

Health Information Compliance Alert

CMS Gives Paper-Billers 'Get Out Of TCS Rule Free' Card

A few sharp tips will keep your compliance plan on the cutting edge

While covered entities are busy scrambling to comply with the Oct. 16 HIPAA transaction rule deadline, certain providers can sidestep the mess entirely - but the cost of doing so may be too high to bother.

The **Centers for Medicare and Medicaid Services** made its message loud and clear in an Aug. 15 interim final rule: If you don't submit your claims electronically, in virtually every circumstance you won't get paid. The rule formally requires that Medicare claims be submitted electronically starting Oct. 16, with only a handful of exceptions.

The biggest exception: Small providers and suppliers. CMS defines "small" entities as either a) a provider of services with fewer than 25 full-time equivalent employees, or b) a physician, practitioner, facility or supplier with fewer than 10 FTEs.

If you qualify as a "small provider of services," you don't need to take any action to preserve your status as a paper biller. You automatically sidestep the HIPAA transaction rule requirements. "If you believe that you meet the small provider exception, there is not a 'waiver' for you to sign," CMS says. "Just continue to bill via paper."

A small provider of services is exempt from the requirement that all Medicare claims be submitted electronically - and, in most cases, in accordance with HIPAA - by Oct. 16, affirms CMS in a notice recently posted to its Web site.

The rest of the exceptions, as a rule, are pretty arcane. They include:

1. circumstances in which there is no method available for the submission of an electronic claim - claims submitted directly by beneficiaries, for example, would fall into this category, as would roster billing of vaccinations, claims submitted under Medicare demonstration projects and claims where more than one plan is responsible for payment prior to Medicare;
2. dental claims (quite rare under Medicare); and
3. claims submitted during a service interruption that's beyond the control of the organization submitting the claim.

Remember, though: Even if you do qualify as a small provider, you don't have license to avoid HIPAA altogether. It's an exemption from filing electronically according to HIPAA standards, not immunity from the HIPAA privacy rule, stresses attorney **John Gilliland II** with Indianapolis-based **Gilliland & Caudill**.

For example, says Gilliland, many physicians are operating under the incorrect assumption that they are not covered by the privacy rule because they have fewer than 10 employees, notes Gilliland. That's a common HIPAA myth that's downright wrong, he warns.

And even if you qualify for the exemption, there's no sense in taking it if you're already billing electronically, notes consultant **L. Michael Fleischman** with **Gates More & Co.** in Atlanta. That's because you'd see major cash flow delays if you switch back to paper billing. Paper claims have a 28-day payment floor while electronic claims have only a 14-day

wait.

To make things more difficult, CMS has promised no timeframe for the exemption. CMS officials may say it's OK to bill via paper in October and change their minds in November.

CMS notes that organizations can also appeal for special waivers by applying to their carrier or fiscal intermediary.

Important Note: CMS points out in the interim final rule that it applies to initial Medicare claims, not changes, adjustments or appeals.

Editor's Note: To see the interim final rule, go to <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/pdf/03-20955.pdf>.