

Facsimile Transmission of Health Information (1996)

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Background

The use of facsimile machines has become increasingly popular in healthcare communications. Patient care is enhanced when clinical information is readily available to healthcare providers.

However, the fax machine also opens up avenues for loss of patient confidentiality if information is transmitted or handled improperly. Healthcare providers must protect patients from unauthorized, inappropriate, or unnecessary intrusion into the sensitive information in their health records.

Legal and Regulatory Requirements

Most regulatory and accreditation requirements do not address specifically the acceptability of transmitting health information via facsimile. However, health information management professionals should be aware of any specific laws in their states, including hospital licensure laws, which outline requirements for original records or address facsimile transmission of health information. The transmission of certain types of health information, such as information relating to acquired immunodeficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, or psychiatric care, may be restricted by state law.

The Medicare Conditions of Participation for Hospitals do not specifically allow or prohibit use of the facsimile machine for transmitting health information. However, in Letter No. 90-25, the Bureau of Policy Development of the Health Care Financing Administration (HCFA) addressed the subject of transmitting physicians' orders to healthcare facilities via facsimile machine. This letter, dated June 1990, states:

The use of fax to transmit physicians' orders is permissible. When fax is used, it is not necessary for the prescribing practitioner to countersign the order at a later date. Note, however, that fax copies may fade and may need to be photocopied. Healthcare facilities should be advised to take extra precaution when thermal paper is used to ensure that a legible copy of the physician's order is retained as long as the medical record is retained.

Physician orders transmitted via facsimile may reduce the possibility of error inherent in the translation of verbal (telephone) orders, and thus contribute to improved patient care.

Legal rules of evidence also must be considered in developing a policy of facsimile transmission of health information. More than half of the states have adopted rules based on the Federal Rules of Evidence or Rule 803 of the Uniform Rules of Evidence (URE). The URE recognizes that business records created and relied upon in the ordinary course of business possess a circumstantial probability of trustworthiness and are admissible as evidence. According to the URE, "a duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity or continuing effectiveness of the original, or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original."

A number of states have adopted the Uniform Photographic Copies of Business and Public Records Act, which authorizes the admissibility of reproductions made in the regular course of business without need to account for the original. Some states have adopted the Uniform Business Records as Evidence Act, which also addresses the admissibility of record reproductions.

Transmission of Health Information

The American Health Information Management Association (AHIMA) recommends facsimile transmission of health information only when the original record or mail-delivered copies will not meet the needs of immediate patient care. The

sensitive information contained in health records should be transmitted via facsimile only when (1) urgently needed for patient care or (2) required by a third-party payer for ongoing certification of payment for a hospitalized patient. The information transmitted should be limited to that necessary to meet the requester's needs. Routine disclosure of information to insurance companies, attorneys, or other legitimate users should be made through regular mail or messenger service.

Except as required by law, a properly completed and signed authorization should be obtained prior to the release of patient information. An authorization transmitted via facsimile is acceptable. If authorization cannot be obtained in cases of explained medical emergency, information may be released for patient care without authorization from the patient or legal representative.

The cover page accompanying the facsimile transmission should include a confidentiality notice that indicates the information is confidential and limits its use. A sample statement is provided below:

****Confidentiality Notice****

The documents accompanying this telecopy transmission contain confidential information, belonging to the sender, that is legally privileged. This information is intended only for the use of the individual or entity named above. The authorized recipient of this information is prohibited from disclosing this information to any other party and is required to destroy the information after its stated need has been fulfilled.

If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or action taken in reliance on the contents of these documents is strictly prohibited. If you have received this telecopy in error, please notify the sender immediately to arrange for return of these documents.

Reasonable efforts should be made to assure the facsimile transmission is sent to the appropriate destination. Destination numbers should be pre-programmed into the machine, if possible, to eliminate errors in transmission from misdialing. (For more detailed information on patient authorizations and recommended procedures, please see AHIMA's *Guidelines for Faxing Patient Health Information*.)

Receipt of Health Information

Unless otherwise prohibited by state law, information transmitted via facsimile is acceptable for inclusion in the patient's health record. If the document is on thermal paper, a photocopy of the document should be placed in the record to avoid the fading that may occur over time with thermal paper. (The facsimile copy should be destroyed after the photocopy is made.)

If the original document was authenticated by the author prior to transmission, the facsimile copy does not need to be countersigned, unless otherwise required by state law. To verify their authenticity, physician orders should be signed by the physician prior to transmission. Unsigned orders should not be carried out until verified with the ordering physician.

Development of Policies and Procedures

Health information management professionals should take the lead in developing policies and procedures to protect patients from unauthorized, inappropriate, or unnecessary intrusion into the sensitive information in their health records. Each provider should develop and enforce its own policies and procedures for transmitting health information via facsimile that protect patient privacy and comply with legal, regulatory, and accreditation requirements.

At a minimum, these policies and procedures should:

1. Assure that fax machines are located in secure areas and limit access to them
2. Identify one individual to monitor incoming documents on each machine. This person should remove incoming documents immediately, examine them to assure receipt of all pages in a legible format, seal the documents in an envelope, and send them in accordance with their instructions
3. Outline appropriate safeguards to assure that transmitted information is sent to the appropriate individual
4. Outline the procedures to be followed in the case of a misdirected transmission

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Note: This practice brief replaces an earlier position statement issued in May 1994.

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