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How Texting Patient Information Can Increase Risk

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In some hospitals, some communications about a patient's health care have moved from the bedside or telephone to the exchange of health care information via text messages. Having ready electronic access to a provider has many virtues, but the exchange of patient information via texting has many risks associated with it. This article will review the potential risks that arise from the use of texting as a means of sharing patient information between health care providers.

Accuracy of Patient Information. High quality decisions about patient care are dependent upon accurate and complete information. Text messaging is designed for quick sharing of small bits of information. Since the number of characters that may be included in a text message are often limited, i.e. 160 characters, the ability to engage in complex decision making discussions, and explore options and alternatives is very limited. When the sender is seeking to shorten the message, critical information or options may be eliminated or there may be confusion about which patient is being discussed in the text message. Providers need to consider when it may be best to place a phone call or meet in person rather than texting so the parties can engage in an in depth discussion of the facts or care options, allowing the participants to hear, clarify, exchange ideas, reflect, contemplate and then make patient care recommendations.

Privacy of Health Care Information. Communication exchanged between a patient and her providers is statutorily protected from compelled disclosure. State and federal laws, including HIPAA, also protect against the disclosure of health care information. Texting patient related information creates a risk of unintended disclosure, especially when the text is unencrypted. The ability to maintain the confidentiality of the text messages and patient privacy is also often dictated by whether the texting is being done on devices whose services are privately purchased by a provider or on a device that is issued by a hospital and/or employer that pays for the services.

Similar issues of security, accessibility, and patient privacy arise when the device is provided by a healthcare employer but used for both professional and personal communication. Unless both sending and receiving devices use the same encryption software ***and*** the wireless service provider has certified that the wireless connection is secure (such as a hospital pager with text capacity used only in the hospital), it may be a HIPAA violation to send a text message that includes protected health information. For example, assume that a healthcare employer has contracted with one of the wireless service providers who advertise "HIPAA compliant" communication devices but the employer texts to a device that is unsecured. Healthcare providers must also be cautious about using the device in public, leaving the device unattended or sharing passwords.

Medical Records. A text message between two providers may allow for the exchange of pertinent patient information that leads to a change in patient care orders or recommended treatment. However, the content of the text and the decision making basis discussed in the text is only shared between the sender and recipient. The text message, in most circumstances is never made a part of the patient's medical record. Just as with phone calls, it is essential to chart the substance of the text messages in the patient record. One risk created by texting is that a record of the content of the communications, or that the communications occurred at all, is not created. If a lawsuit is filed even if the text exchange is accessible, the record is devoid of the content of the text. If the service provider for the privately used phone is no longer in existence, has a records destruction policy or can't be accessed without the device owner's permission, the ability to defend the case may be compromised. Similarly, even a facility that owned the device may have problems accessing the records because of the Stored Communications Act.

When Not At The Bedside. The art of personal communication is comprised of speech, verbal cues and physical surroundings. When a text is sent, the sender is removed from an environment of participatory communication where the listener hears and looks for physical expressions to accompany the words. Since texting is limited in the number of characters that can be used, text messages are often cryptic, include use of incomplete sentences, and contain symbols and abbreviations. If the text message is shown to a jury, the appearance of the message will often not be one of professionalism, but one of hasty, casual, incomplete consultation, and one that may be interpreted as unconcerned, flippant, and/or disrespectful of the patient. Since texting is also a common means of exchanging casual communications with friends and family that include the use of abbreviations such as "LOL", providers need to be reminded that any use of texting in the health care context must NOT include the use of such casual abbreviations, informality and flippancy.

Providers should extend common courtesies to patients, family and other clinicians and avoid sending or reviewing texts while addressing patient care issues with them.

Take Your Criticism Elsewhere. One risk of texting is the removal of the face to face communications or verbal communications when a more professional demeanor can be maintained. When the sender does not have to look the recipient in the eye or does not believe that the message will be seen by others, the risk of exchanging demeaning or disparaging or otherwise inappropriate comments about the sender, the patient or the patient's family increases. Providers need to be reminded that text messages should not contain personal comments or opinions about the quality of care being provided, sentiments about other providers or the patient or patient's family (such as not being available when on call or passing off the tough patients or that the family is too stupid to understand the medical issues).

Policies Governing Texting In Health Care. Employers are encouraged to adopt and implement policies relating to texting. The policy should include guidance on when texting is appropriate, restrictions on disclosure of patient information, requirement of professional standards, a requirement to record the text's contents in the medical record and a statement advising the user that the communications are subject to disclosure and employees/users should not expect privacy in those communications.

Employer Access. One last concern is employer access to the text message sent or received by employees, including health care providers, whether on employer provided devices (particularly in the public sector) or privately owned devices. There are three issues: 1. Can the employer get access to the messages and what is the impact of the Stored Communications Act? 2. Does the employee have a reasonable expectation of privacy in the message? and; 3. Even if he or she does, does the employer have the legal right to access the messages? Risk management policies should also include consideration of the collection and preservation of text messages after a bad outcome to assist in future litigation and preempt spoliation claims. An employer should consult legal counsel to evaluate its access to its employee text messages, the need to audit, scope of the audit and restrictions on the disclosure and use of the text messages.

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