

## CMS SAYS DON'T TEXT PATIENT ORDERS

### FOULSTON SIEFKIN HEALTHCARE ISSUE ALERT

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On December 28, 2017, the Centers for Medicare & Medicaid Services (“CMS”) clarified its position on texting patient information from healthcare provider to provider. In its Memorandum to State Survey Agency Directors (S&C 18-10-ALL), CMS warned all texting of patient orders is prohibited, regardless of whether a secure platform is used to relay the orders, and texting of other patient information is permitted if relayed via a secure platform.

#### **Texting of Orders is Prohibited**

CMS clarified that texting patient orders is prohibited regardless of the platform used. CMS believes this practice is not in compliance with the Conditions of Participation (“CoPs”) or Conditions for Coverage (“CfCs”) requirements for the form, content, and retention of medical records. See 42 C.F.R. 489.24(b). According to CMS, Computerized Provider Order Entry (“CPOE”) is the preferred method of order entry. Orders entered via CPOE, with an immediate download into the provider’s electronic health records (“EHR”), are permitted because the orders are dated, timed, authenticated, and promptly placed in the medical record.

#### **Texting Patient Information is Permitted if Secure**

However, CMS explained that members of the healthcare team are allowed to text patient information through a secure platform. In so doing, CMS recognized that texting “has become an essential and valuable means of communication among the team members.” Providers must use messaging platforms that are “secure, encrypted, and minimize the risks to patient privacy and confidentiality” in order to maintain compliance with the HIPAA regulations.

The full text of CMS’ memorandum can be found at: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-18-10.pdf>. This Memorandum is limited to healthcare provider to provider texting communications. It does not alter a patient’s right under the HIPAA regulations to request his/her provider communicate with him/her in an unsecure manner.

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