ACA Meets HIPAA Chapter 2:
Health Plan HIPAA Transactions Compliance Certification Delayed Until 2015

By Jack Rovner

No one seems to mind that the Department of Health and Human Services (HHS) missed the statutory deadline. Back in March 2010, Congress mandated in Section 1104 of the Patient Protection and Affordable Care Act (Affordable Care Act or ACA) that all health plans certify compliance with certain HIPAA Administrative Simplification standard transactions by Dec. 31, 2013.1 But HHS didn’t propose regulations for implementing this compliance certification mandate until Jan. 2, 2014.2

Those HHS proposed regulations intend to extend the deadline for transactions compliance certification to Dec. 31, 2015.3 That puts transactions compliance certification at the end of a series of impending and imposing HIPAA Administrative Simplification requirements. These include transition to the ICD-10 code set for HIPAA transactions on Oct. 1, 2014, and enumerating unique “health plan identifiers” (HPID) for health plans by Nov. 5, 2014.4

1. The Transactions Compliance Certification Obligation

My Sept. 26, 2013 Counsel Corner piece on “ACAMeets HIPAA” (22 HLR 1443, 9/26/13) explained the transactions compliance certification mandate of ACA § 1104. That mandate obligates health plans to certify and document to HHS that their information systems can conduct HIPAA transactions in accordance with the HIPAA standards and operating rules. That mandate further obligates health plans to complete end-to-end testing of HIPAA transactions with hospitals, physicians and other trading partners. ACA § 1104 required compliance certification by Dec. 31, 2013 for the following three HIPAA transactions: (1) eligibility for a health plan; (2) health care claims status; and (3) health care electronic funds transfer and remittance advice.

HHS explains the delay in implementing ACA § 1104 on the basis that there has been a “lack of a consistent testing process or framework.”5 HHS deems that process and framework “critical to ensure the integrity of internal application systems and confirm a system’s capability to conduct compliant transactions.”6 HHS intends these proposed regulations—and ultimately the final transactions compliance certification rule—to be “a first step toward a standardized testing framework to support a more seamless transition to new and revised standards or operating rules.”7

HHS recently extended the public comment period on these proposed regulations to April 3, 2014. It granted the extension because “entities that are new to HIPAA administrative simplification requirements have requested more time.”8 For example, according to HHS, “many self-funded group health plans have not been impacted by previous HIPAA administrative simplification requirements because many do not directly

---

4. 45 C.F.R. §§ 162.504(b), 162.512, 162.1002(c). A “small health plan”—one with not more than $5 million in annual receipts, see 45 C.F.R. § 160.103—has until Nov. 5, 2015, to obtain its HPID. 45 C.F.R. § 162.504(b)(2).
5. 79 Fed. Reg. at 303.
6. Id.
7. Id. at 303-04.
conduct HIPAA covered transactions.” ¹⁰ That’s a curious observation. Self-funded group health plans are “covered entities” subject to HIPAA Administrative Simplification requirements.¹⁰ Self-funded group health plans have therefore been obligated for more than a decade to ensure that any “business associates” administering their benefits comply fully with the HIPAA transactions standards.¹¹ Nothing in ACA § 1104 or, indeed, in the proposed regulations changes that compliance obligation.

2. HHS’s Proposal for Implementing Transactions Compliance Certification

HHS’s proposed scheme for transactions compliance certification is for each “controlling health plan” (CHP) to submit to HHS, for itself and for any “subhealth plans,” a one-time “snapshot” of the following information as of the submission date:

a) the number of covered lives; and
b) documented evidence of either:
   (i) a “Certification Seal” of compliance from “CAQH CORE”; or
   (ii) a “HIPAA Credential” of compliance from “CAQH CORE.”¹²

“CAQH CORE” is the Council for Affordable Quality Healthcare Committee on Operating Rules for Information Exchange. This is “an industry-wide collaboration committed to development and adoption of national operating rules for administrative transactions.”¹³

A CHP “controls its own business activities, actions, or policies” and “subhealth plans” have their “business activities, actions, or policies” directed by CHPs.¹⁴ HHS’s proposed regulations would require a CHP that has obtained its HPID before Jan. 1, 2015, to submit its “snapshot” transactions compliance certification between Jan. 1, 2015, and Dec. 31, 2015; a CHP allowed to obtain its HPID on or after Jan. 1, 2015, would be required to submit its “snapshot” transactions compliance certification “within 365 days of obtaining its HPID.”¹⁵

A “Certification Seal” results from successfully testing with a CORE-authorized testing vendor the capability to conduct the eligibility, claims status, and electronic funds transfer/remittance advice transactions in accordance with their standards and operating rules. HHS says that the benefit of the “Certification Seal” is that the process for obtaining it “reflects the kind of consistent internal and external testing and documentation of compliance that . . . will ameliorate many of the challenges industry has recently faced during transitioning to new standards and operating rules.”¹⁶

A “HIPAA Credential”—currently under development—is expected to require an executive’s attestation that the CHP has successfully conducted, in accordance with the standards and operating rules, at least 30% of each of its eligibility, claims status, and electronic funds transfer/remittance advice transactions. The CHP must have conducted those compliant transactions with, collectively, from three to 25 of its provider trading partners.¹⁷

Under either option, a CHP would be required to attest to compliance with the HIPAA Privacy and Security Rules, as well as that any business associate conducting transactions on its behalf is complying with the transactions standards and operating rules. HHS views this attestation as “an essential document” for purposes of transactions compliance certification.¹⁸

3. HHS’s Clarification of the Penalties for Noncompliance

ACA § 1104 empowers HHS to levy civil monetary penalties on CHPs that fail to timely submit transactions compliance certifications.¹⁹ The penalty is “$1 per covered life” per day of noncompliance.²⁰ The proposed regulations would require CHPs to report their “covered lives” as part of their transactions compliance certification to enable HHS to assess this penalty.²¹

“Covered lives” would be measured “per person” enrolled in “major medical policies.”²² HHS proposes to define “major medical policy” as an “insurance policy that covers accident and sickness and provides outpatient, hospital, medical and surgical expense coverage.”²³ Although CHPs that are self-funded group health plans or that offer only excepted benefits, such as stand-alone dental or vision, must still certify their transactions compliance, HHS acknowledges they may not be subject to the penalties for noncompliance because they don’t have “covered lives” in “major medical policies.”²⁴ The penalty is capped at not more than “$20 per covered life,” or at “$40 per covered life” for knowing submission of inaccurate or incomplete information in connection with the transactions compliance certification.²⁵

Conclusion

HHS warns that it intends to use “all reasonable means to ensure that CHPs satisfy their obligations” to certify transactions compliance; it admonishes that, “[b]ecause all CHPs are required to obtain an HPID,” HHS will be able to ascertain whether a CHP has fulfilled its transactions compliance certification obligation.²⁶ Stay tuned for Chapter 3—“The Final Rule”—coming soon to CHP IT and compliance departments everywhere.

¹⁰ Id. at 305.
¹¹ Id. at 308; see id. at 309-10 (regarding business associate compliance).
¹² Social Security Act § 1173(j) (42 U.S.C. § 1320d-2(j)).
¹⁶ 45 C.F.R. § 162.103.
¹⁷ Id. at 308.
¹⁸ Id. at 309-10 (regarding business associate compliance).
²⁰ 79 Fed. Reg. at 312.
²³ 79 Fed. Reg. at 313.
²⁵ 79 Fed. Reg. at 313.