



TMA Privacy and Civil Liberties Office Information Paper



SENDING AND RECEIVING PHI BY FACSIMILE

HIPAA Privacy ♦ August 2010

I. Supporting Policies for this Information Paper

- A. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R, C14.3) implements the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (45 CFR 164.530 (c)(1)).
 1. DoD 6025.18-R, C14.3, outlines the appropriate administrative, technical and physical safeguards to be taken by covered entities within the MHS when transmitting PHI by fax to maintain patient privacy and confidentiality.
- B. DoDD 5015.2, DoD Records Management Program

II. Definitions Associated with Transmitting and Receiving PHI by Fax

- A. Activity Confirmation Report (ACR): A term of art for a document generated by the fax machine indicating whether the fax transmission has been successful. It includes a print-out of the destination fax number.
- B. Activity Report Journal (ARJ): A term of art for a manually or electronically generated log that may be used to identify how each incoming fax is handled, to confirm the successful transmission of each outgoing fax, and/or to identify any errors that have occurred during the sending or receiving of faxes.
- C. Covered Entity: A health plan or a healthcare provider within the MHS that transmits any health information in electronic form to carry out financial or administrative activities related to healthcare.
- D. MHS: All DoD health plans and all DoD healthcare providers that are, in the case of institutional providers, organized under the management authority of, or in the case of covered individual providers, assigned to or employed by TMA, the Army, the Navy, or the Air Force.
- E. Protected Health Information (PHI): Information that is created or received by a covered entity and relates to the past, present, or future physical or mental health of an individual; providing payment for healthcare to an individual; and can be used to identify the individual. It excludes health information in employment records held by a covered entity in its role as employer.

III. Guidance Regarding How to Securely Send and Receive PHI by Fax

- A. In accordance with the requirements set forth in DoD 6025.18-R, covered entities within the MHS are responsible for establishing appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of PHI.
- B. The means by which patient information is to be transmitted depends on the clinical circumstances.
- C. The MHS must ensure that PHI transmitted or received by MHS facilities, including military treatment facilities (MTFs) is handled in a manner that protects against unauthorized disclosure of the information to unintended third parties.
 - 1. Because the use of fax machines poses certain risks of improper disclosure of confidential patient information, MHS facilities are encouraged to transmit and receive PHI by mail whenever practical.
 - 2. Transmission of PHI by fax should be limited to urgent or non-routine situations when mail or other delivery would not be feasible.
 - 3. The provider or other professional staff member, in collaboration with the entity's Privacy Office should make the final determination as to the appropriateness of using fax machines to transmit patient medical information.

IV. Procedures for Transmitting and Receiving PHI by Fax

- A. Authorized Personnel. PHI should only be faxed by individuals authorized by the covered entity's policies and procedures.
- B. Assignment of Fax Machines. When possible, covered entities should consider designating fax machines to be used exclusively to transmit and/or receive PHI. The designated fax machine should be physically located so that:
 - 1. It is not in an open public area.
 - 2. Its use can be monitored by the person(s) designated by the MTF.
 - 3. Only authorized staff can have direct access to the fax machine.
- C. PHI Fax Cover Page. Covered entities are advised to create a special fax cover sheet to be used when transmitting PHI. This sheet should contain, at a minimum, the following information:
 - 1. Name of the covered entity
 - 2. Date and time of transmission
 - 3. Number of pages being transmitted (including cover page)
 - 4. To (Name, Telephone Number and Fax Number)
 - 5. From (Sender's Name, Provider's Name, Sender's Telephone Number, and Sender's Fax Number)
 - 6. Remarks or Special Instructions (if appropriate)
 - 7. Information instructing receiver to verify receipt of the fax
 - 8. Confidentiality statement. For example:

“This document may contain information covered under the Privacy Act, 5 USC 552(a), and/or the Health Insurance Portability and Accountability Act (PL 104-191) as implemented by DoD 6025.18-R. If this correspondence contains health-care information, it is being provided to you after appropriate authorization from the patient or under circumstances that do not require patient authorization. You, the recipient, are obligated to maintain it in a safe, secure and confidential manner. Re-disclosure without additional patient consent is prohibited unless the disclosure is otherwise permitted by law. Unauthorized re-disclosure or failure to maintain confidentiality subjects you to applicable sanctions. If you have received this correspondence in error, please notify the sender at once by calling (*enter applicable phone numbers and extension*) and destroy all copies.”

D. Transmitting Information. The facility’s authorized fax user(s) should:

1. Ensure that there is appropriate authorization for the fax transmittal and that the documentation of the authorization is maintained in accordance with the covered entity’s policies and procedures.
2. When faxing to an entity for the first time, telephone that entity to alert them to the pending transmission, confirm the fax number, and determine whether the fax machine is located in a secure area.
 - a. To ensure the validity of the receiving entity, call the entity at its main organization switchboard rather than through a direct phone number.
3. Reconfirm the destination fax number with the intended recipient prior to transmission.
4. Confirm the success of the transmission by calling the intended recipient.
5. Remove the material from the fax machine immediately upon successful transmission and follow local procedures for storing or destroying sensitive documents.
6. Consider pre-programming frequently used numbers directly into the fax machine to avoid errors in dialing the phone number.
7. If a fax is transmitted from a personal computer to a fax machine, ensure all the relevant steps in this section are followed, along with compliance with the HIPAA Security Rule as implemented by DoD 8580.02-R.

E. Receiving Information. Covered entities should designate appropriate employees to monitor fax machines on a regular basis for unanticipated faxes and to distribute these documents to the intended recipient.

1. When a fax arrives, it should be reviewed to verify the number of pages against the faxed cover page. If page(s) are missing, contact the sender and request the document be retransmitted.
2. Follow any instructions on the fax cover page.
3. If the facility maintains an ARJ, ensure the faxed document is recorded appropriately.

V. Fax Errors

A. Transmission Errors. If the sender discovers that PHI has been transmitted to the wrong fax number, the sender should immediately contact the erroneous recipient and request that the fax be destroyed.

- B. Receiving faxes not intended for that number. If a covered entity receives a fax in error, the recipient should inform the sender of the error. Unless instructed otherwise by the sender, the fax must be destroyed and these actions noted in the ARJ.
- C. Both of the aforementioned circumstances would be classified as breaches. Thus, proper breach notification procedures would need to be followed. For further information, refer to the TMA Privacy Office Breach Response Web site:
<http://www.tricare.mil/tma/privacy/breach.aspx>

VI. Record Keeping

- A. Unless otherwise prohibited, PHI transmitted or received by fax is to be included in the patient record. MHS covered entities should develop a system to maintain records of PHI faxed, including evidence of the time/ date of the transmittal, the intended recipient, its contents, and the fax number at which it was confirmed to have been received. These files will be maintained in accordance with the DoD Records Management Program (DoDD 5015.2).