



# KERN HEALTH SYSTEMS

<b>KERN HEALTH SYSTEMS</b>					
<b>POLICY AND PROCEDURES</b>					
SUBJECT: Text Messaging			POLICY #: 12.16-P		
DEPARTMENT: Marketing					
Effective Date: 6/2020	Review/Revised Date: 2/13/2023	DMHC		PAC	
		DHCS	X	QI/UM COMMITTEE	
		BOD		FINANCE COMMITTEE	

\_\_\_\_\_ Date \_\_\_\_\_  
Emily Duran  
Chief Executive Officer

\_\_\_\_\_ Date \_\_\_\_\_  
Chief Operating Officer

\_\_\_\_\_ Date \_\_\_\_\_  
Director of Compliance and Regulatory Affairs

\_\_\_\_\_ Date \_\_\_\_\_  
Director of Member Services

\_\_\_\_\_ Date \_\_\_\_\_  
Senior Director of Member Engagement

**POLICY:**

Kern Health Systems (KHS) shall use text messaging as a method of communication for the purpose of contacting and sending informative messages to members in accordance with contractual requirements and regulatory guidelines as set forth in this policy. KHS member communication methods shall not mislead, defraud or confuse recipients of the communication. KHS may utilize a third party vendor to conduct text messaging outreach to members as a method of engagement to improve member health status. KHS shall not use text messaging, robocalls, or emails to solicit to non-members for potential enrollment.

KHS will comply with all standards relating to text messaging as a method of member communication as outlined by the following sources:

TCPA 47 CFR § 64.1200(a) (2)  
 DHCS Contract 03-76165  
 KHS Policy 5.05-P, Member Rights and Responsibilities  
 KHS Policy 14.03-I, Protected Health Information  
 KHS Policy 11.26-I, Translation of Written Materials  
 KHS Policy 11.23-I, Cultural and Linguistics Services

**DEFINITIONS:**

<b>TERM</b>	<b>DEFINITION</b>
Communication <sup>1</sup>	Information exchange process
Telephone Call <sup>1</sup>	To get or try to get in communication with by telephone
Text Message <sup>1</sup>	A short message sent electronically to a cell phone
Campaign <sup>1</sup>	A series of operations designed to bring about a particular result
Outreach <sup>1</sup>	The extending of services or assistance beyond current or usual limits
Telephone Consumer Protection Act (TCPA) <sup>2</sup>	A law that places restrictions on the use of telephone equipment
Short Message Service (SMS) <sup>1</sup>	A technology for sending short text messages between mobile phones
Free to End User (FTEU) <sup>2</sup>	A message that does not incur charges for the end user (recipient)

**PROCEDURES:**

**1.0 TEXT MESSAGING PRACTICES AND STANDARDS**

All communication will be conducted in accordance with applicable regulatory and contractual requirements. A member may receive a text message as an alternative method of communication in lieu of mail or a telephone call. The text messages must meet member communication standards.

**1.1 Member Contact Information**

KHS will use the member’s most current phone number(s) provided in the Department of Health Care Services (DHCS) eligibility file and provided by the member through contact over the phone with KHS staff, and demographic updates provided by the member through their Member Portal account. The member contact information will be provided to the KHS contracted texting vendor to transmit the text message on behalf of KHS. The texting vendor is responsible for determining which phone numbers provided by KHS are cell phone numbers capable of receiving text messages.

## **1.2 Member Preferred Language**

The text messages will be provided in the preferred language provided from the DHCS eligibility file limited to the KFHC Threshold Language requirements. Members will have the ability to change their language preference for the text messaging campaign.

## **1.3 Use of Text Messaging**

Text messaging will only be used for a defined campaign as approved by KHS and DHCS. All communications will be used on a defined template that is reviewed and approved by KHS.

## **1.4 Text Messaging Restrictions**

Text messaging will not be used to conduct any marketing communications without the written authorization of the member. In addition, all text message content will be reviewed for conformance with policies pertaining to the use and disclosure of protected health information in accordance with HIPAA.

## **1.5 Member Participation**

KFHC will obtain agreement from members to participate in all text messaging campaigns using the assumed opt-in approach in the following manner.

1. Members who have not opted out of text messaging will receive an initial Free to End User (FTEU) “Welcome” text message that will welcome and inform them to the text messaging program is at no cost to the member. This message will be sent to the member once approval from DHCS for the campaign is received by KFHC.
2. The Welcome message will inform members that message charges may apply to future text messages depending on their data plan.
3. Members will also be informed that they may opt out of the program at any time by replying “STOP” to the text message, by contacting KFHC Member Services, or by logging onto their Member Portal account and changing their opt in status.
4. Members that reply “STOP” to any text messages that are sent to the member by KFHC no additional text messages will be sent to that phone number.

## **1.6 DHCS Approval**

Texting programs and campaigns require prior approval from the Department of Health Care Services. KHS will complete and submit the required *Texting Program & Campaign Submission Form* (See Attachment A) along with the required documents to the DHCS in the form and format specified. The DHCS Contract Manager has 60 days to review the request.

## **2.0 THIRD PARTY VENDOR**

KHS may utilize a third party vendor to conduct text messaging, Interactive Voice Response (IVR), or email outreach to members as a method of engagement for health campaigns in an effort to progress KHS’ mission to improve member health status.

If KHS will be using a third-party vendor to conduct health campaigns, KHS will submit a copy of the third-party vendor contract/business agreement to DHCS for review and approval

prior to start of text campaign. Vendor contract must adhere to DHCS policies, procedures, contract and regulatory requirements.

**ATTACHMENTS:**

**Attachment A:** DHCS Texting Program & Campaign Submission Form

**REFERENCE:**

**Revision 2023-01:** Policy received minor updates by the Marketing Dept. Compliance Department updated referenced policies and signature area. **Revision 2020-06:** KHS Welltok Campaign was approved by the Department of Health Care Services on June 6, 2020.

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<sup>1</sup> Merriam-Webster Online Dictionary [www.merriam-webster.com](http://www.merriam-webster.com)

<sup>2</sup> Federal Communications Commission (FCC) website [www.fcc.gov](http://www.fcc.gov)

# TEXTING PROGRAM & CAMPAIGN SUBMISSION FORM

## **INSTRUCTIONS:**

This form is required for all Medi-Cal managed care plans' (MCP) texting program and/or its individual texting campaign(s). Complete this form, including the Indemnification Agreement and email it to your DHCS Contract Manager for approval. DHCS will review and respond within 60 days of submission of the form.

Email subject line must include "For your approval: MCP name, Subplan name if applicable, Texting, and Campaign(s). For example:

- For a campaign submission: "For your approval: PlanA\_Texting\_New Member Orientation"
- For multiple campaigns submission: "For your approval: PlanA\_Texting\_Multiple Campaigns"

MCP is required to complete **all sections (Sections A-C)** when MCP first seeks an approval for a new Texting Program. Once MCP's new texting program has been approved and MCP would like to add additional campaigns, MCP will need to complete **Section A** and **Section C** only.

MCP can replicate **Section C** for additional campaigns if MCP desires to submit multiple campaigns for approval at the same time.

As a condition of approval for any text messaging campaign, a designee within the MCP who holds signatory authority is required to execute the attached Indemnification Agreement. Approval of the campaign is not considered final until the MCP receives a signed copy of the Indemnification Agreement back from the DHCS.

## **Key definitions**

1. Texting Program: MCP's overall program design and infrastructure utilized to implement individual text messaging campaigns.
2. Texting Campaign: MCP's specific text message(s) aimed to address an identified objective (e.g., Preventive Care Reminders, New Member Orientation, etc.).

## **SECTION A: GENERAL INFORMATION**

1. Managed Care Plan: \_\_\_\_\_ Date: \_\_\_\_\_
2. Submitted on behalf of a subcontracting MCP: \_\_\_\_\_  N/A
3. List the county or counties where you conduct your texting campaign(s):  
\_\_\_\_\_

**SECTION B: TEXTING PROGRAM POLICY & PROCEDURE**

1. Does the MCPs policy describe the process the MCP will use to obtain Members' Agreement to Participate (i.e., release of information) either through active opt-in or assumed opt-in approach and explain how a member can opt-out and the timeline associated with processing such requests? Please attach MCP's program policy and procedure (PnP) and process workflow. If no, please describe.

Yes

No

2. Does MCP's policy describe any financial costs that MCP's Members may incur from receiving the Agreement to Participate message(s) and any potential costs of future messages? If no, please describe.

Yes

No

3. Is the MCPs proposal related to redetermination outreach?

Yes

No

If yes, does the MCPs policy indicate outreach will only be made to members who are on the MCPs monthly 834 file showing an HCP status of 05?

Yes

No

4. Has the MCP provided texting script(s) to obtain MCP's Members' Agreement to Participate, or texting script(s) to allow MCP's members to opt-out?

Yes

No

5. Are the texting script(s) provided to members at the sixth grade reading level, per Exhibit A, Attachment 13, 4(C) of the contract with DHCS?

Yes

No

6. Does the texting script have any health education information? If yes, has the campaign script been reviewed and approved by the MCP health educator in accordance with [APL 18-016](#)?

Yes

No

7. Does the MCPs policy describe how the MCP considers privacy concerns and custody/guardianship situations based upon information available to MCP? If no, please describe.

Yes

No

8. Does the MCPs policy describe how the MCP protects Members' PII and/or PHI and meet requirements of Exhibit G of the contract with DHCS? If no, please describe.

Yes

No

9. Is the MCP using a third-party vendor? If yes, who is the vendor? If MCP has not already sent the vendor's Master Service Agreement and all contract amendments to DHCS, attach them to this application.

Yes

No

10. Does the vendor's Master Service Agreement comply with all applicable state and federal law and contract requirements in particular, Exhibit G of the contract with DHCS?

Yes

No



**SECTION C: [SPECIFIC TEXTING CAMPAIGN NAME]**

1. What is the overall purpose of campaign? Circle one.
  - a. Providing health education information
  - b. Providing written member information
  - c. Reminding of preventive care visits
  - d. Supporting statewide regulatory efforts on digital communications
  - e. Other(s): \_\_\_\_\_

**Disclaimers:** MCP certifies that any health education information provided through the campaign has been reviewed and approved by the MCP health educator in accordance with APL 18-016.

Information on eligibility redetermination cannot be included in text campaign.

2. Describe the objectives of the campaign.
  
3. Does the campaign include any member incentives?

- Yes  
 No

If yes, has the incentive been reviewed and approved by DHCS health educators in accordance with APL [16-005](#)?

- Yes  
 No

4. Does the campaign include Personal Identification Information (PII) and/or Protected Health Information (PHI)? If yes, confirm the answer to question 7 in Section B above is checked "yes."

- Yes  
 No

5. Who is the campaign's target population?
  
6. Who will be excluded from the campaign based upon information available to MCP (e.g., Members with SUDS, HIV/AIDS, behavioral health, minors in family planning, etc.)?
  
7. Does MCP require additional Members' Agreement to Participate for this specific texting campaign (i.e., extra opt-in requirement for sensitive services or PHI/PII content)?  
  
 Yes  
 No
  
8. What is the campaign length? When will it start and end?
  
9. What is the frequency of text messaging?
  
10. In what language(s) will the campaign be available? Will members have an option to receive text messages in their primary language (i.e. Spanish)?
  
11. Provide content script of the campaign.
  
12. What is the expected outcome of the campaign?

**Attestations:**

- For new campaign submission only (Section C), MCP attests that the Texting Program submission (Section B) that was previously approved contains no changes. Each new campaign will require an executed Indemnification Agreement.
  
- For ongoing texting programs, MCP will report to the DHCS Contract Manager the outcomes of plan texting campaigns on an annual basis, 45 days from the annual anniversary of the campaigns initiation. For time-limited campaigns, MCP will report outcomes six months after a program ends.

**FOR DHCS USE ONLY (OR USE ALTERNATE DHCS AIR FORM)**

1. DHCS Reviewer's Name: \_\_\_\_\_ Date: \_\_\_\_\_

2. DHCS Reviewer's Title: \_\_\_\_\_

3. DHCS Reviewer's Decision:

Approved as submitted

Approved with the following changes:

\_\_\_\_\_

Denied

Reason (s): \_\_\_\_\_

\_\_\_\_\_

Request for more information: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**TEXT MESSAGING CAMPAIGN INDEMNIFICATION AGREEMENT**

In consideration of the Department of Health Care Services' approval of KERN HEALTH SYSTEMS text messaging program, KERN HEALTH SYSTEMS agrees to indemnify, defend and hold harmless the State, DHCS and its officers, agents and employees from any and all claims and losses, any and all attorneys' fees and costs, judgments, damages, any administrative costs incurred to the extent DHCS is required to provide notice to affected beneficiaries and any other costs associated with any actual or alleged breach of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 and the Information Practices Act, California Civil Code section 1798 et seq. by KERN HEALTH SYSTEMS and any vendor, contractor, subcontractor that KERN HEALTH SYSTEMS contracts with for the approved text messaging campaign.

\_\_\_\_\_  
Health Plan Representative

\_\_\_\_\_  
DHCS Contract Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date