitted by employees of your health care organization are the property of your organization and not of the individual providers who are sending receiving the messages.

- Segregate health care texting from personal texting: In health care environments, it can be a critical problem. Anyone can pick up a nurse's phone and read his personal text messages. Healthcare-related text messages and communications have to be kept separate from personal messages.

- Require special authorization and authentication for accessing messages: There's no use keeping health care and personal messages in different places unless the health care messages are secured with strong authentication requirements. Users should be enrolled in their organization's secure text messaging service through a personal invitation process, and their access to messages should be password-protected. These measures ensure that messages are read by the people they are sent to: not their friends, kids or colleagues. This is a key element of HIPAA's Security Rule.

(See DrFirst for more information)

What Does Your Policy Say?

The below are proposed policy considerations for text messaging. (See the CIO's Guide to HIPAA Compliant Text Messaging).

Policy: Text Messaging

The scope of an effective policy pertaining to the use of text messaging must apply to the organization in its entirety, including all employees, physicians and affiliates. In addition, some third parties, including contractors and vendors, may be required to abide by parts of the policy if required by the organization through a Business Associate Agreement (BAA). Further, the policy must apply to the network, systems and applications that process, store or transmit ePHI or other sensitive information.

Continued on page 4

Getting on the Same Page by Paige Hector, LMSW

Simple Principles of Data Analysis: The Foundation of a Successful QAPI Program

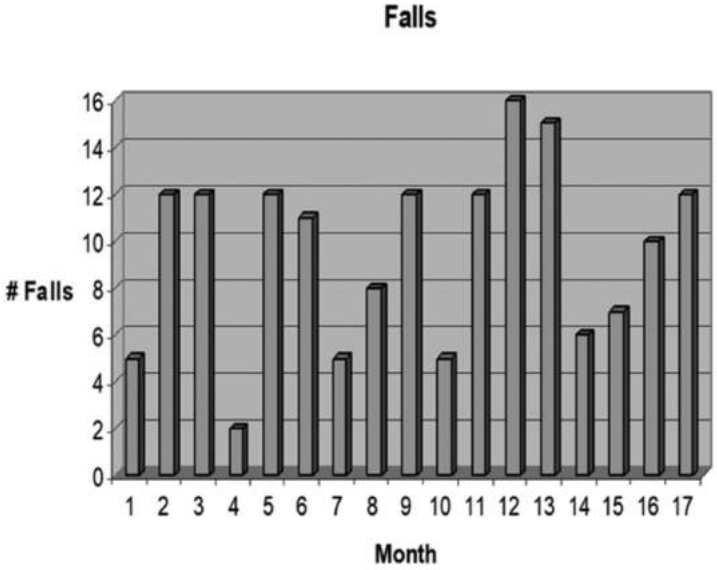
In April, I introduced the concept of statistical theory (think *improvement* statistics) as the basis for sustainable improvement. This month, I'll take us a step further and demonstrate simple principles of data analysis using a real facility example with falls. In fact, this entire summer will be dedicated to data and improvement. Refer again to the new regulation F866 QAPI/QAA Data Collection and Data Monitoring. That entire section of the regulations, 483.75 Quality Assurance and Performance Improvement, emphasizes key components such as program feedback, data systems, data driven, data collection, data analysis, the use of measurements to determine whether interventions are successful, the use of data to identify high risk/volume opportunities for improvement with emphasis on medical errors, adverse events and near misses. Phew!

Here's the tricky part – most of us were never taught how to do any of those things, ***to correctly do those things***. I'm going to be honest here and cross my fingers that readers will be open to this difficult truth. What we learned is what the person that had the job before us used to do or we've done our level best to wrangle data and cobble together something that gives the appearance of improvement. Take a moment and breathe. I'll do the same as that was tough to write. All of us want to provide wonderful care and to improve the systems in our facilities. That's why we're in this business! Along with the passion to serve and to provide wonderful care, the desire to improve must be grounded in statistical theory. That is the only way we can be successful with improving care (most important), and, with these new regulations.

I'm going to ask you to think differently, and then consider different action using the data in your facility. I don't know who to attribute this quotation to but it's apropos, "Unlearning is far more difficult – and painful – than learning." Accepting new information is tough enough but discarding incorrect information or ways of doing things may be even more difficult. That void needs to be filled with correct information and new actions, not harmless little decisions as Jim Verzino cautions when he says, "Nobody plans for poor quality management solutions. But over time, harmless little decisions can derail a quality management system…In the end, nobody plans to have poor quality or environmental performance. It sneaks up on us…[as] the sum of so many bad decisions."

Let's begin with what most staff are doing incorrectly with their data. They use bar charts. If not a bar chart, it's another incorrect data display such as a pie chart, a "trend" analysis, or a traffic light chart with red/yellow/green designations indicating arbitrary cut-offs for "good" numbers and "bad" numbers.

Imagine being in a QAPI meeting and you're presented with a bar graph of falls like the one below. Naturally, your eyes are drawn to the months that "stand out," those with a higher (or lower) number of falls. Leadership might express frustration at the number and ask staff why the number is "so high." There might even be a directive to "fix it" or "get the number down because that's too many falls."



The problem, *one of many*, of focusing on a few data points in a bar graph is that staff incorrectly pick out one or two or perhaps three data points rather than looking at the entire picture, that is, 17 months' worth of falls for a total of 162 falls.

If leadership wants a different number, a different outcome, consider this question, "What ACTION can you take on this data?" In other words, what can staff do differently to affect a desired change? The answer, NONE. There is no appropriate action that can be taken from looking at data in an incorrect graphical display and using opinion-based improvement ideas. It does not mean that the outcome, falls in this example, can't be reduced, but it's going to require a much different approach, an approach guided by improvement theory.

Do not compare two or three numbers and ask staff to explain higher or lower data points. Instead, ask a better question that recognizes the underlying process that contributes to the data points. "*What did you do differently (to the process)?*" That question is simple but profound. It demonstrates understanding of process-oriented thinking and the importance of focusing on the process that led to the outcome (the data point) rather than just the outcome itself.

Think of it like this: Are we simply trying to reduce/increase the

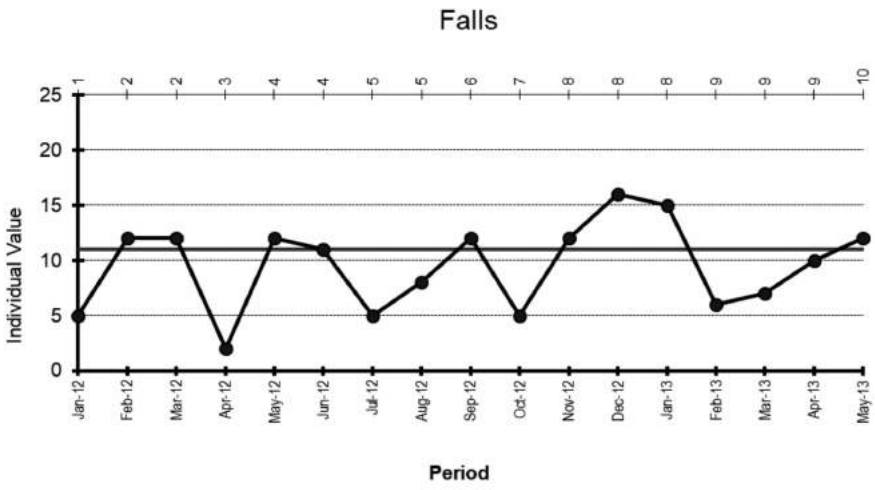
Continued on page 4

Getting on the Same Page continued from page 3

number of [*metric*] or, are we trying to improve the process that produced the [*metric*] in the first place? For example, studying the number of falls each month only tells us how many falls there were. But, studying the PROCESS of defining, assessing, monitoring, intervening, reassessing and communicating falls tells us about the processes that allow the falls to happen and ultimately, to help reduce the outcome, the number of falls. *If you want to improve the outcome, focus on the process.* To read more about processes, refer to my July 2016 article in NAL, https://extendedcareproducts.com/displaypdf.php?r=27.

Let's return to the falls example and present the data correctly in a run chart. A run chart is the most important initial analysis of a set of data. The. Most. Important. A run chart is defined as a simple, time-ordered plot of a set of data in its naturally occurring time order with the median drawn in as a reference line (Balestracci).

Convert the data into a run chart where the metric being measured is plotted on the Y axis (vertical) and time is plotted on the x axis (horizontal).



The purpose of the run chart is to determine if there is more than one process acting on the data. If there is only one process (which is usually the case and is called "common cause variation"), there are specific improvement actions to take. In the event there is *more than one process* (known as "special cause variation", and is rarely the case), there is a different set of actions to take. For both types of variation, the subsequent actions are based in statistical theory, not someone's opinion of what the numbers mean or what to do for improvement.

Just in case you're not sure about the median, the median is the middle number where half the data points are above, and half are below. The median is not the average. This is a very important point when it comes to creating a run chart. The purpose of the median allows us to apply a simple test (the "clump of 8" or "Eight-in-a-row" rule) to determine if there is special cause variation acting on the process. (This test will be explained in the July article.)

The run chart is a very powerful tool from which we can correctly analyze a set of data. We'll springboard from the run chart in subsequent articles. In the meantime, begin incorporating process-oriented questions into your work and engage in productive dialogue based on a strong foundation of improvement statistics:

- What did you do differently (*with the process*)? (Instead of "Why is this number different?")
- Are we trying to improve the process that produced the outcome or just trying to reduce/ increase the outcome?
- What action can we take based on this data?

In light of the falls data and the question of taking action, the answer is still none, *yet*. But that's going to change soon. There are two simple tests to determine if there is a different process acting on the data: 1) Proper identification of a trend, and 2) A "clump of 8" or the "Eight-in-a-row" rule. Next month, I'll write about those two tests and set us all straight on the correct statistical definition of a trend. Never again will you use that term incorrectly! Stay tuned…

Contact Paige at 520-955-3387 or at paige@paigeahead.com
Discover more about her at www.paigeahead.com

The Adelman Advantage continued from page 2

A policy for secure text messaging should include the following key statements, which establish the minimal requirements for the organization:

- Text messages are electronic communications sent with a mobile device or computer system. Text messages can transmit photos, videos and written word formats of communication. If the content of such a message contains ePHI, then the text message must comply with HIPAA requirements.
- All text messages containing ePHI must be sent in a secure, encrypted and approved format.

Policy Statement:

Users should not send text messages containing ePHI unless the text message is encrypted both in transit and at rest using an appropriate application. Additionally:

- The text message must be communicated from the sending device, through the mobile provider or a software application to the recipient's device in an encrypted manner.
- The encrypted text message should not be decrypted and stored on the cellular provider's systems in ways that can be accessed by unauthorized personnel.

Continued on page 6

Broad River Rehab, "*A **knowledgeable** and **compassionate** Partner*"

RAI Manual Updated - Are You Ready?

By: Joel VanEaton, BSN, RN, RAC-CT MT VP of Compliance and Regulatory Affairs

CMS has updated the RAI Manual. It is available for review at https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/nursinghomequalityinits/mds30raimanual.html in the related links section at the bottom of the page. It is time to access this manual and familiarize yourself with the changes. That will be effective on October 1st.

As you may be aware, there were very little additions/revisions to the PDPM in the proposed rule that was issued by CMS in April. It is anticipated that there will be no surprises in the final rule to be issues late in July. A thorough review of the SNF FY 2020 Proposed Rule may be found at https://www.broadriverrehab.com/blog/2019/4/29/0aswmzj084r3j2u2w3vxhqs6iwncvp

Therefore, other than a few items, like the revised definition of group therapy that will need to be finalized, the revised RAI Manual that CMS posted in May is basically the Manual that will be effective on October 1st.

Her is a breakdown of the areas where revisions have been made; Chapter 1, Chapter 2, Chapter 3 Section A, C, D, GG, I, J, K, M, O, V, X, and Z, Chapter 4, Chapter 5, Chapter 6, Appendix A, Appendix B, Appendix C, Appendix G and Appendix H.

Note that in the change documents, CMS has stated the following with regard to Chapters 2 and 6, *"This chapter has been extensively revised for this year's manual. Due to the scope of the revisions, individual changes have not been recorded and tracked in this Change Table. Users are encouraged to review the chapter in its entirety."*

Note also that the MDS 3.0 version 1.17.1is also available for review. It is now available in the RAI Manual file located at the above URL. This document also includes change table to help readers understand the changes that have been made to the data set.

While most of the revisions have been made to accommodate the PDPM, A thorough review of the newly available documents should be made in order to be ready for any and all expectations that will occur this fall.

BRR | BROAD RIVER REHAB

Please Note: I will be hosting a 60-minute webinar entitled "The Final Countdown" on Tuesday, August 13th, in association with Extended Care Products. There will be two times to choose from. Here I'll be covering all of the above information in greater detail PLUS I will have a thorough review of the SNF FY 2020 Final Rule, which will be out from CMS by this time. PLUS, with PDPM implementation drawing near, I will also have all of the updated information, direction and guidance you must have to be ready to go for this fall's PDPM rollout.

Those registering will receive 1.25 hours of CEU credit for attending. Please go to

WebinarLTC.com

to discover more and to register. You may also call 800-807-4553 for more information and to register as well.

The Adelman Advantage continued from page 4

- If an employee wishes to send ePHI via text message to another employee, both the sender(s) and the receiver(s) must fulfil both the encryption requirements for the message in transit and at rest.
- All users who wish to send or receive text messages containing ePHI must ensure that the IT-approved secure text application is approved by the IT department for such purpose. Specific requirements include:
    - The employee must submit their mobile device number with the help desk or the IT department to ensure that proper inventory is maintained of all mobile devices sending or receiving ePHI.
    - Mobile devices used to text ePHI must be properly sanitized upon retirement of the device. The IT department must securely wipe all mobile devices when they are returned. If an employee is using a personal device, they must contact the IT department to securely wipe the device prior to returning it to their cellular provider.

An effective policy for the use of secure text messaging should mandate that the following safeguards be implemented by employees sending and/or receiving messages:

- The mobile device or secure texting application must be password protected; this feature must never be disabled.
- The mobile device must be configured to lock automatically after a period of inactivity (not to exceed 5 minutes).
- All text messages containing ePHI should be limited to the minimum information necessary for the permitted purpose. Multiple identifying factors (e.g., full name, date of birth, medical record number, social security number or condition specific information) should not be used.

The following seven guidelines must be followed when texting PHI. Ensure the accuracy of the information being texted by administering the following precautions:

- Confirm the recipient of your text
- Confirm delivery and receipt of the text. A confirmation receipt that the information was received is ideal
- Do not use shorthand or abbreviations
- Review texts prior to sending to ensure accuracy. Beware of autocorrect functions
- Do not text patient orders
- ALL text messages (or annotations of text messages) that are used for clinical- decision making are documented in the medical record
- Delete all texts containing ePHI as soon as the information is no longer readily needed

Other policy statements to consider and adopt based on your organization's compliance mandates, include:

- Report all unencrypted text messages that are received or sent out that contain any ePHI immediately to the HIPAA Security Officer or the IT Department all text messages that are sent to the wrong intended individual to the HIPAA Security Officer or the IT Department
- Every policy and procedure revision/replacement will be maintained for a minimum of six years from the date of its creation or when it was last in effect, whichever is later
- Log-in audit information and logs relevant to security incidents must be retained for six years

Are You Ready?

There are clear roadmaps now for your organization to adopt texting policies and be in compliance with the application regulations. There are a multitude of potential benefits from a comprehensive messaging system and many companies that can assist with implementing a system with proper safeguards. With proper education and training, text messaging can provide access to health care and streamline the patient care process among other advantages. If you'd like guidance, please give me a call and meet with your organization and IT department to discuss the next steps to take to implement a messaging system.

NOTE: Please consider attending and/or sponsoring the 2019 Annual Conference of the American Assisted Living Nurses Association (AALNA). The event is July 18-19, 2019 in Milwaukee, Wisconsin. I have been blessed to serve as the legal advisor for many years and experience the AALNA optimize its goal to promote safe, effective and dignified nursing practice in assisted living. With more than one million older adults residing in assisted living communities and given the actual and potential increase in the nature and intensity of their health and personal care needs, the demand for licensed nurses in this domain is making assisted living one of the fastest growing segments in the nursing spectrum. Please visit www.alnursing.org for more information.

Rebecca Adelman is an entrepreneur, influencer, thought leader and founder of Adelman Law Firm, a Women's Business Enterprise National Council (WBENC) certified Women Business Enterprise (WBE) established in 2001. For nearly 30 years, Rebecca has concentrated her practice in insurance defense and business litigation. The firm's practice extends through the Tri-States of Arkansas, Mississippi and Tennessee. Rebecca's insurance defense practice includes representation of insurance companies and long-term care providers and their insurers, both regionally and nationally. She also provides consulting services and educational programming to healthcare professionals and business associates. She has active practices in the areas of general liability, professional liability, premises, and employment law. She is a listed mediator serving all areas of business and healthcare litigation. Contact Rebecca at rebecca@adelmanfirm.com and visit www.adelmanfirm.com and www.rebeccaadelman.com.

KESSLER'S CORNER

by Chip Kessler

The *Desire to Discover the Difference Between "Marketing vs. Census Building"*

There is the painter who will come to give your walls a new look, and then there's the painter who creates something special on a piece of canvas. Both are noble professions and take a certain amount of skill to do well. However the person who creates life on canvas is also referred to as an "artist" while the individual who spruces up your walls is always going to be called … a painter.

So it is with "the art" of attracting new residents and families into your nursing or assisted living facility. You can look at this as just "census building" and do the best you and your fellow staff members can at keeping your beds filled, or you can approach the task as something which requires much thought, planning and action! I find that the facilities which usually are running at or near capacity take the latter approach and look at how to really market their buildings.

Accordingly, and for our purposes here because I also place you into this second category, I want to give you some goals to strive for in the "marketing" of your healthcare venue:

Get People Thinking Positively and Talking Enthusiastically about Your Facility: Some call this "top of mind awareness" and it's something you very much want to have in your region and community. Here, folks automatically want to use your care and services when the need arises. It's not left up to a hospital discharge planner or the local physician to make the decision; it's the family and/or resident demanding to go to your building. Think about this for a moment … when's the last time you had a person "demand" to use or come to you? Hopefully it happens often, however, whether it does on a regular basis or just once and a while, you want to strive to make it more the norm than the exception! You achieve this in a number of ways a) positive stories in local media b) outstanding word-of-mouth reputation c) being front and center in community events d) letting key referral sources know about the positive things taking place inside your facility so they too are talking you up and in effect "selling your services" e) establishing powerful relationships with local clergy and religious leaders f) positioning your key staff members as the "healthcare experts" and g) providing outstanding customer service to everyone who enters your facility. Do all of the aforementioned traits well and your facility reaps the rewards!

Get Folks on Your Grounds and in Your Building Before a Caregiving Need Comes Up: Let's face it … no one gets up in the morning and says *"I want to go live in a nursing home"* or *"there's nothing I'd like better than to go reside in an assisted living facility!"* Folks go to stay at your venue because there's a need. You want to demonstrate that you can fill this need in a competent and professional manner. And the best way to accomplish this is to make your case before-hand, when the audience is in a relaxed state-of-mind. This is achieved when people visit your facility for a purpose other than a caregiving need or crisis. Example: you hold a Summertime Open House in Your Building (maybe where you're located it's been a very cold winter and you just want to celebrate the season within your community). You invite the general public through a series of advertisements, and feature musical entertainment, food, etc. The staff is front and center chatting with folks in a friendly, professional manner and the administrator/executive director and the director of nursing is showing the guests around the facility giving tours. Everyone is having a good time. Your guests aren't there all stressed out because Mom's being admitted, rather it's a party. Here you have the golden opportunity to get the point across in an effective yet subtle manner that <u>your building</u> is the place to come when the need arises.

Educate The General Public about Who and What You Are: It's sad but true: many people have negative impressions about nursing facilities and assisted living communities, despite the fact that they've never been in one! It's because all they've heard or seen or read about these healthcare options (in general) has been negative stories on television, radio and the newspapers. There's a case of alleged negligence- it's leading the 6 p.m. TV news; a facility's sued for $10 million- the newspaper's all over it; a fire breaks out and residents are forced to flee- radio has it on every hour. Yes these things happen; however in far less proportion than the general public's led to believe. As a result, it's up to you and your fellow staff members to carry forth your story. Indeed the local media can be an ally here as I've already brought up. Yet the local TV station (more than likely) isn't going to be calling you asking if you have a nice feature story they can come out and film … rather you have to take the initiative. This dovetails back to my earlier point of having folks thinking and talking positively about your building. Just remember that this isn't going to take place unless you make it happen! You must sing your own praises as often as you can.

As always, I'm standing by to be of personal assistance on this month's topic, or any of your marketing and customer service challenge. I'll wind it up here by saying successful leaders understand that they must encourage their key staff to be real marketers to drive people through your doors. Let your competition focus on census building while your facility steps into the forefront with real marketing!

Contact Chip at 800-807-4553 or at chip@ecpnews.net to discover more about his personal consultation program for nursing and assisted living facilities. You may also discover more at ExtendedCareProducts.com

NAL Professional Not Coming Addressed to You Personally?

We want to make sure you are personally getting this newsletter each month, not just have it forwarded to you because you're now holding down the position of a predecessor! Let us know you now are on the job. E-mail your name, facility/company name and address to chip@ecpnews.net & we'll update our records. Just put NAL Professional on the e-mail subject line and we'll take care of the rest.

NAL PROFESSIONAL
P.O. Box 4852
Johnson City, TN 37604

PRSRT STD
US POSTAGE
PAID
MWI