TEXTING CONSIDERATIONS

County of San Diego – Health and Human Services

Business Assurance and Compliance

May 2025

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Disclaimer

This slide deck is provided as an aide to help you manage your agency's privacy and security requirements. It remains the responsibility of your agency to ensure your program is aware of and compliant with all of the applicable laws, rules, regulations, and contractual requirements of your agency. This training should not be construed as legal advice.

Texting

Defining the use case

- Texting between staff about clients
- Automated appointment reminders
- 'Warm' texts to existing clients who have requested texts
- Replying to a text from a client who hasn't signed the form
- 'Cold' texts to potential or current clients initiated by staff

Texting

Texting between staff

- Secure texting application
- De-identified data
- No PHI may be SMS texted between staff

Texting

Automated appointment reminders via text

- Notice of Privacy Practices

- Opt-in on intake paperwork

- Updated phone numbers

- Content of message:
  - Avoid clinic or practice names that infer treatment type
  - Be as generic as possible

Texting

Texting clients with their permission: guidance from OCR-HIPAA

- SMS texting is bad because not encrypted

- Communicate with clients in the manner they request

- Unencrypted email guidance:
  - The "Privacy Rule does not prohibit the use of unencrypted e-mail for treatment-related communications between health care providers and patients" OCR-HIPAA FAQ 12/15/2008
  - "We clarify that covered entities are permitted to send individuals unencrypted emails if they have advised the individual of the risk, and the individual still prefers the unencrypted email…. If individuals are notified of the risks and still prefer unencrypted email, the individual has the right to receive protected health information in that way, and covered entities are not responsible for unauthorized access of protected health information while in transmission to the individual based on the individual's request. Further, covered entities are not responsible for safeguarding information once delivered to the individual." 78 Fed Reg 5634

- SMS texting is same as unencrypted email
  - Roger Severino, Director of OCR – HIMSS 2018

Texting

Texting clients with their permission: considerations

- Client population and propensity to text
- Unsecured versus secure texting
- BYOD policies
- Texting limits
  - Urgent and complicated issues
  - Appointments via text
- Staff education re: how text differs from other communications
- Billing and claims

Texting

Texting clients with their permission: risks

- Decision to send unsecured PHI

- Verifying identity of client

- Accidental texting of PHI

- Disregard of text limits/boundaries
    - Clinical issues, staff burnout

Texting

Texting clients with their permission: policies

- Addressing texting at intake

- Expectation setting
  - Time of day and time to respond
  - Open case/closed case
  - Conversation limits

- Client texting request form

- Documentation of text messages

Texting

Replying to a text from a client who hasn't signed the form

- "Patients may initiate communications with a provider using e-mail. If this situation occurs, the health care provider can assume (unless the patient has explicitly stated otherwise) that e-mail communications are acceptable to the individual. If the provider feels the patient may not be aware of the possible risks of using unencrypted e-mail, or has concerns about potential liability, the provider can alert the patient of those risks, and let the patient decide whether to continue e-mail communications." OCR-HIPAA FAQ 12/15/2008

- Obtain client acknowledgment via text that they understand risk of SMS texting in lieu of form?

- Boundaries discussion?

- Call back?

- Often depends on content of text and relationship with client

Texting

Cold texting

- Avoid inclusion of PHI
  - Must consider content of message combines with identifiers such as phone number
  - Staff signatures
- Specific scripts
- Splitting of messages over time
- Risks to public health and health of client versus risk of PHI

Texting

More questions? Ask us!

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