

Another HIPAA Compliance Deadline Is Just Around the Corner

May 23, 2007 is the deadline for many employer-sponsored health plans to begin complying with HIPAA's National Provider Identifier (NPI) requirements. The NPI rules require most health care providers to obtain a unique 10-digit identification number (an NPI) through an on-line system. The rules also require employer-sponsored health plans and other HIPAA covered entities to use providers' NPIs in electronic transactions that are covered by HIPAA's Electronic Data Interchange (EDI) rules. The "Background" section below explains the interaction of the NPI and EDI rules in greater detail.

The Centers for Medicare and Medicaid Services (CMS) — the federal agency that will enforce the NPI rules — has found that many HIPAA-covered health plans and providers will have difficulty meeting the May 23, 2007 deadline. Due to that finding, CMS recently announced a helpful enforcement policy that will apply until May 23, 2008. This *Alert* reviews the CMS announcement and the actions that employers might wish to take in connection with the NPI rules.

Background

In the past, health plans assigned identifying numbers to providers according to the plans' own enumeration systems, and a health care provider would have many different identifying numbers that it would need to use in order to submit claims, receive payments, etc. This caused inefficiencies for providers submitting health claims and for health plans performing functions—such as coordination of benefits — that require a determination of whether a single expense is covered by two plans. The NPI rules address those inefficiencies by establishing a single identification number for each HIPAA-covered provider and requiring use of that number in electronic transactions that are subject to the EDI rules.

The EDI rules are national standards for electronic health care transactions. Health plans, including health insurers and employer-sponsored health plans, generally must comply with the EDI rules. For health plans, compliance has two components: (1) accepting certain electronic transactions that use specified standard electronic formats, code sets and identifiers, and (2) using those standard formats, codes and identifiers with respect to certain transactions. In the case of the NPI — a standard identifier—the transactions that are most

likely to involve its use are claims transmittals, claims payments and coordination of benefits.

Under the EDI rules, it generally is illegal for a HIPAA covered entity to use non-standard electronic transactions, meaning that health plans cannot require or accept any non-standard items in any covered transaction, except as permitted by the rules. After May 23, any identifier for a health care provider other than that provider's NPI will be a non-standard item, and health plans generally will be prohibited from using or receiving transactions that include such identifiers.

Effect on Health Plans

Health plans, including employer-sponsored health plans, are not required to obtain an NPI. That requirement only applies to health care providers that are covered entities. Some employers maintain on-site health services for their employees, however, and that provision of services may make the employer a health care provider for purposes of HIPAA. (Health care providers are HIPAA covered entities if they transmit any data in electronic form in connection with a transaction that is subject to the EDI rules.) So, if information is transmitted electronically (e.g., by e-mail) for a covered transaction in connection with on-site health services, the employer may become a

health care provider that is required to obtain an NPI.

While employer-sponsored health plans are not required to obtain NPIs, they are required to use NPIs in electronic transactions that are subject to the EDI rules (e.g., claims payments and coordination of benefits).

NOTE: Employers themselves generally are not subject to HIPAA (unless they are covered by HIPAA independent of their involvement with employee health plans). This means that employers do not have to use the standard electronic formats, code sets and identifiers when submitting, for example, enrollment and premium information and materials to an insurer or service provider under the plan.

If an employer-sponsored health plan is insured, then insurer processes claims and it is responsible for ensuring that electronic transactions are compliant. In the case of a self-insured plan, service providers, such as TPAs, are not directly required to comply with the EDI and NPI rules. However, since the health plans for which TPAs provide services are subject to the EDI and NPI rules, a health plan needs to obligate its TPA to comply with those rules when acting on behalf of the health plan. So, even if there is no direct requirement, the practical effect is that the EDI rules will require a self-funded health plan to mandate that the TPA use the standard electronic formats, code sets and identifiers when acting on behalf of the plan.

Required Compliance Dates for Health Plans Under the NPI Rule

Starting May 23, the NPI will be the exclusive identifier for health care providers in electronic transactions covered by the EDI rules. There is an exception to this compliance date for small plans (those with less than \$5 million in annual receipts). Small plans have until May 23, 2008 to comply.

Recent CMS Guidance

CMS confirmed the May 23, 2007 and 2008

compliance dates in recent informal guidance, but noted that it had received inquiries “expressing concern over the health care industry’s state of readiness.” As a result, CMS clarified its approach to enforcement of the NPI rules during the next year (i.e., until May 23, 2008). CMS stated that it will not impose penalties on plans that “deploy contingency plans (in order to ensure the smooth flow of payments),” provided the plan had made “reasonable and diligent” efforts to comply and to facilitate compliance by providers submitting claims. An example of a contingency that a health plan might implement is accepting electronic claims that include both the NPI and the provider identifier that the plan used previously.

In assessing whether to apply penalties under this standard, CMS notes that it would examine whether a health plan (other than a small health plan) had taken actions toward compliance — and toward facilitating providers’ compliance — before the May 23, 2007 compliance date.

What Can Employers Do to Ensure that Their Health Plans Comply?

Even though the NPI rules make compliance the plan’s responsibility, employer plans must depend on their claims processors for compliance. This is because the claims processors generally are responsible for carrying out, on behalf of the plan, the transactions that are required to be in standard electronic format and to use the NPI as the exclusive means to identify providers. Most individuals without specialized information systems knowledge will not be able to determine from verifiable sources whether their service providers’ (or their own) operations comply with the NPI rules. So, the only step that most employers can take toward compliance with the NPI rules is to verify with their claims payers that the claims payers are in a position to comply. (If the employer, itself, carries out functions usually assigned to a claims payer, compliance with the NPI rules is considerably more complicated.)

In order to demonstrate diligence in requiring claims payers to comply with the NPI rules (subject to the contingencies allowed under the

CMS guidance), an employer might want to request the claims payer for its health plan to confirm compliance in writing. If the employer obtains such assurances, and has no reason to doubt their accuracy, that might be sufficient for the plan to avoid penalties in the event of a violation by the claims payer. If you would like assistance with obtaining compliance assurances from the claims payers under your plans, please contact your local Willis representative.

A Note on Other Identifiers Used in Electronic Transactions

CMS previously adopted uniform identifiers for employers that are required to be used in the standard transactions. That uniform identifier is the employer identification number assigned to the employer by the IRS. CMS is required to adopt unique identifiers for health plans, but has not yet done so. Nonetheless, the website the providers use to obtain NPIs — the National Plan/Provider Enumeration System (NPPES) website at <https://nppes.cms.hhs.gov/> — refers to health plans' also needing to obtain identifiers. CMS has not yet established a system for assigning health plan identifiers, but the website has caused some confusion.

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