



Legal Update



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SNFs Must File HIPAA E-Health Care Transaction Compliance Plans

*Allan D. Jergesen and Deidre A. Schönfeldt
Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP*

Recently, the federal Centers for Medicare and Medicaid Services ("CMS"), the successor agency to the Health Care Financing Administration, published a "model compliance plan" for use by SNFs and other health care providers that will not be compliant with the HIPAA Electronic Health Care Transactions and Code Sets Rules before October 16, 2002. CAHSA members that operate SNFs must submit the compliance plan to CMS no later than midnight on October 15, 2002. While this may seem to impose a substantial burden, it should be quite manageable if approached in the proper manner.

Background

The federal Department of Health and Human Services published the final Electronic Health Care Transactions and Code Sets Rules in August 2000 [65 Fed. Reg. 50311 (August 17, 2000)]. These Rules should be distinguished from the HIPAA privacy rules that have attracted so much attention. They prescribe certain standardized formats that health care providers and health payors must follow when engaging in electronic data interchange ("EDI"). Specifically, they identify nine types of electronic transmissions in which providers and payors routinely engage and then prescribe standard data sets for use in each transaction. These will replace numerous different data sets that are currently in use. For example, SNFs no longer will use the

HCFA 1500 form to obtain payment from Medicare. The purpose is to improve data quality and to make electronic transactions more efficient by creating uniform national standards for information exchange. The transmissions include those by which a provider does the following:

- Determines whether a particular patient is covered by a particular payor
- Submits a claim for reimbursement to a payor
- Obtains information regarding the status of a claim that it has submitted
- Receives payment for a claim that it has submitted
- Reviews health services for quality and necessity

To comply with the Rules, SNFs, like other health care providers, must review the software programs that they use in the above electronic data transmissions and determine whether they meet the new criteria. They can do this most easily by consulting with the software vendor. Where software is non-compliant, an SNF will have to obtain new, compliant software. Alternatively, it can employ a so-called "health care clearinghouse" to receive its non-compliant data and put it in compliant form before sending it to the payor and to receive compliant data from the payor and put it in non-compliant form before returning it to the SNF.

Compliance Deadline

When the Electronic Health Care Transactions and Code Sets Rules originally were published in 2000, the deadline for compliance was October 16, 2002. But in December 2001, the Administrative Simplification Compliance Act extended the compliance date for one year to October 16, 2003 to give SNFs and other providers more time to build, test, and successfully implement new systems for the electronic transmission of data sets. However, SNFs, like other providers, cannot simply wait until that date. They must submit a compliance plan to CMS before October 16, 2002, to qualify for this extension. Alternatively, SNFs can comply with the Rules by ensuring before October 16, 2002 that their software for electronic health care transactions meets the standards or by employing a health care clearinghouse to manage non-compliant transactions. In that case, they need not submit a compliance plan to CMS to qualify for a one-year extension. ***SNFs that do not either submit an extension compliance plan or actually achieve compliance before October 16, 2002 may be excluded from the Medicare program.***

The remainder of this Legal Update explains how an SNF can file a compliance plan for the Electronic Health Care Transaction and Code Sets Rules, thereby obtaining a year's extension until October 16, 2003.

Filing a Compliance Plan

CMS has published a model compliance plan that all SNFs may use. SNFs are free to use their own form, provided they include the following information: budget, schedule, work plan, and implementation strategy for achieving compliance; planned use of contractors or vendors; assessment of compliance problems; and a timeframe for testing to begin no later than April 16, 2003.

The model plan can be obtained most easily at the CMS website on the Internet. To do so, an SNF need only go to www.cms.gov/hipaa/hipaa2/ascaform.asp. It then can print the model plan and the instructions and submit its completed plan to CMS in hard copy. Alternatively, and (it would seem) preferably, an SNF can fill out the plan online and submit it electronically. The SNF will receive an on-line confirmation number, which will serve as acknowledgment by CMS that it has received an extension until October 16, 2003. CMS asks that providers not submit the plan in both hard copy and electronic form. It would seem, therefore, that an SNF could comply most easily by submitting the plan electronically. CMS must receive electronically submitted compliance plans by midnight on October 15, 2002. Paper submissions must be postmarked no later than October 15, 2002. SNFs that fail to meet these deadlines will not receive extensions.

The model compliance plan itself is a four-page document containing 26 items for completion:

- Items 1-9 ask for information about the provider, including the contact person.

- Item 10 asks the provider to give the reason for filing for the extension, and lists 12 possibilities ranging from the need for more money or staff, to the need to buy the proper hardware, to the need to wait for the vendor to provide the appropriate software.
- Item 11 ask the provider to estimate its budget for implementing the Electronic Health Care Transactions and Code Sets Rules. The possibilities range from less than \$10,000 to "Don't Know."
- Items 12-14 request information regarding HIPAA awareness, which is designated as "Phase One" of an implementation strategy. The SNF need only indicate whether it has completed the awareness phase and, if not, when it plans to do so.
- Items 15-20 concern doing an informational assessment, which is denoted as "Phase Two" of an implementation strategy. These focus on such issues as whether the provider has compared its current systems to the future HIPAA requirements, whether it has developed a work plan, and whether it intends to use a vendor to help achieve compliance.
- Items 21-26 deal with the development and testing of a compliant system, which is denoted as "Phase Three" of an implementation strategy. These focus on where the provider stands with regard to obtaining and installing complaint software and on training staff to work with the software.

The model compliance plan is accompanied by detailed instructions for filling out each item.

As should be evident, the document is as much a questionnaire as an actual plan for implementing the Electronic Health Care Transaction and Code Sets Rules. SNFs should view it as a tool to get started, if they have not already done so, with the task of meeting the new standards. CMS estimates that it will take approximately 15-20 minutes to fill out the plan. This assumes, of course, that a provider has devoted enough preliminary attention to the matter to be able to answer the questions. Even allowing for some underestimation on the part of CMS, completing and sending in the plan should not pose a great administrative burden. SNFs should remember that CMS will not review and then approve or disapprove the compliance plan on its merits. Thus, the mere act of submitting the plan to CMS is sufficient to secure the one-year extension.

Conclusion

SNFs should see the CMS model compliance plan as an opportunity to assess where they stand in meeting the requirements of the Electronic Health Care Transaction and Code Sets Rules. If they have not taken any steps toward compliance, they should use the model plan to help them to get started. We recommend that SNFs not wait until October 2002 to complete and send in their compliance plans. Rather, they should do so as soon as they can, and then proceed to implement a system for compliance that will be completed well before October 16, 2003.