

NEWS ALERT**HEALTH CARE****CMS Clarifies that Texting of Orders is Not Permitted**

By Stephanie S. Sobkowiak, Dena M. Castricone and Daniel J. Kagan | January 3, 2018

On December 28, 2017, the Centers for Medicare and Medicaid Services (CMS) issued a [Survey and Certification Memorandum](#) (S&C Memo) to clarify CMS' position that it prohibits physicians and health care providers from texting orders. CMS states that texting orders is out of compliance with the Medicare Conditions of Participation (CoPs) and the Conditions for Coverage (CfCs), specifically as such conditions relate to the requirements of a medical record. While the subject line of the S&C Memo relates to all health care providers, CMS appears to rely only on the hospital CoPs to enforce this prohibition on texting orders. However, it is likely that CMS will extend this guidance to other provider types. Additionally, this S&C Memo is in line with the [Joint Commission's recommendations](#) from December of 2016, developed in collaboration with CMS. These recommendations state that providers should not text orders but instead should continue to utilize computerized provider order entry, also known as CPOE, for all physician and other health care practitioner orders.

While CMS does not permit texting orders, it does recognize the essential and valuable use of other forms of texting between health care providers in the S&C Memo. With respect to these other forms of texting, CMS emphasizes that in order to be compliant with the CoPs and CfCs, providers must utilize and maintain secured text messaging platforms that encrypt data and minimize the risks to patients' privacy of their protected health information under HIPAA. This means that providers currently using secured text messaging platforms should continue to monitor and assess the platforms' accessibility, security and integrity.

If you have any questions regarding secured text messaging or any other health law topic, please contact Stephanie, Dena, Dan or another member of our Health Care Practice Group.

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