Perspectives on HIPAA Implementation: Transactions and Code Sets
October 16 and After

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Where Are We Today?

- We are 1 month from compliance date
  - No more delays allowed by law!
- Testing should have started in April, at latest.
- Vendors should have provided software to all their customers; testing should be finished.
- Clearinghouses should have finished testing for all their customers.
- Health plans should have finished testing all transactions with providers and clearinghouses.
  - Most are still doing this, including Medicare contractors
- BUT, some have done NONE of the above.

Brief History

- Administrative Simplification
  - WEDI proposed industry-wide use of X12N standards in 1993.
  - Law written in 1994.
- HIPAA signed into law in 1996.
  - Major publicity around insurance portability.
  - Administrative Simplification Subtitle was sleeper.
- Transactions and Code Sets Proposed Rule
  - Published May 1998.
    - Proposed X12N and NCPDP standards.
  - Lots of comments, but many (most?) providers didn't pay attention to the standards.

Brief History

- Final transaction rule published August 2000
  - Described who must use the standards and when.
  - Adopted specific standards for transactions.
    - NCPDP and X12N (Version 4010).
  - Adopted specific code sets.
    - Those in use today (ICD-9-CM, HCPCS, CPT-4, …).
  - Required implementation by Oct 2002.
- Industry finally reacts in 2001.
  - Need more time!

Brief History

- Administrative Simplification Compliance Act (ASCA) law signed in December 2001.
  - Provided for an additional year – no more!
    - New date October 16, 2003.
  - Law required covered entities to develop plans to meet the new date.
    - April 16 was the deadline to start testing.
  - Also required billing to Medicare be done electronically for all but smallest providers.
    - making many paper-based providers into covered entities.
    - BE CAREFUL WHAT YOU ASK FOR!

Brief History

- Modifications to standards issued February 2002.
  - Based on critical problems with the initial standards (X12N Version 4010A1).
  - NDC code no longer required, except for retail pharmacies.

Outlook for October 16

- HIPAA standard transaction and code sets must be used by all covered entities.
- Providers still have the option for paper (except for Medicare claims).
- We all want this to work – cash flow disruption is not an option for many providers.
- Many looking to clearinghouses for solutions.
  - Central solutions easier to deploy in short time.
- Industry looking for guidance from CMS that will provide 'wiggle room',
  - Because after 10 years, many are still not able to conduct standard transactions!

HIPAA Expectations

- HIPAA claim transaction --
  - Essentially same data as UB92 and HCFA 1500.
  - Expressed in consistent, national code systems.
  - Transmitted in uniform format (X12N).
  - Specificity as to need for situational data.
  - Requirement that no payer could ask for more.
    - Required data elements plus situational data elements where situation was true.
  - Transition could be handled by translator software or clearinghouse.

Unexpected Problems

- Wherever regulation is open to interpretation, industry experience with OIG leads to fear and very conservative legal approaches.
- Insistence on perfection to be compliant.
- New contract requirements delay testing.
- No industry agreement to testing schedule.
  - No transition period before compliance date.
- Delays in vendor delivery of updates.
- High cost of updates.

‘Reasons’ for Delays

- IGs with unexpected data element requirements.
  - Not fixed in Addenda (minor fixes ignored to get done in time).
  - No time to wait for next round of improved standards.
- No clear guidance as to the meaning of ‘compliant’.
- Unreasonable implementation decisions --
  - All ‘required’ and situational data elements required for ‘compliance’.
  - Errors and missing data not compliant – 100% perfection expected.
  - Reject whole batch when 1 transaction is ‘non-compliant’.
  - Re-enrollment requirement.
  - New EDI contract requirements.
- Regulation publication delays.
  - Addenda not published until February.
  - Enforcement regs unpublished.

It's too late! – What do we do?

- Understand reality of situation --
  - Current situation (law & guidance).
  - Reasonable meaning of compliance.
  - Consequences of failure to comply.
- Prioritize responses.
- Create/promulgate contingency plans.
- Establish reasonable compliance targets.
- Coordinate, cooperate, and push trading partners to become compliant over time.

Standard Transaction

- **Standard transaction** means a transaction that complies with the applicable standard adopted under this part.
  - Implementation specifications [are approved] for incorporation by reference in subparts I through R of this part.

- **Sec. 162.923 Requirements for covered entities.**
  - (a) General rule. If a covered entity conducts with another covered entity (or within the same covered entity), using electronic media, a transaction for which the Secretary has adopted a standard under this part, the covered entity must conduct the transaction as a standard transaction.
- **Sec. 162.915 Trading partner agreements [may not]:**
  - (a) Change the definition, data condition, or use of a data element or segment in a standard.
  - (b) Add any data elements or segments to the maximum defined data set.
  - (c) Use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification(s).
  - (d) Change the meaning or intent of the standard's implementation specification(s).

Criminal Penalties

- WRONGFUL DISCLOSURE OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (1177)
  - A person who knowingly and in violation of the [privacy] regulations,
    - uses or causes to be used a unique health identifier;
    - obtains IIHI; or
    - discloses IIHI to another person; shall be punished.
      - Up to $250,000 &10 years if intent to sell or for commercial advantage, personal gain, or malicious harm.
    - Enforced by Department of Justice.

Civil Penalties

- GENERAL PENALTY FOR FAILURE TO COMPLY WITH REQUIREMENTS AND STANDARDS (1176)
  - Any person who violates a provision of HIPAA:
    - $100 per violation.
    - Capped at $25,000 for each calendar year for each requirement or prohibition that is violated.
    - Enforced by HHS (OCR for Privacy, CMS for all others).

Excuses from Civil Penalties

- Noncompliance Not Discovered
  - the person did not know, and by exercising reasonable diligence would not have known.
- Failures Due To Reasonable Cause
  - the failure was due to reasonable cause and not to willful neglect; and
  - the failure is corrected within 30-days
    - which may be extended as determined appropriate by the Secretary based on the nature and extent of the failure to comply.
- Reduction
  - If the failure is due to reasonable cause , any penalty may be waived …

CMS Guidance on Compliance
July 24, 2003

- All covered entities must be in compliance with the electronic transactions and code sets standards by October 16, 2003.
- After that date, covered entities, including health plans, may not conduct noncompliant transactions.
- "The law is the law!"

CMS Enforcement Approach

- CMS is responsible for enforcement.
- CMS will focus on obtaining voluntary compliance
- CMS will use a complaint-driven approach for enforcement.
- When CMS receives a complaint about you, it will notify you in writing that a complaint has been filed. You will have the opportunity to:
  - demonstrate compliance,
  - document your good faith efforts to comply with the standards, and/or
  - submit a corrective action plan.

After a Complaint

- You will be given an opportunity to demonstrate to CMS that you submitted compliant transactions.
  - No definition of 'compliant' in guidance.
- CMS will consider your good faith efforts to comply when assessing individual complaints.

Compliance Model

- CMS recognizes that transactions require the participation of two entities.
  - CMS will look at both entities' good faith efforts to determine whether reasonable cause for noncompliance exists and the time allowed for curing the noncompliance.
- CMS will not impose penalties on entities that deploy contingencies (to ensure the smooth flow of payments) if:—
  - they have made reasonable and diligent efforts to
    - become compliant and,
    - for health plans, to facilitate the compliance of their trading partners.
  - As long as a health plan can demonstrate its active outreach/testing efforts, it can continue processing payments to providers!!!

Good Faith

- Indications of good faith might include such factors as:
  - Increased external testing with trading partners.
  - Lack of availability of, or refusal by, the trading partner(s) to test the transaction(s) with the 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.

For example

- CMS would examine whether a 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.
- A health care provider 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.
- CMS would continue to monitor the covered entity to ensure that their sustained efforts bring progress towards compliance.

Documentation & Contingencies

- Organizations should document that they have exercised good faith efforts to correct problems and implement the changes required to comply in case a complaint is filed.
- CMS will expect non-compliant covered entities to submit plans to achieve compliance.
- CMS flexibility will permit health plans to mitigate unintended adverse effects on covered entities' cash flow and business operations during the transition to the standards.

More Guidance to Come

- What is Compliance? [according to Bill]
  - Compliance is a process ("conducting" standard transactions that comply with the IG).
    - NOT the adherence to a specific element in the IG.
  - Impossible to produce 100% error-free claims.
    - Current error rate at CMS is about 5%.
  - Payer is "compliant" if they accept claim with errors and follow reasonable process to get enough valid data to adjudicate a claim.
    - Also compliant with "clean claim" and "prompt pay" state laws.
  - Payer can ignore all data not needed for adjudication.
    - Specific expectation in 837 IG section 1.3.
  - "Required" data field in IG implies that a payer can insist on it.
    - However, if data element is not accurate, or is not needed for adjudication, the transaction is still HIPAA compliant.

Standard Claims is a Start

- Getting the claims submitted after 10/16 is just the start!
  - Implementing all the other adopted standards for savings over next 5-10 years …
    - Health Care Claims or Equivalent Encounter Information
    - Eligibility for a Health Plan
    - Referral Certification and Authorization
    - Health Care Claim Status
    - Enrollment and Disenrollment in a Health Plan
    - Health Care Payment and Remittance Advice
    - Health Plan Premium Payments
    - Coordination of Benefits
- Future standards
  - Security
  - Attachments
  - Identifiers
  - PMRI? EHR?

Security Regulation Dates

- Published February 20, 2003.

- Compliance Date:
  - April 21, 2005 for all covered entities except small health plans
  - April 21, 2006 for small health plans

Claims Attachments

- Will provide standards for sending claims attachments (procedure reports, lab reports, etc.) electronically.
- All health plans will be required to support these.
- Expected to speed adjudication of complex (large) claims.
- Expect proposed rule later this year.
- Compliance expected in 2007.

Identifiers

- Employer Identifier
  - Final rule May 31, 2002.
  - Compliance by July 30, 2004.
    - Small health plans by August 1, 2005.
- National Provider Identifier
  - Final rule later this year.
  - Will have minimum two years to implement.
- National Health Plan Identifier
  - Proposed rule later this year.

Conclusions: Cooperation

- Plans, providers, clearinghouses, vendors must work together.
  - Coordinate testing schedules.
  - Coordinate information campaigns.
  - Test early to discover problems.
  - Work together to fix them.
  - Look at solutions others have already found.
- All should have contingency plans.
  - What will we do IF trading partners cannot conduct standard transactions electronically?
  - Talk to your banker about line of credit.

Conclusions: Compliance

- Reasonable 'compliance' must include these concepts:
  - No IG can be implemented perfectly by everyone.
  - Even if data elements are 'required' in the IG, a payer may accept a subset for adjudication and ignore the rest.
    - Acceptable subsets should be specified in companion guides.
  - If data errors in a transaction will not impact adjudication, accept the transaction as 'compliant'.
  - If one or more transactions in a batch must be rejected, the rest of the transactions in the batch must be accepted for adjudication.

Conclusions: Continuing Efforts

- If, despite documented good-faith efforts, 'compliant' transactions cannot be sent/received:
  - Continue good-faith efforts until compliant.
  - Continue to send/receive pre HIPAA electronic transactions until compliance can be achieved.
  - Revert to paper as last resort.
- Do the right thing!
  - What does your lawyer know about EDI?
- Document, document, document.

Conclusions: Next Steps

- More money to be saved in implementing and integrating other adopted HIPAA standards.
- Efforts must continue to refine standards over time.
  - Participate in standard setting activities!

Resources

- CMS web site (www.cms.hhs.gov/hipaa/hipaa2).
- National and regional CMS conference calls.
- AskHIPAA emails.
- WEDI SNIP web site (snip.wedi.org).
- Regional SNIP affiliates.
- AFEHCT web site (www.afehct.org).

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