



Pathways Webinar

RESEARCH & TRAINING CENTER FOR PATHWAYS TO POSITIVE FUTURES



Using Text and Email with Clients – Guidance and Resources for Providers

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Our Educational Objectives

- Identify texting and email services which provide the technical and administrative features necessary for their HIPAA-compliant and ethical use in an agency context.
- Describe one or more technical and administrative solutions for ethically and HIPAA-compliantly using nonsecure SMS texting and email to communicate with clients and families in an agency context.
- Create a communications policy for clients and their families which describes how to use email and texting with their clinician and what to expect their clinician to do when using email and texting to communicate with them.

Unit 1: Areas of Consideration

Clinical Texting/Email: A Confluence of Disciplines

- Legal: liability risk management and regulatory (e.g. HIPAA) compliance
 - Attorneys. The privacy officer and risk management officer/consultant are generally attorneys.
- Technical: choosing the right services and devices that provide what clinicians and clients need while keeping it secure.
 - Information Systems/Information Technology Pros. The security officer is generally an IS/IT professional.
- Clinical: using these modern communications to meet clients where they are while also maintaining health therapeutic boundaries.
 - Clinicians. Obviously.

Poll: Does your agency have a security officer?

- Yes.
- No.
- I don't know.

What We Want to Achieve With Email and Texting

- Communicate with clients in a medium where they are comfortable and open.
- Use methods of contact that clients and their families actually respond to and use themselves.
- Reach clients who would normally ignore the existence of services.

Meet clients where they are

What We Need So We Can Achieve Our Goals

Solutions which meet legal, ethical, and clinical standards

“Solutions” are:

- Service choices +
- Device choices +
- Policies

Standards That Texting or Email Solutions Must Meet:

<p>Privacy/Security Standards</p>	<ul style="list-style-type: none">● Encryption and authentication when sending, OR● Client's desire for the communication <i>despite</i> the lack of technical security
<p>Service Provider Relationship Standards</p>	<ul style="list-style-type: none">● Business Associate Agreements (HIPAA) / State or County-Defined Vendor Contracts (Not HIPAA)
<p>Record Maintenance and Access Standards</p>	<ul style="list-style-type: none">● Messages and call logs are reliably maintained, with backups, where <i>agency administrators</i> can access them

Standards That Texting or Email Solutions Should Consider:

<p>Client Safety Standards</p>	<ul style="list-style-type: none">● Message exposure to dangerous individuals in life/household● Employer/school viewing messages or message “metadata”
<p>Clinical Boundary Standards</p>	<ul style="list-style-type: none">● When do we talk/text?● What do we talk about?● How do we talk about it?● What documents do we exchange?● What’s the clinician’s turnaround time for responses?
<p>Telehealth Standards</p>	<ul style="list-style-type: none">● Highly dependent on state requirements● Sometimes vaguely defined

Unit 2: Texting and Email Services

The Big Legal-Ethical Issue: Transmissions

Counselors take precautions to ensure the confidentiality of all information transmitted through the use of any medium.

ACA Code of Ethics, 2014, B.3.e

Psychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium, recognizing that the extent and limits of confidentiality may be regulated by law or established by institutional rules or professional or scientific relationship.

Ethical Principles of Psychologists and Code of Conduct, 2010, 4.01

Social workers should take reasonable steps to protect the confidentiality of electronic communications, including information provided to clients or third parties. Social workers should use applicable safeguards (such as encryption, firewalls, and passwords) when using electronic communications such as e-mail, online posts, online chat sessions, mobile communication, and text messages.

NASW Code of Ethics, 2017, 1.07.m

34. NCCs shall protect the confidentiality and security of tests or assessments, reports, data and any transmission of information in any form.

National Board for Certified Counselors Code of Ethics, 2016

“Transmission Security”

Standard: Transmission security. Implement technical security measures to guard against unauthorized access to electronic protected health information that is being transmitted over an electronic communications network.

45 CFR § 164.312 (e)(1)

“electronic communications network” = The Internet

Types of Email Security

- **Conventional:** might use security when sending, *maybe*. It depends. But you usually can't rely on that.
 - Normal, everyday email. GSuite, Microsoft 365, and many others. Should be regarded as **nonsecure** for policy-making purposes.
- **Escrow:** Annoying, but very good at protecting information from most risks.
 - Patient portals, Hushmail, LuxSci, and many others. Should be regarded as the **most secure** for policy-making purposes.
- **Forced TLS:** Protected from privacy breaches during sending. (Lands in client inboxes without protection after satisfying HIPAA transmission standards.)
 - Paubox “seamless encryption”, LuxSci, and many others. Should be regarded as **secure** for policy-making purposes.
- For later study: <https://personcenteredtech.com/2018/01/01/3-kinds-email-hipaa-howto-informed-choice/>

What is “Texting?”

- **SMS: Actual “texting”**
 - What old cell phones and Android phones do. **Nonsecure** for policy-making purposes.
- **Proprietary Messaging apps:**
Other ways to do texting.
 - iMessage, OhMD, TigerText, WhatsApp, Signal, etc. Each service must be evaluated to see if it is **secure** or not. Most are not for our purposes.



SMS on an iPhone



iMessage

Client Desire for Nonsecure Emails and Texts?

- Yes, HIPAA allows it.*
- Need to inform the client of the risks.
- Often referred to as “alternative communication.”
- Does not change your requirement to follow HIPAA standards, including the Business Associate rule

Is the client’s decision informed and autonomous if there is no reasonable secure alternative available?

HIPAA is happy. But what if the client lives with an abuser? Or their employer or school can monitor their emails or texts? What is our ethical responsibility there?

*Attorneys, see guidance here: <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>

When to Use SMS / Nonsecure Texting?

- The client doesn't have a smartphone or can't install apps on theirs.
- The client wants appointment reminders by SMS from your HIPAA-secure scheduling service or practice management system.
- There's a client emergency and, for some reason, *SMS is absolutely the only way you're able to reach them.*
- **Agency policy allows for it.**

Service Choices and Client SES

- Every secure option requires a computer
 - Remember: smartphones are computers!
- Low-SES people rarely have smartphones, or they may have them but don't have very much room on their data plan. (But they may have unlimited SMS.)
- They usually access desktop/laptop computers through public services such as libraries.
 - Nonsecure texting is sometimes the most private and compassionate way to communicate with low-SES people

General Rule: Texting solutions intended to reach low-SES people using will almost certainly need to be based on *nonsecure* services! (i.e. SMS)

Poll: What would you want to use with your client population? Choose all that apply.

- SMS (nonsecure) Texting
- A secure messaging app.
- Conventional (nonsecure) email
- Escrow email
- TLS email

Unit 3: Documenting Texts and Emails

Texts and Emails are Records

- HIPAA requires we protect the availability of the PHI
- Professional associations and boards seem inclined to want full retention of the messages
- Courts may subpoena original emails and text messages
- **Clients need to be informed that emails and texts are in their record**

Some Retention Strategies:

- Use email and texting services which retain messages in a way that is easily accessed by agency admins for audits and releases
- Copy text messages and paste them into the EHR using the EHR's app on your phone
- Use a wireless printer to print from the phone
- *Do not send the message to yourself in an ordinary email, even if it's a screenshot!*

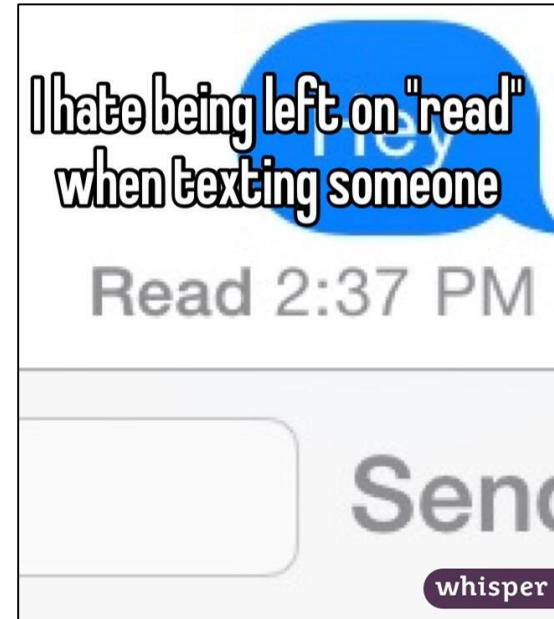
Unit 4: Boundaries and Professionalism

Some Major Clinical-Ethical Considerations

- How does mobile, textual communication affect boundaries?
 - Where is this healthy/unhealthy? Therapy affirming/interfering?
- What topics should you email or text about?
- How do you address multicultural concerns in email and texting?
- When and how quickly should you respond to clients?

What Are Reasonable Boundaries?

- What does it mean for the clinician-client contact locale to extend beyond the office (physical or online) walls?
- What are the client's subculture/age-bound expectations about boundaries around texting and email?
- *How quickly do clients expect a response to messages?*



Client expectations regarding reasonable boundaries in texting may very well differ from the therapist's expectations

Poll: Have you ever had a client get upset at your slow response to messages? Choose all that apply.

- Yes, but it was fine.
- Yes, and it was rough to work out.
- No, but I'm a compulsive answerer.
- No, it has never come up.

How Do You Write Your Messages?

- What is “professional” language in emails?
- What is “professional” language in texts?
- Are they different?

More On Text Messages

- Linguists (e.g. Chiad, 2008) have identified that text messaging language is more like spoken English than written.
- What would it be like to interact with clients using formal written English?
- That said, how do you speak to your clients? Is it the same way you speak to friends?

Consider the differences:

I really messed that one up

I really messed that one up 🥲

I really messed that one up 😏

Suggestion for Boundary Setting

- Office Policies! E.g. Social Media Policies. Some things you might put in there:
 - It will be up to 24 hours
 - It will be more than 24 hours
 - Weekends and holidays don't count towards the time
 - I don't text people back
- Talk to the clients about these policies. Keep the conversation going as much as needed.

Unit 5: Creating Agency Solutions

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Any Texting or Email Solution Will Consist Of:

Telecommunications Service Provider(s)	<ul style="list-style-type: none">● Phone company, VoIP service, Email service● Agency-provided services vs. clinicians' personal services
Clinician Devices	<ul style="list-style-type: none">● Smartphone, flip phone, tablet, computer● Agency-provided devices vs. clinicians' personal devices● Is it "hardened"*? Does the agency have security policies for handling these devices?
Client Communications Policies (for Clients + Clinicians/Agency)	<ul style="list-style-type: none">● Policies that clients (and/or guardians) agree to with regards to email or texting with the agency and clinicians.
Agency Security & Privacy Policies (Clinicians/Agency Only)	<ul style="list-style-type: none">● Internal policies for managing security and privacy of client information; security of documents, devices, and user accounts.

* IT people, some info on hardening devices: <https://personcenteredtech.com/2019/04/16/computer-smartphone-hipaa-security-checklist-therapists/>

Let's Examine Some Forms and Worksheets

- Email/Portal Messaging Solution Worksheet
- Texting Solution Worksheet
- Sample Communications Policy
- Request for Nonsecure Communications Form
- Email and Texting Risk Questionnaire

Q&A

Some Final Risk Management Points

- Be wary/aware of crossing into telemental health territory
- Make sure that all use of email and texting is done with intention, and is not reactive or unplanned
- Be sure clients are aware of how you will use email or texting -- especially SMS!

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