

Health Information Compliance Alert

Transactions: Flood Of Non-Compliant Claims Too Much For CMS

CMS's contingency plan intends to soak up October's TCS deluge

The **Centers for Medicare & Medicaid Services**, soaked with non-compliant claims from HIPAA-covered entities, pulled out a gigantic umbrella this month to shield CEs still struggling with HIPAA's transactions rule.

CMS announced Sept. 23 it will implement a contingency plan to accept non-compliant electronic transactions after the Oct. 16 transactions and code sets deadline. The plan will ensure continued processing of claims from thousands of providers who likely would not have been able to meet the deadline, thus guaranteeing that claims will not be rejected by CMS.

CMS Administrator **Tom Scully** said "implementing this contingency plan moves us toward the dual goals of achieving HIPAA compliance while not disrupting providers' cash flow and operations." The agency said it made the decision to implement the plan after reviewing statistics that revealed "unacceptably low numbers" of HIPAA-compliant claims being submitted.

Announcing that Medicare is currently able to process HIPAA claims, **Tom Grissom**, director of CMS's Center for Medicare Management, said, "we need to work with our trading partners to increase the percentage of claims in production."

The contingency plan means CMS will continue to accept and process claims in electronic formats now in use, which will give providers more time to complete the testing process. However, CMS said it would "regularly reassess the readiness of its trading partners to determine how long the contingency plan will remain in effect."

Will Providers Procrastinate?

While the CMS announcement is great news for entities that haven't yet mastered their HIPAA-compliant claims procedures, is there a danger that entities will feel entitled to delay their compliance efforts? **Deborah Larios**, an attorney with **Miller & Martin** in Nashville said that while she had hoped CMS would've made its announcement closer to the compliance deadline, "there were people who were going into absolute panic over this whole thing, so I'm glad they came out with [the contingency plan]."

Larios tells **Eli** she hopes CMS will "continue to make it very clear that this is temporary - that at any point they could revoke this additional flexibility." If CMS reinforces the notion of short-term flexibility, Larios says entities will realize that compliance with the transactions section of HIPAA must be met.

But others don't see much risk that CMS's contingency plan will impede implementation of the rule. "CMS's promised flexibility is explicitly conditioned on continued good faith efforts to implement the standards," says **Bill Sarraille** with **Sidley Austin Brown & Wood**. As Sarraille notes, "contingency planning is not a matter of choice at present. With so many providers not even into testing and so few that are actually successful in their testing, there is no alternative to contingency planning right now."

One privacy officer tells **Eli** that even though she believed CMS would in fact announce its contingency plan, her health care facility still plans to stick to its schedule of becoming fully compliant by Oct. 16. "We were not surprised by the news - in fact, we expected it," says **Tara Shewchuk**, systems compliance officer with **Resurrection Health Care** in Chicago.

Shewchuk says the CMS announcement will not change Resurrection's implementation plans, and asserts that the facility will remain on target to implement HIPAA-compliant transactions "with all payers that will be capable of accepting them" by the original deadline. And even though Resurrection still plans to be compliant by the October deadline, Shewchuk stresses that it's better to be safe than sorry: "Over the last month or so, we did institute [our own] contingency plan in the event we faced any business interruption due to HIPAA implementation glitches on the payer side."

