



It's Time To Comply With HIPAA

Providers scurry to meet deadlines for Final Privacy Rule and Transactions and Code Sets Rule.

AFTER YEARS OF WRANGLING AND delays, the Department of Health and Human Services (HHS) is set to begin implementation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Enforcement of the Final Privacy Rule, which seeks to safeguard the confidentiality of a patient's identifiable health information, goes into effect April 14.

On Oct. 16, HHS will begin enforcing the Transactions and Code Sets Rule, including recent revisions added to the final rule and published in the Feb. 20 *Federal Register*. Under the Code Sets Rule, health care providers that transmit health information (including health care claims) in electronic form will be required to use the standard transactions adopted by HHS. These transactions consist of standard electronic formats and sets of codes used to convey health information such as tables of terms, medical concepts, medical diagnostic codes, and medical procedure codes, along with the descriptors of the codes.

And, under HIPAA's Final Security Rule, published in the Feb. 20 *Federal Register*, entities covered by HIPAA (health insurers, providers, and clearinghouses) will be tasked with implementing administrative, physical, and technical safeguards to protect electronic health information in their databases. Most covered entities will have

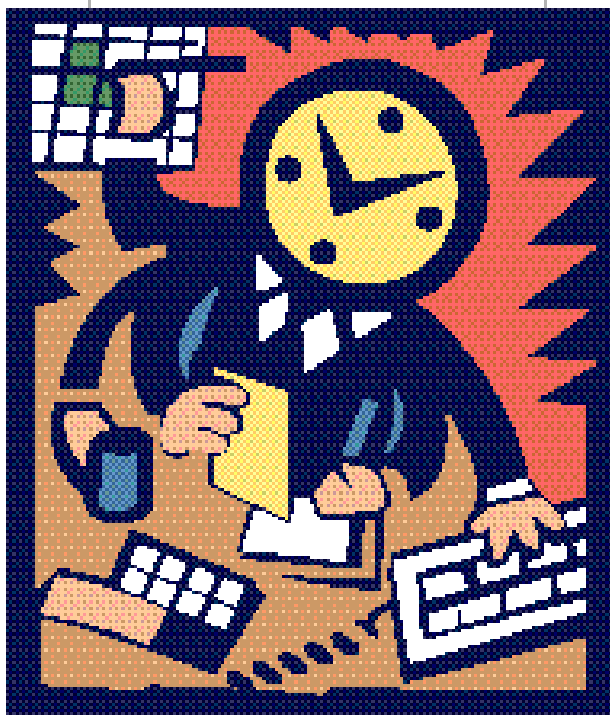
two full years—until April 21, 2005—to comply with the standards, which will work in concert with the final privacy standards, employing many of the

if they hope to make the deadline, according to the Centers for Medicare & Medicaid Services (CMS).

Beyond the compliance date (Oct. 16), the Medicare program will be prohibited from paying any claims that are not submitted electronically, unless a provider is granted an HHS waiver. A likely result is that payers other than Medicare will also move to electronic transactions in order to take advantage of the predicted cost savings, while remaining consistent with the Medicare program.

Among Congress' primary purposes in enacting HIPAA was to use electronic computer technology to make health care delivery more efficient and effective. Unlike many other professions, health care has not, until HIPAA, moved ahead with uniform national standards for the electronic exchange of administrative and financial information.

Under HIPAA's Final Transactions and Code Sets Rule, health care providers—including skilled nursing facilities, some intermediate care facilities for people with mental retardation and group homes for people with mental retardation or developmental disabilities, and some



same terms and definitions in order to make compliance less complicated.

The Next Hurdle

For providers operating on or near schedule, compliance with the Transactions and Code Sets Rule is the next HIPAA hurdle. Because it can take six months or more to prepare to conduct electronic transactions in accordance with the transactions rule, providers should begin the transition to electronic transactions immediately

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assisted living facilities—will be able to submit a common form of transaction to any health plan in the 50 states, the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

HHS has mandated that providers begin testing for compliance with the Code Sets Rule no later than April 2003. But while the statute does not specify the extent of the testing required, HHS has interpreted it to mean internal system testing. However, because each implementation of the rule will present unique circumstances and different challenges, some covered entities will have to begin external testing sooner than others. HHS is encouraging all covered entities to begin testing for consistency with the final rule as soon as possible.

Implementation Suggestions

To successfully understand and implement the Final Transactions and Code Sets Rule, providers would be well advised to bear the following suggestions in mind:

■ *No shortcuts* There is no easy way to implement the Final Transactions Rule. Each provider and its workforce will have a substantial magnitude of hard work in order to master the rule.

■ *Education, training, oversight* The Final Transactions Rule should be learned in much the same manner as other new regulatory requirements—through in-services and other training and educational programs. Providers should recall that proving good intentions and the absence of willful neglect under HIPAA will be based, in part, on documentation of education, training, and oversight activities.

■ *Pick a project leader* Appoint a staff member to be responsible for learning about, implementing, and overseeing the Transactions Rule process. This individual can shepherd the overall

effort throughout the facility and oversee an initial assessment of payment and reimbursement procedures to determine how transactions are being handled.

■ *Coordinate with intermediaries* It is mandatory that a provider be on the same page with its CMS fiscal intermediaries regarding software, timing, procedure, testing, and certification.

In addition, relationships with any necessary health care clearinghouses should be initiated.

■ *Seek outside help*

Providers are advised to retain the services of a reputable vendor who can test for compatibility and certify consistency with the requirements of the rule. CMS recommends Claredi Corp. as a reliable HIPAA transaction testing and certification service.

■ *Initiative, creativity, flexibility* A good HIPAA compliance program should take advantage of any and all resources and be open and flexible to legitimate suggestions from knowledgeable outside vendors. Providers must also draw on experiences gained with respect to other areas of regulatory compliance.

Penalties

Violations of the Final Transactions and Code Sets Rule will result in civil money penalties against providers, but criminal penalties are unlikely to apply. However, there will be personal criminal penalties, including fines and incarceration, for wrongful disclosures of HIPAA-protected health information under the privacy and security rules.

Civil money penalty authority for the code sets violations has been delegated to CMS, which will soon publish an enforcement rule. Criminal enforcement will be the responsibility of the Department of Justice, but thus far nothing has been published regard-

ing how criminal enforcement of HIPAA will be undertaken.

Under HIPAA, long term care facilities must develop their own internal systems of sanctions for employees and business associates who violate transaction rule policies. These sanctions would be in addition to any that HHS might impose. HIPAA requires penalties for noncompliance of up to \$100 per person per violation and up to \$25,000 per person for violations of a single standard for a calendar year. These penalties are in addition to penalties under any other federal and state laws that might apply to the acts or omissions that give rise to the violations.

In most cases, however, HHS is expected to allow for a “good-faith” effort to comply. A penalty will not be imposed if the failure to comply is corrected during the 30-day period beginning on the first date the individual liable for the penalty becomes aware that the rule has been breached. ■



For More Information

■ The author can be reached via e-mail at agoldberg@goulstorrs.com or by phone at (617) 482-1776.

■ The complete text of the Final Privacy and Transactions and Code Sets rules is available at the CMS Web site at www.cms.hhs.gov/hipaa/hipaa2.

■ The full text of the addenda to the transaction modifications rule is available at http://hipaa.wpc-edi.com/HIPAAAddenda_40.asp.

■ More information about HIPAA standards is available at www.cms.hhs.gov/hipaa and <http://www.aspe.hhs.gov/admsimp>.

■ A fact sheet summarizing the administrative simplification standards required by HIPAA is available at www.hhs.gov/news/press/2002pres/hipaa.html.

■ Information about Claredi Corp. can be found on the Internet at www.claredi.com.