

To: Early Intervention Officials
Interested Parties

From: Bureau of Early Intervention
Early Intervention Program

Issued: December 29, 2020

Subject: Use of Text Messaging in the Early Intervention Program

This purpose of this document is to clarify policies related to the use of text messaging in the Early Intervention Program. Effective immediately, the use of text messaging is limited to administrative activities and is not a separately billable activity.

1. Question: Which federal and State confidentiality regulations pertain to the use of text messaging in the Early Intervention Program (EIP)?

Answer: In accordance with the Individuals with Disabilities Education Act (IDEA) Part C regulations in 34 CFR §§ 303.401—303.417, the Family Education Rights and Privacy Act (FERPA) regulations in 34 CFR §§ 99.30—99.38, and 10 NYCRR § 69-4.17(3)(c), Early Intervention Officials/Designees, early intervention providers, and early intervention service coordinators are responsible for ensuring the confidentiality of all personally identifiable information (PII) contained in all early intervention records, including text messages. The Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules protect the privacy of medical records and other personal information referred to as Protected Health Information (PHI). HIPAA governs medical, not early intervention records and applies only to early intervention billing records.

2. Question: What are the potential confidentiality and security risks of using text messages to communicate PII with families, service providers, service coordinators and others authorized by the parent?

Answer: The use of standard, non-encrypted, non-monitored and non-controlled Short Message Service (SMS) or Instant Messaging (IM) texts to transmit child identifying information is inherently unsecure and therefore, it is possible that the confidentiality of text messages can be breached by a third party. Other risks of text messaging include, but are not limited to, the following:

- Text messages can be accessed without any level of authentication which means that anyone who has access to the mobile device may have access to all text messages on the device without entering a password.
- If careful attention is not paid to the telephone number the text is being sent to, text messages can be sent to an unintended recipient.

- Text messages can be intercepted, altered, forwarded or used without authorization or detection.
- Backup copies of texts can be stored electronically and on paper, even after the sender and/or the recipient has deleted his or her copy.
- Text messages may exist on a mobile device indefinitely, where information can be exposed to unauthorized third parties due to theft or loss of the mobile device, recycling of the device, or improper disposal of the device used to send text messages.
- Text messages may be temporarily maintained on a telecommunications provider's servers while the message awaits delivery to the recipient's device (e.g., if the recipient's device is powered off or out of range). Texts primarily will be transmitted through the wireless cellular networks of telecommunications providers; these providers may have a right to check text messages sent through their systems.

For these and other risks posed by text messaging PII, the Department prohibits text messaging to send or receive personally identifiable data, information, or records, pertaining to EI eligible children and their families. The use of text messaging is limited to *only* administrative activities.

3. Question: What are administrative activities?

Answer: Administrative activities include confirmation and/or cancellation of appointments; notifying the parent of scheduling delays due to weather, etc.; and requesting a return phone call, as long as the text does not contain any personally identifiable information about the child or family (such as the child's name, the names of the child's parents or other family members, and the child's and/or family's address).

4. Question: What if a parent requests that personally identifiable information is texted to their cell phone?

Answer: In this situation, the parent should be informed by the provider, service coordinator, and/or EI agency that while their child is receiving services through the EIP, the EIO/D, service providers, and/or service coordinator will be unable to use text messages to communicate personal information about their child, as the practice of text messaging to transmit PII in the EIP is not allowable.

5. Question: Is texting prohibited even if the parent is willing to sign a specific informed consent for the use of texting to communicate PII information about their child's early intervention services?

Answer: The practice of text messaging to transmit PII in the EIP, is not permitted under any circumstances.

6. Question: Has the Department also revised the guidance on texting as it relates to initial and ongoing service coordination activities that can be billed for reimbursement in the EIP?

Answer: Yes. Effective immediately, texting with parents, providers and other authorized persons related to the child is limited to administrative activities as described above and is not a separately billable service coordination activity under any circumstances. This guidance applies to all early intervention service providers, including service coordinators. Further, it replaces previous billing guidance regarding texting with parents, providers and others involved with the child in the April 2016 *Standards and Procedures for Service Coordination under the Early Intervention Program*, which has been updated to reflect this clarification. Likewise, any other Department guidance which is contrary to the limitations on text messaging as articulated in this guidance document are no longer in effect, to the extent such guidance allows text messaging for non-administrative purposes.

If you have any questions regarding the use of text messaging in the EIP, please contact the Bureau of Early Intervention at (518) 473-7016 or at beipub@health.ny.gov.