

Facsimile Transmission of Health Information (2001 Update)

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Background

The quality of healthcare is enhanced when patient clinical information is readily available to healthcare providers. As a result, facsimile (fax) machines and fax software have become commonplace in healthcare organizations. Fax machines work by scanning a document and converting the text to electronic impulses that are then transmitted over telephone lines. The receiving fax then converts the electronic impulses back to text. Physicians who need to share clinical information about a patient use fax machines, for example, when intercampus or regular mail delivery proves too slow. Similarly, hospital transcription departments use facsimile software to deliver a copy of a dictated report to the physician's office as soon as the report is transcribed.

Although fax equipment and software can enhance the quality of healthcare by facilitating rapid transmission of clinical information, this same equipment and software opens up the possibility that information will be misdirected or intercepted by individuals to whom access is not intended or authorized. In recent years, there have been numerous reports describing events wherein patient health records were inadvertently faxed to a newspaper office, for example, rather than the intended recipient.

Legal and Regulatory Requirements

Most federal regulatory requirements such as HIPAA, the Medicare Conditions of Participation, and the Confidentiality of Substance Abuse Patient Records do not specifically address the use of fax equipment or copies.

State laws vary and may address the use of facsimile equipment in licensing or health information laws or regulations, or possibly those related to specific types of diseases, such as sexually transmitted disease or mental health problems.

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 on 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.

The Bureau of Policy Development of the Health Care Financing Administration (HCFA) addressed the subject of transmitting physicians' orders to healthcare facilities via fax machine. In Letter No. 90-25, dated June 1990, the Bureau 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.

Recommendations

1. Establish fax policies and procedures based on federal and state law and regulation and consultation with legal counsel
2. Include in your organization's Notice of Information Practices uses and disclosures of individually identifiable health information made via facsimile machine or software where appropriate (see AHIMA's Practice Brief on Notice of Information Practices, May 2001)
3. Obtain a written authorization for any use or disclosure of individually identifiable health information made via facsimile machine or software when not otherwise authorized by the individual's consent to treatment, payment, and healthcare operations, or federal or state law or regulation
4. Take reasonable steps to ensure the fax transmission is sent to the appropriate destination. Pre-program and test destination numbers whenever possible to eliminate errors in transmission from misdialing. Periodically remind those who are frequent recipients of individually identifiable health information to notify you if their fax number is to change (for example, include a piece in medical staff newsletters where transcriptionists automatically fax reports to physician offices). Train staff to double check the recipient's fax number before pressing the send key
5. Attach a confidentiality statement on the cover page when transmitting individually identifiable health information (see "Sample Confidentiality Notice," above)
6. Contact the receiver and ask that the material be returned or destroyed if the sender becomes aware that a fax was misdirected
7. Place fax machines in secure areas
8. Unless otherwise prohibited by state law, information transmitted via facsimile is acceptable and may be included in the patient's health record.

Sample Confidentiality Notice

The documents accompanying this transmission contain confidential health information 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 unless required to do so by law or regulation 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 information in error, please notify the sender immediately and arrange for the return or destruction of these documents.

Revised by

Gwen Hughes, RHIA

Originally prepared by Mary D. Brandt, MBA, RHIA, CHE

Acknowledgments

Jill Callahan Dennis, JD, RHIA

Beth Hjort, RHIA

Cheryl Smith, BS, RHIT, CPHQ

References

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