

HIPAA Regulations On The Use Of Or Fax Or E-mail To Communicate With Providers Or Patients

The answer to this question is divided into parts with the assumption that the information being communicated meets the definition of individually identifiable protected health information.

- **Regulations for faxing test results to physicians who order the test** -- HIPAA does not prohibit the use of fax to communicate protected health information, but the faxed information is subject to the HIPAA privacy and security measures of the rule. The *security* provisions of HIPAA require "reasonable" efforts to insure that the fax was sent securely and that the fax was received securely. Of course, the term "reasonable" is subjective. Steps should be taken to make sure you are faxing to a dedicated fax machine, in a secure location, and that you have a method of ascertaining that the information is being received by the person intended.

NOTE -- the privacy rules allow pathologists, as indirect treatment providers, to use and disclose protected health information for treatment, payment and health care operations without obtaining written consent from the patient.

- **Regulations for faxing results to patients** -- HIPAA, to be consistent with CLIA, allows for the communication of test results to the patient only as allowed by CLIA. CLIA permits labs to provide test results only to "authorized persons " as defined primarily by state law, which in most instances, is the ordering physician and not the patient. If state law does allow for test results to be communicated directly to the patient, and the results are faxed, reasonable security measures described above should be followed.
- **Regulations for emailing test results to physicians who order the test** -- HIPAA does not prohibit the use of e-mail to communicate protected health information, but the HIPAA privacy and security measures apply. Once again, HIPAA requires "reasonable" efforts to insure privacy and security. These range from asking if the e-mail is password protected upon receipt to more technological approaches such as encryption, virtual private networks, or secure messaging.
- **Regulations for emailing test results to patients** -- HIPAA, to be consistent with CLIA, allows for the communication of test results to the patient only as allowed by CLIA. CLIA permits labs to provide test results only to "authorized persons " as defined primarily by state law, which in most instances, is the ordering physician and not the patient. If state law does allow for test results to be communicated directly to the patient, and the results are faxed, reasonable security measures described above should be followed.

Some general thoughts on the use of the word "reasonable" in the regulations: The rule recognizes "scalability" in compliance, meaning that large integrated health care systems will be held to higher compliance measures than solo practitioners. The rule also requires every health care provider and organization to develop written policy and procedures for HIPAA. These written approaches should communicate how you intend to comply with the rules. It would be an error to have written procedures that are not followed, such as indicating the use of advanced technologies like encryption or private networks for email communication, and then not having the technology in place.



The information contained in this resource is intended solely for education and communication purposes and is not intended to constitute medical advice. The CAP expressly disclaims any and all liability for any information included in this resource.

© 2003 College of American Pathologists