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Advisory No. 4A

Faxing medical records and other confidential data

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Sending and receiving medical records, prescriptions, lab and X-ray reports, and insurance forms by fax is convenient, fast and legal. But faxing is not without problems. Information sent by fax is transmitted over telephone lines. If the correct number was not dialed, sensitive, confidential information could be sent to the wrong person, thus violating a patient's privacy and creating a potential liability for the sender. Fax machines can malfunction, either at the sending or receiving end, and information might not be properly or completely transmitted. The quality of received documents is dependent in part on the sender's skills, the qualities of the telephone lines used to transmit and receive, and the recipient's fax machine. Medical offices that fax medical records and other data should follow the safeguards in this advisory.

Should you fax?

Before faxing any patient-specific medical information, be certain you have the patient's written authorization to do so if required by HIPAA or state law. Medical records sent by fax must be handled with the same confidentiality safeguards used when transmitting medical records in any other format. For more information, see *Special Report Claims Alert 26A, "California Confidentiality of Medical Information Act: Rules for privacy and release of medical information"* (California only); and *Special Report Claims Alert 34, "HIPAA's Privacy Act: A Compliance Primer for the Solo and Small Group Practice,"* a newsletter that reviews the federal regulation's requirements (all states).

Preparing to fax.

Count and number the pages to be faxed. Use a cover page that includes all of the following:

- the date;
- sender's name, address, telephone and fax numbers;
- recipient's name, telephone and fax numbers; when faxing to a facility that has different departments, include the recipient's department or office number;
- the number of pages being faxed, counting the cover page;
- a [confidentiality notice \(Figure 1\)](#);
- a brief message about the contents, including a request that the recipient acknowledge receipt of the fax (see "[Did it get there?](#)" below);
- Use a plain, large, easy-to-read type face on fax cover pages. Fancy type, small type, heavy graphics and reverse type (white on black) take longer to transmit and are difficult to read.

Dial carefully.

Check the recipient's fax number and dial it carefully to ensure the transmission is sent to the right person. Contemporary fax machines have a digital display that shows the dialed number. Check the fax number before hitting the "send" key. Machines that enable the user to program frequently dialed numbers may provide some protection against inadvertent errors.

Did it get there?

Some fax machines do not indicate if the transmission was successful. Some fax machines *do* indicate the number of pages transmitted, but this information may be displayed for only a few seconds on a digital readout. If the recipient's fax machine is busy, depending on its setup, the sender's fax machine may re-try the call several times. But if the transmission never goes through because the recipient's fax machine is busy or offline, the sender may not know unless a journal report is generated. Unless the sender stays at the machine while a fax is transmitted, it is possible that transmission error messages could be overlooked. Some fax machines print a journal page with details of *each* transmission; others may print a journal at the end of the day or after a specified number of transmissions. Review journal reports to determine if a fax did not go through or if only portions of the packet were sent. Because many problems can occur with a fax transmission, these types of notices (digital readouts or journal reports) are not as effective a safeguard as a phone call by the sender or by the recipient to acknowledge receipt. In your cover page message, indicate in large, bold type if you want the recipient to call to acknowledge receipt, or if you will make the call to confirm it.

Is it readable?

If received faxed information is unclear, illegible, or is otherwise unreadable, request a re-transmission from the sender. This is especially important if medication requests, test results, or other documents that contain critical numbers or words do not come through clearly and therefore could be misinterpreted. Although prescription information (except for controlled substances) and lab data may be faxed, telephone line interference or unclear fax machines at either end can add spots and smudges that might be misread as numbers or decimal points. Do not accept unclear or unreadable faxes. Notify the sender and ask for a re-transmission, or request a paper copy by mail.

Saving faxes

Most new fax machines use plain copy machine grade paper. Some older faxes receive and print on thermal paper, which can fade in time or darken if exposed to light. If your fax machine uses thermal paper and you intend to save received information, make a photocopy of the fax message on plain paper. Destroy the thermal fax after making a copy.

Faxing Schedule III-V controlled substance prescriptions

Federal laws allow Schedule III-V controlled substances to be prescribed via fax to the pharmacist (21 C.F.R. 1306.21), as do Alaska, California and Idaho state laws. Hawaii state law does not currently allow faxing of Schedule III-V drugs; however, the Department of Public Safety will introduce a bill to allow such faxed prescriptions in the 2006 legislative session.

Faxing Schedule II controlled substance prescriptions

According to federal law, prescription orders for Schedule II drugs may only be faxed if the patient is in a skilled nursing facility, intermediate care facility, or licensed home health agency providing hospice care; and if the pharmacist reduces the prescription to writing and obtains the signature of the person to whom the drugs are delivered [21 C.F.R. §1306.11(f)(g)]. In addition, prescriptions for Schedule II controlled substances may be faxed by a physician or a physician's agent so long as the original written, signed prescription is presented to the pharmacist before dispensing [21 C.F.R. §1306.11(a)].

California only: California state law allows prescriptions for Schedule II controlled substances to be faxed in an emergency if a written prescription is provided or postmarked within seven days to the pharmacist (Health & Safety Code §11167). However, federal regulations, which supercede state law in this instance, do not allow faxing of Schedule II prescriptions in this circumstance. MIEC legal counsel suggests that policyholders in California follow the more stringent federal requirements on this point.

All states: In the event of an emergency, federal law allows oral prescribing of Schedule II drugs so long as the quantity is limited to the amount necessary to treat the patient during the emergency period, the prescription is reduced immediately to writing by the pharmacist, the pharmacist makes a reasonable effort to confirm the identity of the prescribing provider if he or she is not known to them, and within seven days the prescribing physician produces a written prescription [21 C.F.R. §1306.11(d)].

Physicians in Alaska, California and Idaho may follow federal guidelines when orally prescribing Schedule II drugs in an emergency. Hawaii physicians may follow the guidelines as well, with one exception: the physician must produce a written prescription within seventy-two (72) hours rather than the seven days allowed by federal law.

Faxing and HIPAA

Faxing is not considered an "electronic means" for purposes of determining whether or not a physician is a "covered entity" under HIPAA if information is faxed from a stand-alone fax machine, rather than from a computer fax modem. However, to the extent a physician is a covered entity, some additional obligations will be imposed with respect to the physician's use of fax machines. The HIPAA Privacy Rules require covered physicians to establish and use written policies and procedures

reasonably designed to verify the identity and author of the requestor when the physician does not know the person requesting the Protected Health Information (PHI) [45 C.F.R. §164.514(h)]. “Knowledge of a person” may take the form of a known fax number. [65 Fed.Reg. 82546 (Dec. 28, 2000)]. When a fax number is not known, “calling the requestor back through the main organization switchboard rather than through a direct dial phone number” is sufficient [65 Fed.Reg. 82719 (Dec. 28, 2000)].

Updated with the assistance of Renee Richards, Esq., Hassard Bonnington LLP, San Francisco, CA

Fax Cover Page Confidentiality Notice

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL(S) OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE (COLLECT, IF NECESSARY) AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS

Get advice from MIEC

Loss Prevention Department

Oakland, CA
510/428-9411 (Bay Area)
Outside 510: 800/227-4527
Fax: 510/420-7066

E-mail:

lossprevention@miec.com

claims@miec.com

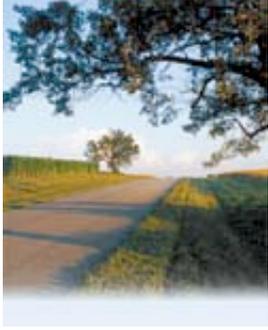
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Idaho Claims Office

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