

Date: Thu, Aug 7, 2003
Subject: Weekly Trading Partner Message

This week we want to provide you with some important information regarding DHS' progress toward HIPAA compliance. The next three months will be a very busy time for everyone and we will be working hard to ensure that you continue to receive information about DHS status.

Attached you will find two documents. The first document explains DHS approach to this transition period. The second is a document developed by CMS called "Guidance on Compliance with HIPAA Transactions and Code Sets, After The October 16, 2003, Implementation Deadline." Each of these documents will be posted at: www.dhs.state.or.us/admin/hipaa

DHS and HIPAA Compliance

As you read the attached CMS Guidance document, you may ask yourself, "Will this change the way DHS is approaching HIPAA compliance?"

The answer is no.

DHS continues to work diligently and is on track to meet the federal compliance requirements deadline. DHS is committed to working collaboratively with its trading partners through effective communication.

The department's goals through this transition process are:

1. Continue to work collaboratively with you;
2. Ensure clients are served and access to health care services continue; and
3. Making sure cash flow is maintained to you our trading partners..

Good Faith Efforts

DHS will follow the guidance on HIPAA compliance provided by CMS on "good faith" efforts. This approach is consistent with the DHS approach and provides an opportunity for good faith efforts in working for compliance and encourages collaborative relationships to resolve issues, test transactions as well as implementation of appropriate contingencies.

As you may know DHS is modifying its systems and using a translator solution to achieve HIPAA compliance. This is a challenging endeavor as we are trying to mesh together older technology with a modern technology solution. As we have experienced challenges we have appreciated your participation in helping DHS develop shared solutions. We will continue to keep you informed each week and take advantage of opportunities that allow us to assist each other in our pursuit of HIPAA compliance.

In Closing

This is the last weekly provider communication that you will receive from me, as I am moving on to other challenges at this time. Jarred Clark - jarred.e.clark@state.or.us at 503-947-5378, - will be your key communication contact in my absence and many of you know him already. He will continue to put out the weekly trading partner messages for you. On a personal note, I have enjoyed working with all of you and wish you all the best.

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DHS continues to work diligently and is on track to meet the federal compliance requirements for the Oct. 16, 2003 HIPAA Transaction and Code Sets deadline.

The department's goals through its transition to HIPAA compliance on Transaction and Codes Sets are to:

- Work collaboratively with its trading partners;
- Ensure clients are served and maintain their access to health care;
- Maintain cash flows to trading partners.

DHS will follow the guidance on HIPAA compliance provided by the Centers for Medicare & Medicaid Services on "good faith" efforts.

- CMS's approach is to give covered entities, such as DHS, the opportunity to demonstrate good faith efforts in working toward compliance. We will work collaboratively with trading partners on shared challenges, provide external testing resources for trading partners, document efforts to comply with standards, and deploy appropriate contingencies.

DHS is in the process of modifying its systems to achieve HIPAA compliance.

- The DHS MMIS system is a 30-year old mainframe-based operation that has been modified almost continuously in response to changing business processes and legal requirements.
- DHS is making modifications in its systems and using a translator as a means of achieving HIPAA compliance initially. Long-term plans are to replace the MMIS with an improved system that will incorporate HIPAA compliance requirements.

DHS will continue to work collaboratively with its trading partners to identify and implement shared solutions on HIPAA Transaction and Code Sets issues.

- DHS will maintain its dialogue with the trading partner community to pursue collaborative approaches in dealing with Transaction and Codes Sets issues. It will regularly communicate with trading partners electronically via an email outreach list and through its web site.
- DHS will be an active participant in trading partner forums relating to these issues, such as the Oregon HIPAA Forum.
- DHS will proactively set work sessions and other meetings with its trading partners to develop joint business rules pertaining to systems changes needed to accommodate HIPAA.
- DHS will regularly assess its trading partners readiness and work with them to help remove any obstacles to compliance.

DHS HIPAA Client, Stakeholder, Provider Communication Mailings Tentatively Planned

STAKEHOLDERS	CLIENTS	PROVIDERS
⇓	⇓	⇓
WHEN: Gen. HIPAA Stakeholder mailing Nov.2002	WHEN: Privacy Notice Late March 2003	WHEN: 1.General HIPAA Letter with Timelines – Nov. 2002 2. Business Testing Letter –Feb. 2, 2003 3. Business How-To Letter - TBD
⇓	⇓	⇓
HOW: DHS Communications updating Stakeholder Database <i>(Associations, Partners, Etc. approx. 3,500 on this database)</i>	HOW: 1. OIS is pulling list of clients (as per Cindy’s request) 2. OMAP is helping to see if we can insert into Medical Card Mailing	HOW: 1. OIS/Business Services pulling provider lists (as per Cindy’s request) 2. Jane/Shawn mapping out contractual relationships
	↓	↓
	NEED HELP: Making sure we reach all clients who need to get this notice.	NEED HELP: Making sure we reach all providers who need to get these mailings.
	<u>Who is holder of databases/ mailing lists for clients affected in various parts of department?</u>	<u>Who is holder of databases/ mailing lists for providers affected in parts of department?</u>
	1. OMAP – Medical Card Mailing (K. Mickenham) 2. Food Stamp Mailing 3. SPD who don’t get medical cards 4. County Delivered Services to Clients (AAA) 5. WIC 6. State Hospitals 7. State Operated group homes 8. A&D clients 9. Tribes 10. Others?	1. OMAP has extensive provider mailing list. (K. Mickenham) 2. Others?

Guidance on Compliance with HIPAA Transactions and Code Sets AFTER THE OCTOBER 16, 2003, IMPLEMENTATION DEADLINE

BACKGROUND

To improve the efficiency and effectiveness of the health care system, Congress enacted the Health Insurance Portability and Accountability Act (HIPAA) of 1996, which included a series of “administrative simplification” provisions that required the Department of Health and Human Services (HHS) to adopt national standards for electronic health care transactions. All covered entities must be in compliance with the electronic transactions and code sets standards by October 16, 2003.

The law is clear: October 16, 2003 is the deadline for covered entities to comply with HIPAA’s electronic transaction and code sets provisions. After that date, covered entities, including health plans, may not conduct noncompliant transactions. With the October deadline just ahead, HHS has received a number of inquiries expressing concern over the health care industry’s state of readiness. In response, the Department believes it is particularly important to outline its approach to enforcement of HIPAA’s electronic transactions and code sets provisions. The Department will continue to provide technical assistance and issue guidance on the transactions and code sets provisions and compliance therewith.

ENFORCEMENT APPROACH

The Secretary has made the Centers for Medicare & Medicaid Services (CMS) responsible for enforcing the electronic transactions and code sets provisions of the law.

CMS will focus on obtaining voluntary compliance and use a complaint-driven approach for enforcement of HIPAA’s electronic transactions and code sets provisions. When CMS receives a complaint about a covered entity, it will notify the entity in writing that a complaint has been filed. Following notification from CMS, the entity will have the opportunity to 1) demonstrate compliance, 2) document its good faith efforts to comply with the standards, and/or 3) submit a corrective action plan.

Demonstrating Compliance - Covered entities will be given an opportunity to demonstrate to CMS that they submitted compliant transactions.

Good Faith Policy - CMS’s approach will utilize the flexibility granted in section 1176(b) of the Social Security Act to consider good faith efforts to comply when assessing individual complaints. Under section 1176(b), HHS may not impose a civil money penalty where the failure to comply is based on reasonable cause and is not due to willful neglect, and the failure to comply is cured with a 30-day period. HHS has the authority under the statute to extend the period within which a covered entity may cure the noncompliance “based on the nature and extent of the failure to comply.”

CMS recognizes that transactions often require the participation of two covered entities and that noncompliance by one covered entity may put the second covered entity in a difficult position. Therefore, during the period immediately following the compliance date, CMS intends to look at

both covered entities' good faith efforts to come into compliance with the standards in determining, on a case-by-case basis, whether reasonable cause for the noncompliance exists and, if so, the extent to which the time for curing the noncompliance should be extended.

CMS will not impose penalties on covered entities that deploy contingencies (in order to ensure the smooth flow of payments) if they have made reasonable and diligent efforts to become compliant and, in the case of health plans, to facilitate the compliance of their trading partners. Specifically, as long as a health plan can demonstrate to CMS its active outreach/testing efforts, it can continue processing payments to providers. In determining whether a good faith effort has been made, CMS will place a strong emphasis on sustained actions and demonstrable progress.

Indications of good faith might include, for example, such factors as:

- Increased external testing with trading partners.
- Lack of availability of, or refusal by, the trading partner(s) prior to October 16, 2003 to test the transaction(s) with the covered entity whose compliance is at issue.
- In the case of a health plan, concerted efforts in advance of the October 16, 2003 and continued efforts afterwards to conduct outreach and make testing opportunities available to its provider community.

While there are many examples of complaints that CMS may receive, the following is one example that illustrates how CMS expects the process to work.

Example: A complaint is filed against an otherwise-compliant health plan that accepts and processes both compliant and non-compliant transactions while working to help its providers achieve compliance.

In this situation, CMS would 1) notify the plan of the complaint, 2) based on the plan's response to the notification, evaluate the plan's efforts to help its noncompliant providers come into compliance, and 3) if it determined that the plan had demonstrated good faith and reasonable cause for its non-compliance, not impose a penalty for the period of time CMS determines is appropriate, based on the nature and extent of the failure to comply.

For example, CMS would examine whether the health plan undertook a course of outreach actions to its trading partners on awareness and testing, with particular focus on the actions that occurred prior to October 16th. Similarly, health care providers should be able to demonstrate that they took actions to become compliant prior to October 16th. If CMS determines that reasonable and diligent efforts have been made, the cure period for noncompliance would be extended at the discretion of the government. Furthermore, CMS will continue to monitor the covered entity to ensure that their sustained efforts bring progress towards compliance. If continued progress is not made, CMS will step up their enforcement efforts towards that covered entity.

Organizations that have exercised good faith efforts to correct problems and implement the changes required to comply with HIPAA should be prepared to document them in the event of a complaint being filed. This flexibility will permit health plans to mitigate unintended adverse effects on covered entities' cash flow and business operations during the transition to the standards, as well as on the availability and quality of patient care.

Corrective Action Plan (CAP) – After October 16, 2003, in addition to possible fines and penalties imposed, CMS will expect non-compliant covered entities to submit plans to achieve compliance in a manner and time acceptable to the Secretary. More detailed information on CAPs will be forthcoming.

WORKING TOWARD COMPLIANCE

In the few remaining months before the October 16th deadline, HHS encourages health plans and providers to intensify their efforts toward achieving transaction and code set compliance. In addition, HHS encourages health plans to assess the readiness of their provider communities to determine the need to implement contingency plans to maintain the flow of payments while continuing to work toward compliance. Although transaction and code set compliance is a huge undertaking, the result will be greatly enhanced electronic communication throughout the health care community. Successful implementation will require the attention and cooperation of all health plans and clearinghouses, and of all providers that conduct electronic transactions. There is considerable industry support for transaction and code sets, and we all look forward to realizing the many advantages of its successful implementation.

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