## HIPAA INFORMATION SERIES

### 10. Enforcement of HIPAA Standards

This is the tenth in a series of informational papers developed by the Centers for Medicare and Medicaid Services (CMS) to communicate key concepts and requirements contained in HIPAA. Collectively, the papers provide information, suggestions, tips, guidance and checklists to assist health care providers in understanding what they need to focus on to become HIPAA compliant. This paper describes CMS' role and approach to enforcing HIPAA's electronic transactions and codes sets requirements.

> **IMPORTANT:** CMS will be responsible for developing and enforcing the administrative simplification requirements of HIPAA with the exception of the privacy requirements which are overseen and enforced by HHS' Office for Civil Rights (OCR).

### What is CMS' role in helping health care providers comply with HIPAA standards?

On October 15, 2002, the Secretary of the Department of Health and Human Services (HHS) announced that CMS would be responsible for developing and enforcing the Administrative Simplification requirements of HIPAA. A new office within CMS, the Office of HIPAA Standards, was created to proactively support and oversee the HIPAA transaction and code set standards requirements, the security requirements and the national identifier requirements.

The Privacy requirements will continue to be overseen and enforced by HHS' Office for Civil Rights (OCR).

### How will the compliance process work?

CMS' immediate goals are to clarify the HIPAA standards and provide technical guidance to covered entities. The enforcement of the transactions and code sets is primarily complaint-driven. When CMS receives a complaint about a covered entity, they will notify the entity in writing that a complaint has been filed. The entity will have the opportunity to demonstrate compliance or to submit a corrective action plan. Organizations that exercise "reasonable diligence" and make efforts to correct problems and implement the changes required to comply with HIPAA, are unlikely to be subject to civil or criminal penalties. However, if the covered entity does not respond to CMS, fines could be imposed as a last resort.

> **NOTE:** Your "good faith efforts" will go a long way as you work towards HIPAA compliance.

CMS intends to develop guidelines that explain how the enforcement process will operate. In the meantime, providers should take advantage of the numerous web sites and resources outlined in this and other papers in this informational series.

## CMS' commitment to providers

CMS' goal is to help health care providers implement HIPAA's electronic transactions and code set standards by the compliance deadline. The agency is committed to educating and assisting providers, rather than conducting investigations and audits.

> **CMS' Objective:**
>
> **Widespread Voluntary Compliance**

It is CMS' hope that with the necessary help and support there will be wide spread compliance with the requirements.

- ➢ CMS will focus on educating providers and other covered entities on what steps they should be taking to meet the October 16, 2003 deadline for compliance.

- ➢ CMS will encourage providers and other covered entities to prepare a corrective action plan in case they cannot meet the deadline.

- ➢ CMS will not impose fines on any provider without providing them with an opportunity to correct problems and/or submit a plan for compliance.

- ➢ CMS will concentrate enforcement activities on investigating complaints.

## What should you do if you did not submit an extension request?

> **October 16, 2003 Deadline:**
>
> **"Learn More and Act Now"**

The official deadline for submitting a one year "compliance extension plan" was October 15, 2002. Providers who are "covered entities" and did not file for an extension, are required by law to be compliant with the electronic transactions and code sets requirements.

Given CMS' complaint driven enforcement process, even if you did not file for an extension, you should make every effort to come into compliance as soon as possible. Use this informational series of papers, the resources available on web sites, and your local trade organizations to help you get started.

## STANDARD TRANSACTIONS

1. Claims or equivalent encounter information

2. Payment and remittance advice

3. Claim status inquiry and response

4. Eligibility inquiry and response

5. Referral certification and authorization inquiry and response

6. Enrollment and disenrollment in a health plan

7. Health plan premium payments

8. Coordination of benefits

*Pending approval:*
9. Claims attachments

10. First report of injury

### Code Sets

1. Physician services/ other health services- **both HCPCS and CPT-4**

2. Medical supplies, orthotics, and DME- **HCPCS**

3. Diagnosis codes- **ICD-9-CM,Vols 1&2**

4. Inpatient hospital procedures– **ICD-9-CM,Vol 3**

5. Dental services– **Code on dental procedures and nomenclature**

6. Drugs/biologics– **NDC for retail pharmacy**

### How is a complaint filed?

Any HIPAA related complaints, other than privacy, are filed in writing formally with CMS. You may request both paper-based and on-line forms from CMS' many resources. The form can be downloaded from:
http://www.cms.hhs.gov/hipaa/hipaa2

CMS designed the form for ease of use. It contains the minimal amount of information needed to initiate a HIPAA related complaint against an entity. Please note that HIPAA privacy complaints should not be filed with this form. All Privacy inquiries and concerns are handled by the Office of Civil Rights.

### What about new provider practices that open for business after October 15, 2002?

New provider offices that opened and started seeing patients after October 15, 2002 did not have an opportunity to file for the one-year extension. If you are a newly formed covered entity, you should be HIPAA compliant when you open your doors for patients and start processing your claims. Remember, you have the option of utilizing a clearinghouse, billing service, or

> **NOTE:** if you are a "covered entity" and are not submitting your transactions in the HIPAA standard electronic formats, your claims may get rejected and may not get paid in a timely fashion.

software company to meet the HIPAA electronic transactions requirements. If you are not able to achieve compliance immediately, good faith efforts could be taken into account in the event a complaint is filed. Also, in the event of a complaint, you will have the opportunity to submit a corrective action plan to resolve any problems.

### Are there penalties for non-compliance?

The law does provide for fines for non-compliance. The Secretary of HHS may impose a civil monetary penalty on any person or covered entity who violates any HIPAA requirement. The civil monetary penalty for violating transaction standards is up to $100 per person per violation and up to $25,000 per person per violation of a single standard per calendar year.

Keep in mind, CMS sees its primary role as a promoter of compliance and would only impose a monetary fine as a last resort. As discussed earlier, organizations that exercise "reasonable diligence" and make efforts to correct problems are unlikely to be subject to civil penalties. However, if the covered entity does not respond to CMS, fines could be imposed as a last resort.

## HIPAA Deadlines

**April 14, 2003**
*Privacy Deadline*
❖

**April 16, 2003**
*Testing*

You should start testing your software no later than April 16, 2003.
❖

**October 16, 2003**
*Electronic Transactions & Code Sets Deadline*

**NOTE:** Medicare will require that all Medicare claims be submitted electronically, with the exception of those from small providers and under certain limited circumstances.
❖

**April 21, 2005**
*Security Deadline*
**(April 21, 2006 for small health plans)**

## *Moving towards compliance – it is not too late*

As discussed throughout this information series, CMS is committed to helping providers throughout the HIPAA process. We highly recommend that you document your progress towards compliance and review the steps outlined in this series.

> **TIP:** Continually review your HIPAA plans and document your progress towards HIPAA compliance.

- Educate yourself and your staff on the basics of HIPAA law (paper 1).
- Determine whether you are a covered entity under HIPAA (paper 2).
- Be aware of the HIPAA deadlines right around the corner (paper 3).
- If you are a covered entity, review your business operations and review the HIPAA Electronic Transactions & Code Sets (paper 4).
- Communicate with your vendors, billing services and clearinghouses. Know what questions you should be asking them (paper 5).
- Insure you have the necessary two-way communication with each of your health plans. This is essential for compliance (paper 6).
- Test your office operations and insure that those who electronically process claims on your behalf have a testing plan in place (paper 7).
- Investigate and understand your Trading Partner Agreements with your health plans (paper 8).
- Take those final steps towards compliance and do not hesitate to get the help you need (paper 9).

- **CMS E-Mail box** – **askhipaa@cms.hhs.gov.**

- **CMS HIPAA Hotline –1-866-282-0659**

  Learn about the latest HIPAA Administrative Simplification outreach materials and events. Join the CMS HIPAA outreach listserv.
  To sign up, go to our web site: http://www.cms.hhs.gov/hipaa/hipaa2