



Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM Update #30 January, 2014

Proposed Regulations Detail Process for Health Plans to Certify Compliance With HIPAA's Electronic Transaction Standards and Operating Rules, Starting in 2015

HHS has issued proposed regulations to implement the statutory requirement for health plans to certify compliance with HIPAA's electronic transaction standards and operating rules. As background, HHS has adopted standards that health plans (and other HIPAA-covered entities) must use when conducting specified transactions electronically. Health care reform requires HHS to adopt operating rules to facilitate implementation of the transaction standards and further requires health plans (but not other HIPAA-covered entities) to certify that they are in compliance with the transaction standards and operating rules. To date, HHS has issued operating rules for three electronic transactions—eligibility for a health plan and health care claim status, and electronic funds transfers with remittance advice (EFT/ERA). The proposed regulations explain how health plans would certify that they are in compliance with the adopted standards and operating rules for these three transactions (First Certification Transactions), with an initial deadline of December 31, 2015 for most plans. Here are some high lights.

- *Who Must Certify?* The certification obligation would be imposed on controlling health plans (CHPs), which would report on behalf of themselves and their sub health plans (SHPs). (CHPs and SHPs are explained in the final rule regarding unique health plan identifiers (HPIDs). Each CHP would have to submit documentation demonstrating compliance with the standards and operating rules—with respect to itself, its SHPs, and business associates of itself and its SHPs.
- *Documenting Compliance.* Compliance may be documented in either of two ways, both of which are administered by the same independent organization that developed the operating rules—the Council for Affordable Quality Healthcare Committee on Operating Rules for Information Exchange (CORE).
 - *HIPAA Credential.* The first way to document compliance is through a HIPAA Credential, where the CHP attests to CORE that it has successfully tested the operating rules for each of the First Certification Transactions with at least 3 (and up to 25) trading partners accounting for at least 30% of the total number of transactions conducted with providers. The preamble notes that CORE is still in the process of developing the HIPAA Credential, which is expected to be finalized before final regulations are issued.
 - *CORE Seal.* The second way to document compliance is by obtaining a CORE Seal for each of the First Certification Transactions. The preamble identifies the following four-step process for obtaining a CORE Seal: (1) conducting a gap analysis by evaluating, planning, and completing necessary system upgrades; (2) signing and submitting a pledge to become a CORE-certified; (3) conducting testing through a CORE-authorized testing vendor; and (4) applying for a CORE Seal by submitting the proper documentation and fee
- *Reporting Covered Lives.* In addition to submitting documentation relating to the HIPAA Credential or CORE Seal, CHPs also would have to report their number of covered lives (including SHPs' covered lives), which would be used to calculate penalties for CHPs failing to adequately certify compliance. Penalties generally would range from \$1 to \$20 per covered life, but up to \$40 per covered life for CHPs submitting inaccurate or incomplete information with actual knowledge or acting in deliberate ignorance or reckless disregard of the accuracy or completeness of the information. The proposed regulations detail an administrative process for HHS to assess, and for CHPs to contest, penalties.



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The proposed regulations provide the first official indication that health plans did not have to comply with the December 31, 2013 statutory deadline for certifying compliance with the First Certification Transactions. While the delay until December 31, 2015 is welcome, the preamble emphasizes that all HIPAA-covered entities, including health plans, were required to be compliant with the operating rules for the eligibility for a health plan and health care claim status transactions by January 1, 2013 and for the EFT/ERA transaction by January 1, 2014. This delay relates only to the requirement to certify compliance. Health plans will have a lot to digest in the proposed regulations, with particular attention to the preamble's detailed discussion of the two certification alternatives. The preamble notes that there are "any number of reasons" why a CHP may elect one alternative over the other, so each CHP will have to analyze its own situation. Business associates (such as TPAs) that conduct electronic transactions on behalf of health plans likely will be happy not to have an independent certification requirement. But since a CHP's certification essentially vouches for its business associate's compliance with the applicable standards, CHPs may seek verification of compliance by their business associates to support their reporting to HHS.

[Administrative Simplification: Certification of Compliance for Health Plans, 45 CFR Parts 160 and 162, 79 Fed. Reg. 297 (Jan. 2, 2014)] Available at <http://www.gpo.gov/fdsys/pkg/FR-2014-01-02/pdf/2013-31318.pdf>



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