



# **HIPAA** **Transactions** **Developing** **“Commercially** **Reasonable”** **Testing/Acceptance** **Strategies**

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**Tom Hanks**  
**Director, Health Care Practice**  
**PricewaterhouseCoopers LLP**

**Tom.Hanks@us.pwcglobal.com**

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# ***Train Wreck***

**AVOIDING  
THE  
CARNAGE**





# Context of the Issues

- **Background - Evolving HIPAA Transaction Concerns**
- **Certification Issues**
- **Standard transaction compliance problems**
- **Testing Issues & Potential Return of Paper**
- **Industry Strategies, Options & Risks**
- **Regulatory Options**
- **Commercially Reasonable Position**
- **Recommendations**
- **Questions and Discussion**



# Official Disclaimer

- **None of the content in this presentation, either oral or written, should be construed in any manner to present legal opinion**
- **Each entity should seek its own legal counsel for guidance before acting upon any recommendations contained herein**



# The Myth of the “Standard” Claim Transaction

- **HIPAA started out to provide a single ubiquitous transaction that entities could conduct interchangeably**
- **However, health care relationships and requirements are too complex to fit a simple “one size fits all” claim transaction**
- **HIPAA standard claim transactions have evolved into highly specialized, claim type specific, and trading partner dependent transactions that if interpreted strictly, are an order of magnitude more complex than what the industry now uses**



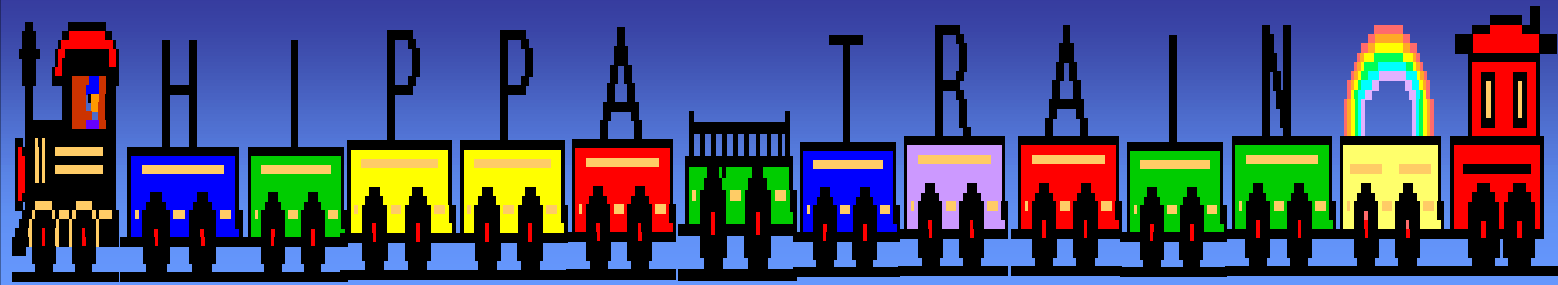
# Certification ≠ Interoperability

- Certification addresses capabilities
- Certification is a one-time test event that documents that an entity is capable of generating a compliant transaction
- Pursuing certification a good way to address gaps and address specific issues
- Certification does NOT ensure that ongoing transactions are compliant - a “certified” trading partner can send both “compliant” and non-compliant transactions
- Certification value is directly proportional to the extent the certifying entity will support you with disputes



# Vendor Certification ≠ Compliant Transactions

- Providers' purchasing systems from vendors who have had transactions certified is not an indicator that the provider will automatically generate compliant transactions
- Many systems do not prompt user for needed information – especially situational data
- Vendors systems can generate the “format” and provide the capability of building a compliant transaction
- Populating data content of the transaction is still the provider's responsibility – and dependent on business process

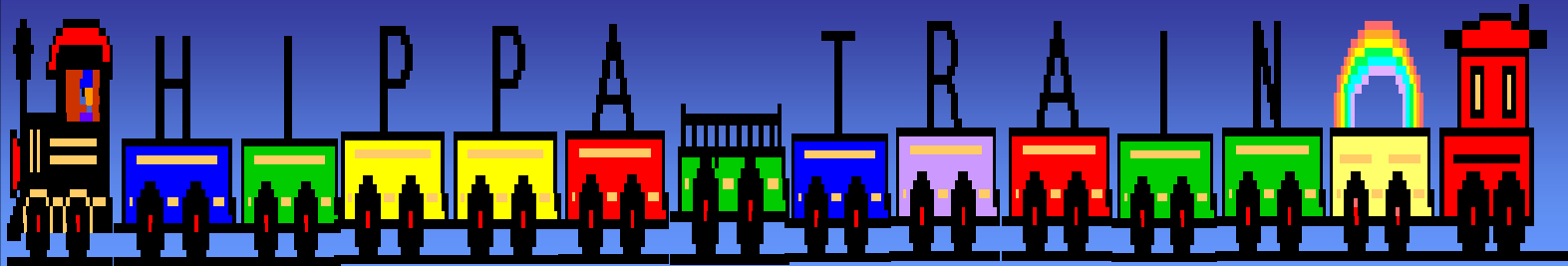


- Standard Transactions **Formats**
  - Directs the order of information and where it should be put in the train
    - Locomotive in front – caboose in the rear
    - Explains types of cars and in what order (provider name cars, service line cars, patient name cars, etc.)
- HIPAA Standard ASC X12N 837 Version 40.10 Format (Claim Train)
  - Defines the type of information and the order of that information



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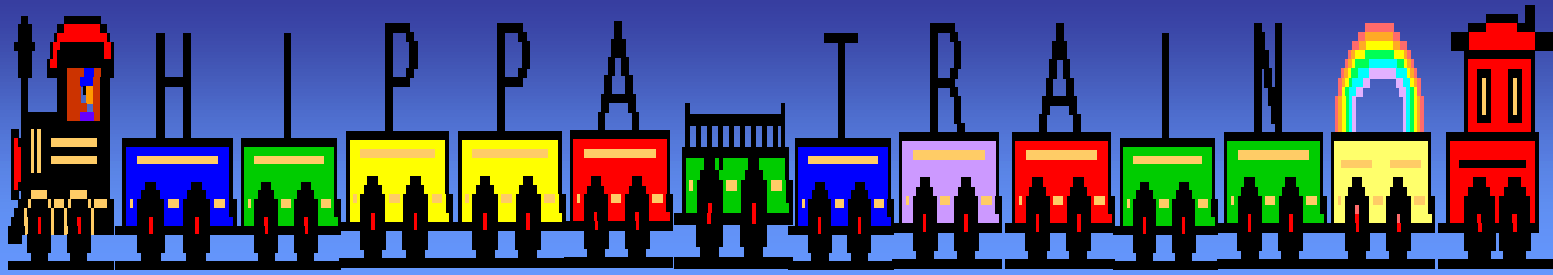




- **Implementation Guide (X12N 837P)**
  - Directs when types of cars should or should not be used – and what MOST cars contain.
  - Required - Always have patient name and address cars
  - Situational – Use a “pay to provider” car filled with a name and address ONLY when the name and address in the “billing provider” car is not the location for sending payment



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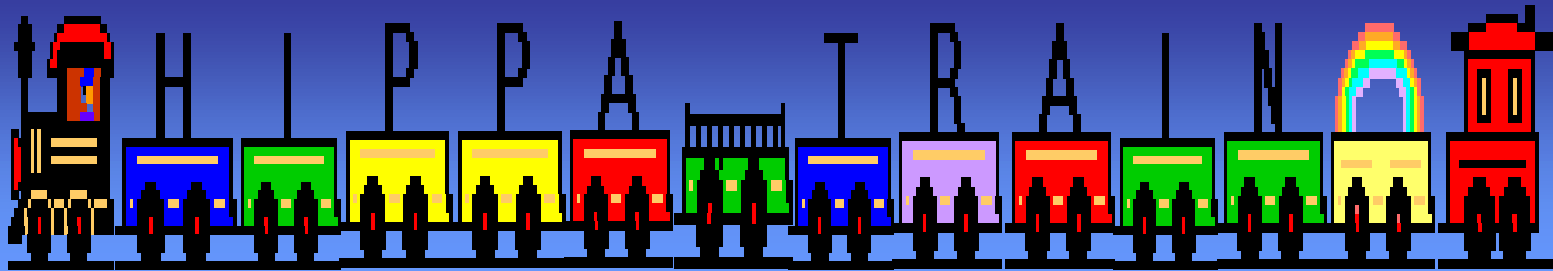


## • Payer Companion Guide

- Implementation Guides leave many situational guidelines to trading partners – defines on a general basis what information should go in each trading partner specific car.
- If the claim train is for “anesthesia”, then fill the unit indicator car with “UN” – [and]
- Use a 15 minute to unit conversion before filling the unit/minute car with units – [and]
- Fill the procedure code car with a surgical code – [and]...



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## • **Contract Specific Requirements**

- Implementation Guides leave some situational guidelines specific to individual payer-provider contracts - defines what information should go in each contract specific car.
- Payall Health Plan's contract with Fixemup Clinic requires that whenever Fixemup sends a claim train to payer B – the train must have an “Ambulatory Patient Group” car filled with an Ambulatory Patient Group Number



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# Issue #1

## Trading Partner Testing

### ■ Unprecedented Complexity

- $\cong$  750 “situational” elements in the 837I/P IGs
- Driven by  $\cong$  70 claim types and (n) payer companion guides and (?) contracts
- Requirements ambiguous – subject to interpretation

***“I’ve got 25,000 submitters, there’s no way I can test with each of them individually.”***

***“I know that testing with the vendors and clearinghouses alone will not work for HIPAA – I don’t want the clearinghouse deciding claims acceptance or rejection”***



# Issue #1 - More Trading Partner Testing

- Requires compressing a decade of work into six months of testing while addressing added complexities

***“For HIPAA to work, more than 13 million pairs of payers and providers must implement an average of 2.2 transactions each...the industry will need 2.9 million analyst months to implement HIPAA”***

***Gartner Group, March 2001***



# Issue #2

## Reliance on Vendor Compliance

- **Provider vendors tout “HIPAA Compliant”**
    - Means **capable** of generating a compliant transaction
  - **But - Providers’ business processes drive compliance – NOT providers’ vendors**
    - Right data in the wrong place or right place at wrong time doesn’t work
    - Requiring certification does not solve the problem – providers still have to get it “right”
- “If only 5% of the providers revert to paper it will be a disaster for the industry”***



# Issue #3

## Return of Paper

- **Payers are processing as many as 85% of current claims electronically**
  - If providers can't submit HIPAA compliant electronic transactions they may revert to paper
  - “My providers will revert to paper if they can't generate HIPAA compliant transactions – the increase in paper processing costs for payers is unacceptable”

***“ If only 10% of my providers reverted to paper claims, the prompt payment penalties and fines alone would exceed \$1M per month”***



# Adaptive Strategies Considered

## 1. Strictly Compliant Method

- Reject **all** electronic transactions that are not perfectly compliant with HIPAA Transaction Implementation Guide
- One piece of imperfect information could reject 5,000 claims

## 2. Operationally Compliant Method (aka “Commercially Reasonable”)

- Accept **only** HIPAA Standard X12N transactions – but accept those that meet reasonable business needs regardless of perfect Implementation Guide compliance





# Adaptive Strategies Considered

## 3. Continue Accepting Current Formats

- Accept current formats (.e.g. NSF) until providers are completely tested and perfectly compliant to HIPAA Implementation Guides
- Could take awhile



# Moving Compliance Date?

- **Post ASCA the Secretary does not appear to have the statutory power to move the compliance date - or suspend enforcement**
- **Requires literal Act of Congress to move date**
- **Congress likely to be hostile to any request by to move Standard Transaction compliance date – especially given almost EVERYONE filed a plan saying the industry would be ready by October, 2003**
- **Moving compliance date does not decrease complexity**



# Postponing/Diluting Enforcement?

- **Standard transactions needed to achieve the statute's basic goals**
- **Secretary can only extend the 30 day cure period – No statutory basis for postponing effective enforcement of the transaction standards.**
- **The Secretary could not simply refrain from real enforcement of the deadline absent the deadline's being changed**
- **Still does not address complexity and challenge of perfection**



# What Criminal Penalties!?

- CFR 42 1320d (aka Section 1177(a)) OFFENSE.--A person who knowingly and in violation of this part--  
**"(1) *uses or causes to be used a unique health identifier;***
  - **Violation of “this part” = disclosure of a unique identifier in a non-standard transaction.**
- Also, the minimum necessary provision of the Privacy rule only excludes standard transactions. Non-standard transactions such as NSF would not be excluded from the minimum necessary provision. – therefore, disclosures of PHI in non-standard transactions (e.g. NSF) would be a Privacy violation.



# Other Laws Applying to Standard Transactions

- **State insurance regulations (including prompt payment laws)**
  - Rejecting imperfect claims that could have been adjudicated may be rejecting “clean claims”
- **State contract law (insurance policies are contracts)**
- **Federal and state consumer protection laws**
- **Federal and state unfair competition laws**
- **Federal and state antitrust laws**
- **Sarbanes-Oxley for publicly traded corporations**
  - For publicly held companies, any decision not to comply with the current deadline, and to risk possible civil & criminal penalties, potentially raises serious public reporting issues



# Catch 22

- **Conducting non-standard formats does not appear to be a legal option**
  - Contrary to law - opens the door to criminal penalties
- **Rejecting imperfect claims submitted in HIPAA standard formats with non-material errors is also not a reasonable option**
  - Contrary to “commercially reasonable” principles
    - UCC Article 4A
    - Also found in state contract law, insurance regulations, and today’s existing EDI practices
  - Could create massive hardship for both providers and payers



# Catch 22

- **Relying on a compliance date extension or the postponement/dilution of enforcement activities is not reliable or prudent**
  - Covered entities have already submitted ASCA extension applications that document each entity's plan for compliance by October 16, 2003
  - Puts corporate officers at risk – especially public corporations
- **Failure to take operationally compliant approach could lead to legal and political problems**
  - Operational problems associated with requiring perfection



# So What Do We Do - Now?







# Guiding Principles

- **Fair and responsible**
- **Compliant – we want to do what's right legally**
- **Run our businesses in an efficient manner**
- **Sensitive to our customers, trading partners, and employees**
- **Perfection not commercially reasonable – may never be attained**
  - Perfection a great goal – not a strategy
- **Don't want to go backwards**



# Operationally Compliant = Commercially Reasonable

**Regardless of Congressional action to delay the compliance date or formal statement of enforcement relaxation trading partners should...**

1. Develop flexible business processes and technology that is capable of efficiently applying commercially reasonable practices to HIPAA transactions
2. Use appropriate HIPAA standard transaction **formats**
3. Apply the UCC “commercially reasonable” concept and accept standard transactions that meet business needs but may not be perfectly compliant



# Commercially Reasonable Practices

- **Document clear policies for transmission, acceptance, and rejection of transactions**
- **Accept HIPAA standard transactions that may not be perfect, but contain the business information needed to serve the receiving entity's purpose for that transaction**
- **Provide reporting to the submitters detailing HIPAA IG errors contained in transactions both accepted and rejected**
- **Continuously review required information to simplify transactions**

# Questions & Discussion

We Can Only Succeed  
– By Pulling Together



**Tom Hanks**

**Director, Health Care Practice  
PricewaterhouseCoopers LLP**

**[Tom.Hanks@us.pwcglobal.com](mailto:Tom.Hanks@us.pwcglobal.com)**