

ISSUE ALERTS



CMS SAYS DON'T TEXT PATIENT ORDERS

FOULSTON SIEFKIN HEALTHCARE ISSUE ALERT

January 2, 2018

By: Brooke Bennett Aziere and Amanda M. Wilwert

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.

For More Information

Foulston Siefkin's health care lawyers maintain a high level of expertise regarding federal and state regulations affecting the health care industry. The firm devotes significant resources to ensure our attorneys remain up-to-date on daily developments. At the same time, the relationship of our health care law practice group with Foulston Siefkin's other practice groups, including the taxation, general business, labor and employment, and commercial litigation groups, enhances our ability to consider all of the legal ramifications of any situation or strategy. For additional information on this topic contact **Brooke Bennett Aziere** at 316.291.9768 or baziere@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

Established in 1919, Foulston Siefkin is the largest law firm in Kansas. With offices in Wichita, Kansas City, and Topeka, Foulston Siefkin provides a full range of legal services to clients in the areas of Administrative & Regulatory, Agribusiness, Antitrust & Trade Regulation, Appellate Law, Banking & Financial Services, Construction, Creditors' Rights & Bankruptcy, E-Commerce, Education & Public Entity, Elder Law, Emerging Small Business, Employee Benefits & ERISA, Employment & Labor, Energy, Environmental, Estate Planning & Probate, Family Business Enterprise, Franchise, General Business, Government Investigations & White Collar Defense, Health Care, Immigration, Insurance Defense Litigation, Insurance Regulatory, Intellectual Property, Litigation & Disputes, Mediation/Dispute Resolution, Mergers & Acquisitions, Native American Law, OSHA, Public Policy and Government Relations, Product Liability, Professional Malpractice, Real Estate, Securities, Supply Chain Management, Tax Exempt Organizations, Taxation, Water Rights, and Workers Compensation. This document has been prepared by Foulston Siefkin for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.

PRACTICE AREAS

- Healthcare