

Become a Text Compliance Guru (HIPAA & TCPA)

Smartphones!!

Most of us (72%) are hanging out on our smartphones. Three out of four Americans now own a smartphone and 79% read email on their smartphone. Almost everyone (97%) uses their smartphone to text. It only makes sense that today's patients want to use their smartphones to communicate with healthcare providers. Recent studies have found

that 60% of patients want text reminders. What's more, seven out of ten patients say they want to use text for communication beyond simple reminders as well. It's not just millennials. Almost half of baby boomers also prefer text messages. Leveraging text to communicate with young and old alike is a huge opportunity for healthcare providers.

However, it does come with some challenges, namely compliance. At this point, most practices are familiar with how regulations may impact phone calls with patients. However, the same practices may not be aware of digital communication regulations with those same patients.



Patient Communication has changed. Patients rarely answer the phone or listen to voicemails and they almost never read emails! The way you manage the patient relationship is completely different than it used to be. Traditional means of communication are often seen as annoying and invasive by today's patients. On top of that they are ineffective and don't support your goal of Patient Engagement.

Believe it or not, 90% of people no longer answer their phone and 50% of adults admit to not checking their voicemail. Given the changes in patient communication preferences it's critical that today's Healthcare Providers change the way they communicate as well.

So if patients aren't answering their phones, what ARE they doing?

Staying Compliant

Compliance can be scary! We see stories almost daily about data breaches or similar lapses in data security. Sensitive information needs to be kept private, confidential and secure. It's important that we have regulations in place to keep patient information confidential.

Fortunately, you can use text to communicate with patients and build a thriving practice. You simply need to understand how to communicate and still stay within the boundaries of the law. Let's have a look at some of the most common regulations and how they apply to using text for patient communication.

HIPAA IN A NUTSHELL

Enacted in 1996, HIPAA stands for the Health Insurance Portability and Accountability Act. HIPAA provides rules around uses and disclosures to keep protected health information (PHI) private. The HIPAA Privacy Rule defines PHI as individually identifiable information transmitted or maintained in any form or medium by a covered entity or a business associate.

HIPAA regulates:

- How and when it's acceptable to disclose PHI
- Ways you are required to protect PHI
- Patient rights to access their own information



Who is impacted by HIPAA?

Both covered entities (healthcare practices) and their business associates are required to follow HIPAA regulations. Business associates are any vendors or contractors that work with your practice. This would include a vendor who assists with patient communications, including text. When creating a relationship with any business associate, practices must obtain written assurances that the business associate will adequately protect and safeguard PHI. This is most often done using a business associate agreement. The amount of PHI provided should be the minimum amount necessary to complete the necessary functions of that business associate. Note: It is the responsibility of the practice to make sure a business associate agreement is completed.

Receiving and communicating via text message

How should you handle a situation where a patient texts you directly with a question related to their health or the care they are receiving? What should you do? Of course, Patients can send you any message containing PHI that they want. It's their information and they have the right to do with it as they please. If you are going to engage with that patient and respond to their inquiry you need to make sure that you're covered. You are not allowed to forward that information or continue an electronic conversation about PHI in an unsecured way.

The best thing to do in a situation like this is to reply with a message requesting the patient's consent to discuss their PHI.

Once the patient gives you permission, you're allowed to communicate with them without concern of violation. HIPAA does require that you make patients aware of the risk of communicating their PHI via an unsecured channel and to obtain their consent prior to doing so. If the patient is not comfortable discussing their PHI over text, you should move the conversation to a secure method of communication like a phone call, secure patient portal, or in-office visit. It's important that you make patients aware of unsecured communication and that you receive authorization from a them to discuss PHI on an unsecured channel.



Example:

"Hi Brad. It looks like you'd like to discuss your health in a little more detail. Text is not a secure way to do that. Do you still want to carry on a conversation?"

TCPA

The Telephone Consumer Protection Act (TCPA) is a law originally created to battle telemarketing calls and fax spam. Today, it also includes text messaging. Basically the TCPA says it's unlawful to make a robocall, send

a fax, or text someone in the United States, unless that person gives express consent beforehand. And in the case of marketing messages or calls, the express consent must be in writing. There are a few exceptions to

that law. One of these exceptions applies to healthcare-related messages. More to come on this topic.

What is the Healthcare Message Exemption?

A practice is exempt from the rule requiring them to obtain express written consent if they are communicating a healthcare message to their patient. Basically, if your patient has given you their phone number, you can text them for healthcare related messages. Healthcare-related messages include (among others):

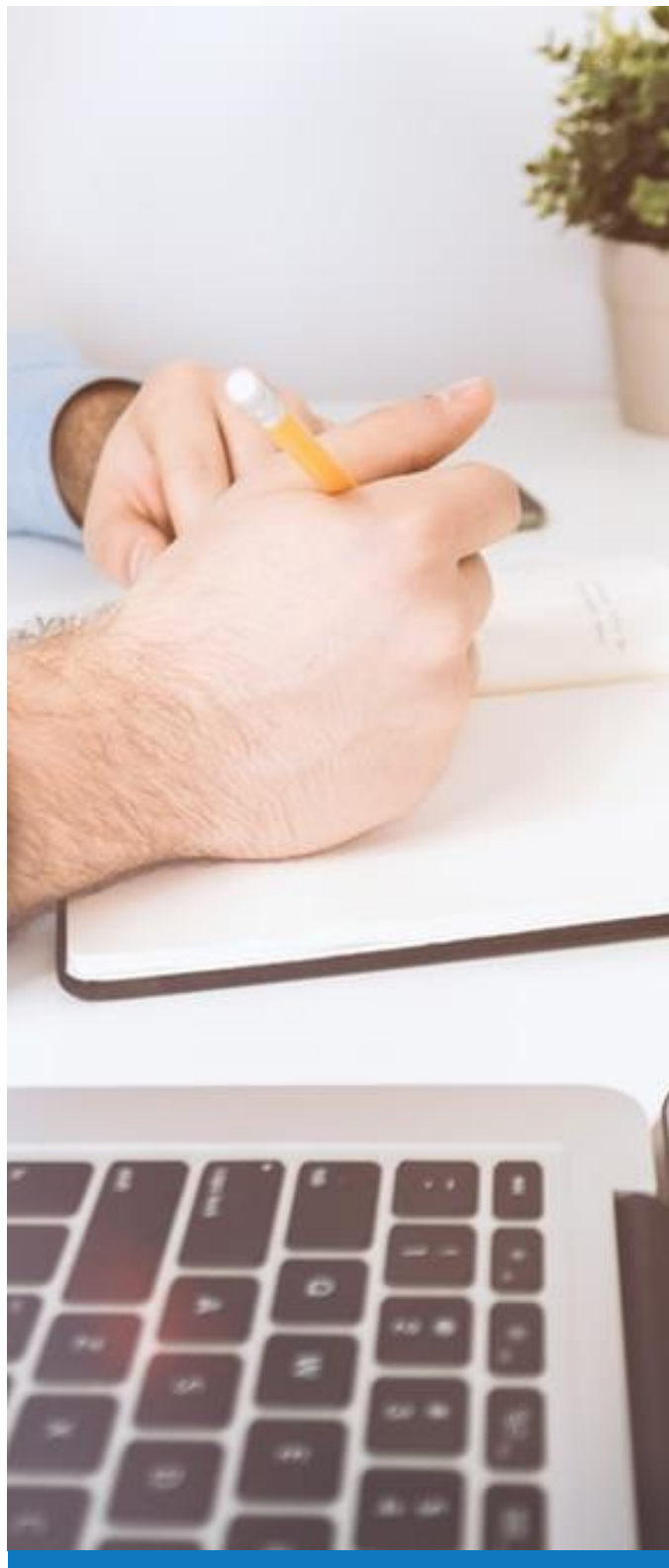
- Appointment reminders
- Confirmation messages
- Wellness checkups
- Post-operative instructions
- Post-discharge information
- Lab results
- Prescriptions notifications
- Home healthcare instruction

IMPORTANT! Marketing messages and certain other types of messages are NOT exempt under the TCPA.

You are required to have express written consent to send the following messages via text message:

1. Advertisements for new services
2. Solicitations to events
3. Special offers
4. Accounting, billing, or collection Messages

If you do not have express written consent to send these messages, you should communicate them in alternative ways. If you want to send out a dual-purpose message that includes both a healthcare AND a marketing message, the message will be held to the higher marketing message standard and will require express written consent.



Always Include an Opt-out Message

Opting out is a very important principle of TCPA compliance. The rules allow anyone to revoke consent at any time and by “any reasonable means”. This means that even if someone has previously given you consent, at any time they can say “stop texting me” or “stop calling me” and you must abide by that. The TCPA also requires that automated marketing messages (like texts) sent to consumers give clear and obvious notice about how to decline to receive future messages. It’s usually best to include “Reply STOP to optout” in all text messages.

Why is all of this important? Well, the TCPA is not just a set of guidelines, it’s a Law with penalties. There is a \$500 per violation penalty, or \$1,500 for knowingly violating TCPA. NOTE: this penalty is actually PER message sent. So if someone sends out 3,000 messages to people who have already opted out, the fee would be \$500 times 3,000 violations. Do the math, as you can see, there are serious consequences for ignoring TCPA.

Two Great Examples of TCPA Compliance, or Not!

Meet Sarah. She’s a new patient at Aligned Medical USA. She completed the “New Patient” forms during her first visit and is ready for her free consultation. Sarah’s “New Patient” forms did NOT include an option to consent to receive text messages. However, Sarah did provide her mobile phone number in the relevant field. After her free consult she decided to schedule an appointment.

Two weeks later, she receives an appointment reminder text message on her phone remind her of the appointment. She never explicitly consented to receive text messages. Is Aligned Health USA being compliant with TCPA?

Because of the healthcare message exemption the answer is YES! The TCPA allows the appointment reminder message to be sent to Sarah without her express written consent. Because she provided her mobile phone number as part of the patient intake

forms she provided implied consent to receive healthcare messages, such as appointment reminders. Aligned Medical USA can send healthcare-related messages to their patients, provided they have not opted out.

Now meet Brad, who works at Aligned Medical USA. They recently began offering a new procedure in the practice and they want to tell of their patients about it. Brad knows that people are most likely to get the message if he sends it through text.

Brad needs to be careful here. Unfortunately, marketing messages (like new product notifications) are NOT covered by the healthcare message exemption. Aligned Medical USA needs to have received the patient’s express written consent before sending marketing messages by text. Once Brad has obtained consent, he is fully able to send marketing text messages to patients.

Final Notes

Below are a few best practices you'll want to keep in mind as you work to keep your practice's text communications compliant with the TCPA:

- Always obtain written consent for text communication.
- Simply ask for written consent in patient forms, intake forms, etc. If you have express written consent, you have nothing to worry about!
- Familiarize yourself with and follow the rules that apply to you.
- It's important to partner with vendors that follow the rules and have incorporated safeguards to help you stay compliant.

Using text to share relevant information with patients can increase their satisfaction and save your office an amazing amount of time. Just remember that it's important to always obtain the correct consent and stay compliant with TCPA!



Text-enable Your Practice Phone

Text-enable your practice phone and create an unfair advantage! The Zingit technology is easy to use and helps clients get the most out of their existing software by automating workflows. Zingit helps clients generate amazing reviews, outrank competition and be found online which results in attracting new patients. Our simple-to-use website plugins help convert those patients into care and keep client schedules full. Patient engagement is all about sending the right message at the right time and in the right way. That's why we use the #1 preferred

method of communication for today's patients, text messaging!

Zingit integrates with most practice management and scheduling software. The result is a level of automation that turbocharges the client's practice, generating results like never before. Our proprietary SMART Campaigns are customizable for every client's unique needs. Providing amazing care is not a one-size-fits-all proposition, and neither is our software. Call us today or visit www.Zingit.com to learn how we can help you scale your practice.