

HIPAA Privacy Protections in Text Message Content

Questions and Scenarios

Government texters have indicated preference for the following scenarios when sending text message notifications. This outline is to seek guidance from HHS legal team on what is permissible within the guidelines of HIPAA.

For the purposes of this document, “we” refers to government texters, i.e. state benefit program staff and administrators.

FAQs from Benefit Administering Agencies

General HIPAA considerations

- Can you verify that the following programs fall within the below HIPAA scenarios?
 - *SNAP, TANF, WIC, UI, SSI, Medicaid*
- Can you provide a list of any other specific benefits programs that would fall into the below HIPAA scenarios? (ex. child protective or early intervention services)
- Can you provide a list of specific PHI information that should be considered within the HIPAA scenarios below?

Mentions and inclusion of information

1. Scenario: Mention participation in a specific program *by the program’s name* (e.g. Medicaid, WIC, TANF) in a message.
Example: “It’s time to renew your **TANF** benefits! You should get your renewal form in a week in the mail.”
Example: “[**STATE**] **TANF**: We received your application. It looks like we’re missing your photo ID. Please submit it online or come into the office.”
Open Questions:
 - Does specific wording matter?
2. Scenario: Include a person’s name in a message that also includes mention of a specific benefit program
Example: “Hi [**FIRST NAME**]. It’s time to renew your **SNAP** benefits! You should get your renewal form in a week in the mail.”
Open Questions:
 - Does it matter if we use first and last names or only first names?
3. Scenario: Include links to a specific program website (e.g., SNAP or Medicaid)

- a. Example: “Hi **[FIRSTNAME]**. It's time to renew your **[PROGRAM]** benefits! You should get your renewal form in a week in the mail. You can renew online right now at **{ProgramApplicationPortalURL}**.”
 - b. *Open Questions:*
 - Is it different if recipients are directed to a generic or multi-program website, such as a state’s single sign-on portal for all programs, or a portal for all state health insurance programs?
4. Scenario: Include a case number (or partial case number) in messages as a way of confirming a message is legitimate and not fraudulent
 - a. Example: “Hi **[FIRSTNAME]**. It's time to renew your **[PROGRAM]** benefits for your case ending in 1234! You can find your case number on your EBT card. You should get your renewal form in a week in the mail. You can renew online right now at **{ProgramApplicationPortalURL}**.”
 - b. *Open Questions:*
 - Does including the specific name of a program change the permissibility?
5. Scenario: Is including partial information as a prompt for verification considered PII? This assumes the participant received an initial text which contained the first name and benefit program .
 - a. Example: “Your house number on file is 1234 - if that is not correct, please update your address.”
 - b. *Open Questions:*
 - Does splitting information across a sequence of texts to the same number affect whether that information is subject to HIPAA restrictions?
6. Scenario: Is information about action steps for an application/renewal considered PII?
 - a. Example: “Hi **[FIRSTNAME]**. We received your SNAP application. It looks like we’re missing your photo ID. Please submit it online or come into the office.”
 - i. *Open Questions:*
 1. Are we improperly revealing SNAP application/Status of application?
 2. If the applicant texts the document/data back to us, what are we permitted to do with it?
 - b. How should States and partners handle/approach when clients send back their own PII or attach images in texts? (unsolicited, we didn’t ask directly but somehow the client sent it)
 - i. Scenario: A participant receives a text message to contact the agency (via web portal, phone call, or office visit) to update the home address. The participant responds in the text message with the home address.
 - ii. *Open Questions:*
 1. Does the guidance change depending on the situation for example:

- a. Case worker requested (2-way texting)
- b. Homevisit providing support services (2-way texting)
- c. Chat box / portal that allows raw text data

Adjunctive eligibility

- 7. Is there particular consent language that state, local, tribal, and territorial (SLTT) governments could use to share more sensitive/personalized information via text notifications for the above scenarios?
- 8. What are the guidelines around reaching out to people who are potentially eligible for various programs based on a health or disability status that is known to the government because of another program?
 - a. Scenario: For example, if a person is on a pregnancy-related Medicaid program what are permissible ways to share information about other programs with that person (i.e WIC, SNAP, TANF, or Lifeline program)?
 - i. Example: “Hi **[FIRST NAME]**. Did you know that if you receive Medicaid and are pregnant or have a child under five, you might be eligible for additional assistance to buy food and formula? To learn more about support for new parents go to WIC.gov.”
 - b. Is this the same for cross-referrals between SSI/SSDI and Medicaid categories for persons with disabilities? Between Medicaid and SAMHSA funded BH services?
 - c. Does it matter if the outreach is based on categorical eligibility versus that person’s unique data that was submitted for one program but is being used by another (such as which category they’ve qualified for Medicaid under)?
 - i. What messaging is permitted?:
 - 1. “**You *might* be eligible** for a specific program by name (ex. WIC)” vs. “**you qualify for**” vs. “**people in this category qualify**”
 - 2. “**People who are pregnant or have children under 5** may be eligible for...”
 - 3. “**People who participate in SNAP** are also eligible for help with home energy costs...”
 - 4. “**Because you receive SNAP**, you are also eligible for help with...”