



legal matters

Preparing for HIPAA Electronic transactions and patient privacy rules are set to take effect in October and April. Be sure you've covered all your bases before that date. The good news is, compliance may not be as difficult as it seems.

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The Health Insurance Portability and Accountability Act (HIPAA)

is the latest health-care acronym to join the vernacular and will soon be familiar to health-care providers across the nation.

When it was passed in 1996, HIPAA had three principal purposes—enact health insurance reforms (e.g., portability of coverage), increase efforts to prevent health-care fraud and abuse, and implement the so-called administrative simplifications. The act has received media attention recently because several aspects of

the Administrative Simplification regulations are scheduled to take effect in the upcoming months.

The Standards for Electronic Transactions, or the “**Transactions Rule**,” portion is scheduled to take effect October 16, 2002.

The Standards for Privacy of Individually Identifiable Health Information, or the “**Privacy Rule**,” portion is scheduled to take effect

April 14, 2003. Several other Administrative Simplification regulations, including those relating to security, are still not yet in final form, and there is no firm timetable for their release and implementation.

Covered entities, or those organizations which must comply with these rules, include health-care providers, health plans, and health-care clearing houses.

Complying with the Transactions Rule

Today, several hundred different formats exist for the on-line processing of health-care claims. According to the 2000 edition of the *Guide to Medical Practice Software*, there are more than 1,500 active practice management software vendors. The Transactions Rule requires everyone to use the same format for exchanging files.

The Transactions Rule covers eight administrative and financial health-care transactions, including health claims or encounter information, eligibility for a health plan, referral certifications and authorizations, health-care payment and remittance advice, and coordination of benefits.

Even if you believe you will be compliant with the Transactions Rule by October 15, 2002, the one-year extension is an opportunity to ensure that your software vendor, billing agent, and payers are all compliant with the Transactions Rule as well.

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To comply with the Transactions Rule, providers will need to ensure their software (and their software vendor) allows them to send and receive the covered administrative and financial health-care transactions using the standard formats required by the Transactions Rule.

Because of the uncertainty with regard to timely compliance with the Transactions Rule, the [Administrative Simplification Compliance Act](#)—yes, another acronym (ASCA)—was signed into law on December 27, 2001. ASCA permits health-care providers (and other HIPAA-covered entities) to receive a one-year extension to comply with the Transactions Rule by submitting a compliance plan to CMS on or before October 15, 2002.

To aid HIPAA's covered entities in submitting this plan, CMS has released a model document that should be completed to receive the one-year compliance extension. The CMS application for the compliance plan extension includes a series of provider-specific questions, including the provider's reason for seeking the extension, and the provider's implementation budget and implementation strategy.

ASCA does not require CMS to approve or disapprove of a compliance plan submission. Rather, the actual submission of an extension plan is sufficient to secure the one-year extension for the Transactions Rule. Moreover, if the compliance plan extension is completed via the Internet, CMS will respond with a confirmation number of the extension request, so a provider knows it has the extra year to comply with the Transactions Rule. CMS will not provide this acknowledgment if you send a paper submission for an extension, so you will be well-served by using

the Internet and receiving a receipt of your extension request.

The CMS has general instructions and a model compliance plan for the Transactions Rule on their Web site at www.cms.gov/hipaa/hipaa2/ascaform.asp.

If a provider fails to submit a compliance plan to CMS by October 15, 2002 and is not able to comply with the Transactions Rule, it could result in significant financial penalties and possible exclusion from participation in the Medicare program. No provider should take this risk. Even if you believe you will be compliant with the Transactions Rule by October 15, 2002, the one-year extension is an opportunity to ensure that your software vendor, billing agent, and payers are all compliant with the Transactions Rule as well. All providers should seek the extension.

Complying with the privacy rule

While the Transactions Rule gives providers the opportunity to seek an extension until October 15, 2003, the Privacy Rule's effective date of April 14, 2003 has not been extended. Many covered entities may be hoping for a late holiday present in the form of an extension to comply, which appears unlikely.

Part of the uncertainty in the health-care community with regard to the Privacy Rule is driven by the fact that only this August, HHS released "final" modifications to the Privacy Rule—almost twenty months after publishing the Privacy Rule. The revised Privacy Rule modifies many of the standards delineated in the Privacy Rule. Complicating matters further, Senator Ted Kennedy and other members of Congress have threatened to move forward with legislation reinstating some of the specif-

ic patient privacy provisions removed from the final Privacy Rule.

In light of this regulatory and legislative maelstrom, how should a provider go about ensuring compliance with the Privacy Rule by April 14, 2003?

First, it is important to understand the purpose of the Privacy Rule. According to the press release the HHS included when it distributed the Proposed Privacy Rule, "The Privacy Rule creates national standards to protect individuals' personal health information and gives patients increased access to their medical records." This sounds lofty, but how does it do that?

While you don't have to read the Privacy Rule and its preamble—it is approximately two inches thick in triple-column text—you should become familiar with some of the key terms:

- protected health information
- individually identifiable health information
- treatment, payment
- health-care operations
- covered entities
- the role of consents and authorizations

The meanings for these terms in the rule are not necessarily the same as what you and your practice might currently use—they are specific for the purposes of the Privacy Rule. You will also need to know the responsibilities of your practice's business associates. (The Privacy Rule was published in the Federal Register on December 28, 2000 and begins on page 82462, or on the Web at www.hhs.gov/ocr/hipaa/)

Second, it will be necessary to commit resources to achieve compliance with the Privacy Rule. Unlike Y2K, the Privacy Rule (as well as the Transactions Rule and the other regulations to follow) will

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not go away after their effective date has passed. Financially, compliance with the Privacy Rule may not be as expensive as Y2K (particularly if your practice used Y2K as an opportunity to upgrade all of your office hardware and software).

Instead, practices will need to make sure there is an awareness, sensitivity, and most importantly, compliance with HIPAA requirements within the office from the most senior partner in the practice to the most junior non-physician staff person who has access to a patient's protected health information.

Like most federal statutes, HIPAA has severe penalties for non-compliance. This includes the potential for six-figure fines and jail time if an offender knowingly misuses an individual's health information under false pretenses and intends to sell, transfer or use such health information about an individual for commercial advantage. An obvious example of this type of activity is selling the names and addresses of patients to a third-party vendor without receiving each patient's specific authorization to disclose the information as outlined in the Privacy Rule.

Third, begin taking the administrative steps required to comply with the Privacy Rule. It will be necessary to appoint an individual in the practice (it does not have to be a physician) to be the designated privacy official responsible for the development and implementation of the practice's privacy policies and procedures. The practice should also name a person (who may also be the designated privacy official) who is charged with fielding complaints from patients about the practice's privacy practices.

Once the effective date of the Privacy Rule is a little bit closer (and hopefully

the confusion regarding the Proposed Privacy Rule is resolved), a practice must develop and implement policies and procedures to comply with the Privacy Rule and train all of its work force (physicians and non-physicians alike) regarding its privacy policies and procedures. Additionally, the training must be provided to each new member of the practice who becomes employed after the Privacy Rule's effective date.

Fourth, identify the flow of protected health information within your office and with third parties. For instance, if your practice participates in research protocols, there are certain specified provisions in the Privacy Rule affecting these relationships.

Most practices have formal contracts with third-party vendors to handle billing, collections, or practice management activities. You should perform an "internal audit" and identify all of the arrangements you have in place with vendors who handle patients' protected health information (e.g., your night-time cleaning company will likely not be considered a business associate unless their job function also includes claims submission). Once the Privacy Rule effective date arrives, providers and other covered entities will need to have contracts (or amendments to existing contracts) in place that require their business associates to adhere to all of the Privacy Rule requirements.

Don't become HIPAAcritical or worse a HIPAAchondriac

Avoid getting too anxious about HIPAA. This article very briefly highlights some key points and implementation steps regarding the Transactions Rule and the Privacy Rule. While there is a lot of information to digest and your practice will

likely have to make some modifications to its existing protocols and develop new forms, everyone is in the same predicament. Whether you have been in practice 25 years or are just starting in practice, HIPAA is a new requirement for everyone.

There is some irony that the Administrative Simplification provisions of HIPAA received the least attention during the debate surrounding the passage of HIPAA, and will now likely be remembered as the centerpiece of the Act.

Even if you have not yet done a single thing in your practice to become HIPAA-compliant, there is still time to act in a cogent and comprehensive manner. Submit a Transactions Rule extension. Read as much as your schedule permits regarding the two rules, and utilize the expertise and energy of outside advisers to resolve the HIPAA issues with which you need assistance. Pay attention to the debate in your professional journals and periodicals regarding the impact of the revised Privacy Rule and how its ultimate outcome affects the existing Privacy Rule.

While compliance with HIPAA is not necessarily simple, if it is properly implemented, it will reassure your patients that you are handling their personal information properly to prevent unwanted and unintentional disclosures, and provide you and your practice with the opportunity to assess the flow of patient information within and beyond the walls of your practice. ■

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