

DDE

Supplemental Information

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Introduction

- Supplemental Document
(aka the alternative interpretation)
- Purpose – identify where ambiguous areas are to promote dialogue on important policy and interpretive issues
- Identified Ambiguities - industry (WEDI) can develop interpretation(s), recommendations, policy based guidance
- Final arbiter – HHS issuance of amended rule or official guidance, and/or court

Clear(er) Provisions

There are certain basic rules that are clear:

- Health plans must have the capability of conducting standard, electronic data interchange transactions. 162.925(a)
- Health plans may offer a DDE option to health care providers. 162.925(b)

Clear(er) Provisions

A DDE option offered by a health plan must utilize HIPAA mandated data content and condition but does not need to comply with mandated format.

- Data content: data elements and code sets inherent to the transaction and not related to format
- Data condition: rule describing when to use a certain data element or segment
- Format: data elements related to enveloping, hierarchical structure, or assist in identifying data content

Clear(er) Provisions

- Providers may choose to use DDE offered by plans to conduct a transaction.
- Health plans may not offer an incentive to providers to use the DDE option.

Questions

Does Direct mean data element by data element?

- “direct entry of data (for example using dumb terminals or web browsers) that is immediately transmitted into a health plan’s computer”
 - One: How did the examples named in the regulation work at time the regulation was adopted?
 - Two: “data” is not defined in regulation
 - A keystroke?
 - A data element?
 - A segment?
 - A data set?
 - Other

Questions

Can an entity use a business associate?

- **Key phrases:** “a health plan can offer”, “a health care provider can elect to use”, “direct”, “immediately transmitted into a health plan’s computer”
 - Option One: means no intermediary
 - Option two: entity can use business associates to act on their behalf
 - Option three: where an entity has no computer of its own that conducts that business function
 - A) the exception is inapplicable or
 - B) a BA’s computer is in fact “the entity or entities’ computer”

Questions

Is the prohibition against adverse affect relevant to how DDE is treated vis a vis EDI?

- A health plan may not delay or reject a transaction, or attempt to adversely affect the other entity or the transaction, because the transaction is a standard.

162.925(a)(2)

- There is no regulatory language which supports the proposition that this requirement means anything other than what it says. Plans cannot negatively discriminate against a transaction or entity on the sole basis that it is/uses a standard.
- Further, a specific provision addresses requirements directly related to a plan's offering of DDE.

Questions

What does the no incentive provision prohibit?

- A health plan may not offer an incentive for a health care provider to conduct a transaction covered by this part as a transaction described under the exception...162.925(a)(4)
 - This prohibition only governs “transactions covered by this part”. These are listed in subparts K through R. So any discussion related to other information exchanges is specifically excluded from this prohibition and isn’t relevant.
 - The provision does not suggest, much less mandate, a comparison of characteristics between different communication methods.
 - There is no definition of incentive:
 - A subjective analysis of whether any provider may find any relevant function more useful or advantageous in any situation
 - Something in the middle? What criteria?
 - An overt or tangible bonus, reward, or punishment offered or imposed by the plan to the provider

What Glasses do you wear?

Polarized viewpoints may contribute to interpretation

1. DDE is an exception and therefore a barrier to standardization. Construe all ambiguities to constrain the exception and relegate it to a transition-type role.
2. DDE is the official recognition that there are multiple, viable technologies that can transmit standard data. Construe EDI as a minimum required standard and DDE as one of a range of alternatives in addition to it.