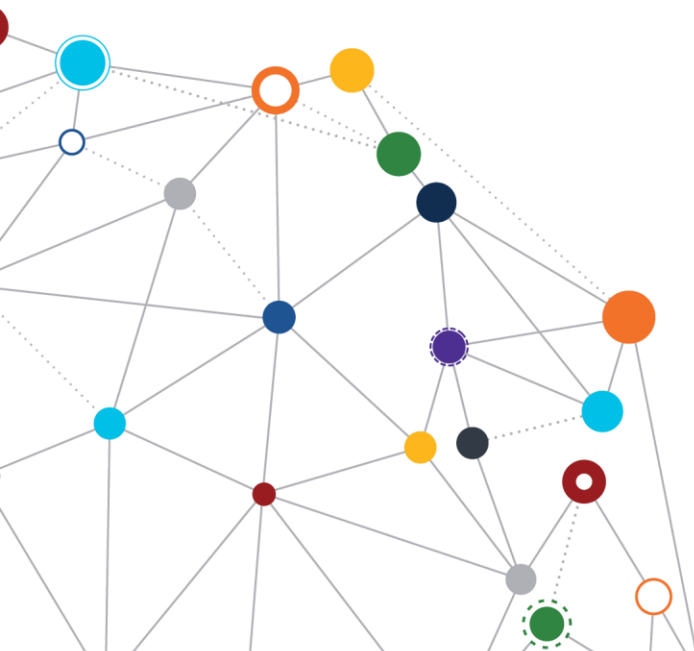




Standard Operating Policy for Delivering Personalized Notifications via Text Messages

For Internal Use Only

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VA



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Revision History

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Standard Operating Procedure for Delivering Text Message Notifications

1. Purpose

- a. The Department of Veterans Affairs (VA) is committed to providing the best customer experience in its delivery of care, benefits and memorial services to Veterans, Service members, their families, caregivers and survivors.¹
- b. To better engage and serve Veterans, the VA Office of Information and Technology manages VEText and VA Notify, enterprise-level products designed to provide capability to send digital notifications to Veterans, their families, and caregivers, as an alternative or supplement to delivering such notifications via regular postal mail. Digital notifications, such as text messaging (SMS), are essential in providing timely updates to VA's customers and are an important tool in improving the experience VA provides its users.
- c. This Standard Operating Procedure defines when VA can deliver notifications to Veterans using text messaging, and what is allowed in the content of those messages.

2. Background

- a. The Telephone Consumer Protection Act of 1991 (TCPA)² governs when business entities can use the telephone system (including voice calls and SMS-based text messaging) for unsolicited commercial messages, placing limits on the use of automatic dialing systems, artificial or prerecorded voice messages, automated text messages (SMS) and fax machines.
- b. In a 2016 declaratory ruling, the FCC found that TCPA does not apply to Federal Government agencies.³ However, in a subsequent 2021 adjudicatory ruling, the FCC clarified that contractors making calls on behalf of the federal government are subject to the TCPA.⁴ As such, VA is exempt from the statute but contractors making calls on behalf of VA are not.

¹ VA Directive 0010 – VA Customer Experience

² Public Law 102-243

³ TCPA Declaratory Ruling [FCC-16-72A1](#)

⁴ FCC Adjudicatory Ruling [86 FR 9299](#)

- c. Though TCPA does not apply to the Department of Veterans Affairs it does apply to any contractors making calls on behalf of VA. Therefore, it is VA's policy is to align with the intent of TCPA, which is designed to limit unsolicited or unwanted automated communications via phone or text message.
- d. This Standard Operating Procedure provides a framework for ensuring VA only uses SMS messaging when appropriate.

3. Consent to Receive Messages

- a. Consistent with TCPA, VA should only deliver SMS text messages to people who expect and desire to receive those messages from the VA.
- b. There are two types of consent under TCPA, 1) "Prior Express Consent" and 2) "Explicit Written Consent." Which type of consent VA requires depends on the type of message being delivered via SMS.
 - i. **"Prior Express Consent"** is consent that is implied when an individual provides a phone number as a means of contacting the individual in the context of obtaining or registering for a specific service. For example, a phone number may be optionally provided when enrolling in VA health care, making an appointment, or filing for a VA benefit. When individuals provide VA this contact information in the context of obtaining a service, the individual expects to receive (and it is permissible for VA to send) messages pertaining to the specific services VA provides the individual without explicit written consent.

For example, VA may send the Veteran an SMS message to a patient reminding the patient of an upcoming healthcare appointment or needed health screening if that person provided their phone number in the context of receiving services from the VA. This use case would not require VA collect an explicit 'opt-in' beyond this prior express consent.

- ii. **"Explicit Written Consent"** as defined in FCC regulations means a written agreement between the caller and the receiver of a call or message that clearly authorizes the caller to deliver to the receiver "advertisements or telemarketing messages using an automatic telephone dialing system or an artificial prerecorded voice," specifies the phone number to be called, and bears the "signature" of the person receiving the call. "Explicit Written Consent" (also referred to as an "Opt-In") is required under TCPA for most general marketing

messages and other automated commercial messages.

For example, VA would require explicit written consent to send an individual a message highlighting a new VA benefit or service in which the person is not enrolled, or to send a “thank you for your service” message on Veterans Day.

- c. A 2015 FCC Declaratory Ruling⁵ notes the following types of messages would not require “explicit written consent”:
 - i. Health care communication, including communication about appointment and exam confirmations and reminders, wellness checkups, hospital pre-registration instructions, pre-operative instructions, lab results, post-discharge follow-up intended to prevent readmission, prescription notifications, and home healthcare instructions
 - ii. Notification of shipment and tracking information
 - iii. Notification about the status of a service an individual is seeking
 - iv. Financial related messages (i.e. notes about debts owed)
 - v. Disaster related messages related to health and safety
- d. Regardless of the type of message being sent, VA should always include an easy to use method for individuals to “opt-out” of future messages of that type.

In summary: If an individual has provided the VA a phone number capable of receiving text messages, VA may send text messages to that phone number that directly pertain to the services VA provides that individual without obtaining express written consent to send those messages. The following types of messages will be allowed in VA without an explicit written consent (opt-in):

1. Health care communication, including information about appointments
2. Pharmacy shipment notifications
3. Appeal hearing reminders
4. Benefit and payments updates
5. Updates related to the status of a beneficiary’s requested or enrolled VA services
6. Updates related to the status of an application or request for a VA service
7. Disaster related messages that are of emergent nature and relate to the health and safety of Veterans.

⁵ Such examples are detailed in a July 2015 FCC declaratory ruling ([FCC-15-72](#)).

Other messages may also be permissible to send without express written consent if they align with the intent of the TCPA regulation as described above.

4. Content of Messages

- a. VA must comply with all laws related to the privacy of Veteran information when delivering messages via SMS (or any other medium). To protect Veteran's privacy, each text message (SMS) template must be compliant with the following:
 - i. VA Privacy Policy
 - ii. Health Insurance Portability and Accountability Act (HIPAA)
 - iii. Federal Information Security Management Act
- b. To comply with the above existing policies, the standard text messages for each use case (i.e., health care appointment, pharmacy shipment, etc.) will **NOT** include any Protected Health Information (PHI) and/or Personally Identifiable Information (PII). All message templates must be approved by the appropriate Privacy Officer.

Below are examples of acceptable messages that do not include PHI. Date and time alone are not enough information to individually identify a Veteran or their appointment and would not be considered PHI. The following message is an example of a deidentified (non-PHI) message:

VA Health Care Appointment Reminder:

You have an upcoming appointment with VA on NOV 23 at 09:30.

Reply:

Y1 to CONFIRM your in-person visit

N1 to CANCEL

Send STOP to end messages.

VA Pharmacy Shipment Notifications:

Your order has shipped.

Track your shipment: [insert tracking link here]

Send STOP to end messages.

Board of Veterans' Appeals Hearing Reminder:

You have an upcoming virtual hearing on Dec 15, 2021 at 9:30 AM CST with a Board of Veterans' Appeals Veterans Law Judge.

Please refer to the email message you received with the virtual hearing details.

If you would like more information on the status of your appeal, please visit <https://www.va.gov/claim-or-appeal-status/> or call 1-800-827-1000.

Send STOP to end messages.

Additional PII \and PHI may be provided to the Veteran upon request as part of their right of access, with Privacy Officer approval.

For each new initiative that intends to send messages that may contain PHI and/or PII, a review will be conducted by the program office privacy officer and no messages will be sent without approval of the privacy officer.

Below is an example of a message that was coordinated with VHA Privacy that includes limited PHI, which may only be sent after a Veteran has requested to receive limited PHI as their right of access for a healthcare appointment reminder.

You have an upcoming appointment with CARDIOLOGY (1ST FLOOR ROOM 1A) at VA Loma Linda on NOV 23 at 09:30.

Reply:
Y1 to CONFIRM your in-person visit
N1 to CANCEL

Send STOP to end messages.

- c. Each message delivered will include a method for the recipient to opt out of future messages.
- d. VA does not send general, non-actionable marketing messages via SMS, because such messages would require explicit written consent. There are other communication channels that are more appropriate for these types of messages (i.e. the VetResources email newsletter⁶, which Veterans provide express written consent to opt in to).

⁶ <https://www.va.gov/vetresources/>

5. Other Considerations

- a. **3rd Party Vendors:** Vendors that provide notification services to VA either directly, or as part of an integrated solution, must comply with the Standard Operating Procedure outlined in this document if they wish to send SMS messages to individuals on behalf of the VA. Such vendors must be able to share their collected consent or opt-ins as well as opt-outs or withdrawals of consent so that VA has them recorded.
- b. **Preferences:** To provide Veterans a world-class experience, the OIT has worked with the Veterans Experience Office (VEO) to provide an integrated method for Veterans to control their preferred communication channels (i.e. email, SMS, etc.) and preferences (opt-in and opt-out) from a central website (VA.gov).
 - i. Veterans are automatically enrolled to receive text messages (SMS) for all use cases listed in 3. C. above (i.e. health care appointment reminders, appeal hearing reminders, pharmacy shipment notifications, etc.). Veterans can opt-out by updating their preferences via VA.gov or simply responding “STOP” to the text message.
 - ii. Veteran’s phone number from VA Profile – VA’s authoritative source – will be utilized to send text messages (SMS).
- c. **For more information on this Standard Operating Procedure, or to initiate a request to leverage VEText or VA Notify to deliver a text message notification, please visit**
<https://github.com/department-of-veterans-affairs/va.gov-team/tree/master/products/va-notify>

6. Signature

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