HIPAA Compliance Extension Postpones Simplification Benefits

by Dan Rode, MBA, FHFMA

Under the terms of the Health Insurance Portability and Accountability Act of 1996, February 2002 would mark the second anniversary of administrative simplification for all but the smallest of health plans, and one year of rules related to claims attachments. Instead, Congress just approved a compliance extension of its implementation date for up to one year.

HIPAA holds much promise for the healthcare industry, and while delay was not a goal of AHIMA, we must accept it and ensure that we are moving toward its promise: administrative simplification. This article provides a status report on the HIPAA regulations and implementation and suggestions for how HIM professionals should be addressing them if employed by or working with covered entities.

Transactions and Code Sets

The extension mentioned above **only** affects the HIPAA transactions and codes sets; the deadline for the privacy rule remains the same.1 Further, the extension for the transaction and code sets implementation requirements will be given only if the entity seeking the extension files a compliance agreement before the rule's October 16, 2002, deadline. (See "Senate Accepts House HIPAA Compliance Language" for more information.)

A revision to the transaction and code set regulations, in the form of a proposed rule, is already on the way. This revision corrects some problems unearthed as the transactions are being implemented. Among the changes are new definitions for a few data elements that become optional rather than required. The proposed rule will also contain language that reinstates the "J" code for use with pharmaceuticals.

Local codes were also to be addressed under HIPAA. A group under the Centers for Medicare and Medicaid Services (CMS) has been working to take the estimated 30,000 local codes (HCPCS Level III Codes) and make them into national HCPCS Level II codes. While this project has been somewhat successful in eliminating most discrepancies, no statement has been issued regarding these codes. How the Department of Health and Human Services (HHS) will address the need for national codes in the future through the HCPCS process, which, under HIPAA, should become an open process, has not been revealed either. Because we only expect an extension of the rule for some entities, HHS will have to create a process in short order for those facilities that will be implementing by October 16, 2002.

The code sets identified under HIPAA will remain the same as those currently in effect, but they will need to be addressed shortly as the government and industry attempt to deal with coding issues raised by new technology and the need for uniform coding.

Privacy

HHS will be publishing the promised notice of proposed rule making (NPRM) for revisions to the HIPAA privacy rule in the near future. Since HHS published its "guidance" in July 2001, it has received input on revisions to the rule. In August 2001, the National Committee on Vital and Health Statistics (NCVHS), the principle advisory group to HHS on these HIPAA rules, held hearings on the consent, minimum necessary, research, marketing, and fund raising components of the rule. NCVHS' suggestions and other input should comprise the HHS proposals, but the process is unlikely to be completed by the privacy rule one-year anniversary. Because the proposal will be in the form of an NPRM, the public will have the right to comment, which could lead to more changes between now and the April 14, 2003, implementation date. HHS Secretary Tommy Thompson has revealed that the NPRM will address the use of protected health information for preadmission/preregistration activities as well as for filling prescriptions.

The Office of Civil Rights (OCR) has already begun to take action through its Web site and regional offices to assist entities in the implementation of privacy. For more information on the OCR, see "The First Step Towards Compliance: OCR Outreach," (*J AHIMA*, February 2002).

Security

HHS sources indicate that it is holding the security final rule to ensure that any changes made to the privacy regulations will change the security rule. Some covered entities have complained that the privacy rule was changed extensively between the NPRM and the privacy final rule, and HHS wants to avoid similar complaints about the security rule. Several sources have indicated that they do not expect problems and the security regulation will be released shortly. The implementation date requirement for security will be approximately a year behind that for privacy.

Claims Attachments

The claims attachments rule was originally scheduled to be introduced a year after the claims transactions rule, though it appears that HHS will attempt to release this rule this spring. Limited information has been posted by HHS on the claims attachments and the standards involved. Work on this transaction has occurred within Health Level Seven and the Accredited Standards Committee X12. It is unclear at this point how the industry will react to these attachments, but an implementation will certainly be no sooner than late 2004.

Identifiers

HHS has already published NPRMs for national uniform identifiers for healthcare providers and individual employers. HIPAA calls for two additional identifiers: one for healthcare plans and one for individuals. As we have noted before, Congress has put a requirement into the last several HHS appropriations that prohibits it from taking action on the individual identifier. In the January 2002 *Journal*, we noted that this stance might be challenged as the industry and federal government look to resolve issues surrounding the public health infrastructure and recent bioterrorism events.

HHS sources tell us that the identifiers for health plans lay ready for an NPRM, though when the healthcare community will see this notice remains unclear. Final rules for providers and employers may be released soon due to another item contained in the House HIPAA extension language: an appropriation of $44.2 million for HHS to use in implementing HIPAA. The delay behind identifiers has been because Congress had not put into use any monies for implementation. To establish identifiers means not only defining such identifiers, but also administering a process that assigns identifiers and maintains the identification behind such IDs. Now that possibility exists.

Penalties

HIPAA never called for one or more penalty rules, but HHS promised such a rule. When the privacy rule was issued, HHS indicated that the OCR would be responsible for enforcement of the privacy rule. This leaves the enforcement of other HIPAA administrative simplification to HHS. The publication of such rules has yet to be determined, but some believe that action has been slowed in order to provide the industry time to manage the other rules.

Additional Rules Possible

HIPAA also allows the Secretary to promote other rules under HIPAA. So far, there is no indication of whether a "first report of injury" transaction rule will be published. First report of injury forms, in their paper format, are initiated by employers, which are currently exempt under HIPAA.

Policy makers, and especially the NCVHS fully expect the secretary of HHS to promote other HIPAA rules in support of the computerized patient record (CPR). The NCVHS has already begun exploring this goal and AHIMA testified on this issue in a spring 2001 NCVHS meeting. The NCVHS standards and security subcommittee has indicated that it will be holding hearings on the content of a CPR this winter, and AHIMA will report on these hearings as soon as possible.

Don't Delay Benefits of HIPAA

The US healthcare industry has a reputation of lagging behind in the adoption of electronic transactions and other e-health initiatives. Delay in the HIPAA transaction and code set implementation raises concern that once again some of the entities in the industry will drag their feet in implementation of the rules and modernization of the information infrastructure.

While the HIPAA rules have been slow in coming, their delay should not stop the industry from implementing the standards wherever possible. The ASC X12 transaction standards, the ICD-9-CM, CPT, and other coding standards stand ready to use at any time.

Government rules only ensure that at some point all covered entities have implemented the rules. Don't let your facility, practice, health plan, clearinghouse, and other covered entity delay implementation. You are only delaying your opportunities for administrative simplification and cost savings as well as the ability to address clinical data issues such as medical errors (and patient safety), healthcare information infrastructure, e-health, and consistency in coding. Make time to participate in local HIPAA activities and let those present know how HIPAA affects HIM. Don't miss the opportunity to educate your colleagues and members of Congress about the issues surrounding the need for HIPAA and a steady implementation rather than delay.

Notes

1. See AHIMA's Analysis of the HIPAA Transactions and Codes Sets at the AHIMA Web site: http://www.ahima.org/dc/.

Senate Accepts House HIPAA Compliance Language; Bill Signed by President

(from "Washington Update", *J AHIMA*, February 2002, compiled by Donald D. Asmonga, MBA)

On December 12, the US Senate accepted by unanimous consent the HIPAA compliance language passed by the US House of Representatives in HR 3323. This legislation provides conditions to receive a one-year extension of the October 16, 2002 compliance date for the HIPAA transactions and code sets final rule. The legislation passed the House unanimously. It was presented to the president on December 18, 2001, and signed on December 27.

The language from HR 3323 does not strictly designate a one-year delay; rather, it establishes conditions for covered entities to receive a delay. Those covered entities that are prepared to begin HIPAA electronic transactions by the original October 16, 2002, compliance date may do so. In order for a covered entity to receive a delay, it must submit a compliance plan to the Secretary of Health and Human Services by October 16, 2002, that must contain:

- an analysis reflecting the extent to which, and the reasons why, the person is not in compliance
- a budget, schedule, work plan, and implementation strategy for achieving compliance
- whether the entity plans to use or might use a contractor or other vendor to assist it in achieving compliance
- a time frame for testing that begins no later than April 16, 2003

Failure to submit a compliance plan or be in compliance by October 16, 2002, can result in exclusion from participating in the Medicare plan. The Department of Health and Human Services (HHS) secretary is required to produce a model compliance plan by March 2002. Further, the National Committee on Vital and Health Statistics is expected to do an analysis of a sample of compliance plans and then produce a report containing effective compliance solutions.

Other important aspects of the legislation include language to:

- ensure April 14, 2003, enactment of privacy standards
- authorize $42 million for the implementation of the regulations and technical assistance, education, outreach, and enforcement activities
- make electronic submission of claims a Medicare Condition of Participation, except under certain circumstances

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