

CLIENT ALERTS

CMS Bans Texting of Patient Orders!

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In a Letter to State Surveyors, the Centers for Medicare & Medicaid Services (“CMS”) has clarified its position on texting patient information, and more notably Orders, among members of a patient’s care team. In a nutshell: Don’t Do It!

In its December 28, 2017 Memo regarding Texting of Patient Information among Healthcare Providers, CMS recognizes the benefits and long standing practice of texting patient information among members of a patient’s healthcare team, but explains that it is only permissible if performed through a **secure, encrypted** platform in accordance with HIPAA privacy and security regulations. CMS expects that providers and organizations that utilize secure, encrypted texting systems will implement procedures for regularly assessing the security of the system.

However, CMS also indicates that, as it concerns Orders from a provider to a member of the care team, texting is **never** permissible, encrypted or otherwise, as the Conditions of Participation and Conditions for Coverage mandate that Orders be dated, timed, **authenticated and promptly placed** in the medical record. See 42 CFR 482.24(b).[1] According to CMS, the best (and preferred) practice for entering orders is through Computerized Provider Order Entry (CPOE), which ensure immediate and authenticated entry into the electronic health record.

While the texting prohibition has not yet been addressed in the Interpretative Guidelines,[2] Interpretive Guideline A-0454 concerning section 482.24(c)(2) provides slight guidance on the “promptly” directive, noting that it is to be “performed readily or immediately” so that all members of the patient’s care team have access to it. The use of texting for Orders does not meet either the requirements for authentication or prompt placement, at a minimum.

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Healthcare providers and entities must take steps to educate staff about the problems associated with texting generally, and texting Orders specifically. While CMS recognizes texting is commonplace, it does not mean it can be condoned. If not already in place, hospitals and entities that are subject to certification surveys should take steps to eradicate these standard practices through policy changes and education.

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[1] In its Memo, CMS incorrectly cites to 42 CFR 489.24(b).

[2] CMS State Operations Manual (SOM), Appendix A, available at: https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_a_hospitals.pdf.