

Health Information Compliance Alert

Transactions: Interview With An Enforcer - A Q & A With CMS

A CMS official sheds new light on the agency's contingency plan

While covered entities (CEs) across the nation have breathed a collective sigh of relief over the Sept. 23 announcement by the **Centers for Medicare & Medicaid Services** that it would accept non-compliant electronic claims as part of its "contingency plan," many CEs are still unsure what the plan means in the long run. Fortunately, one CMS spokesperson was willing to share some valuable information with **Eli** about the plan - and what it really means for you.

Question: CMS issued its contingency plan due in large part to what it considered "unacceptably low numbers" of compliant claims? What does CMS consider to be "unacceptably low"?

Answer: As of Oct. 10, only about 22 percent of Medicare claims that have been submitted were compliant. That figure had risen from 11 percent at the time the agency announced its plan.

Question: How will CMS determine when it's time to stop accepting non-compliant claims?

Answer: We haven't set any hard standard on that. We don't know what's going to happen [after] Oct. 16. [Compliant claims] have gone from 11 to 22 percent. If that percentage doubles in the next couple of days, we'll have a different look than if it's still at 22 percent. It may be 80 percent; we don't know. It's just a matter of watching and seeing where it's going.

Question: How much fair warning will there be when CMS ceases to accept non-compliant claims?

Answer: Everything we've done has contained a degree of fair warning. We outlined a complaint-driven system, so if somebody complains about you, we will go and ask you about this [complaint] to help you get into compliance. There comes a time, historically, when you have a few hard cases with people just refusing to cooperate. But right now that's generally not the problem. There's a lot of foot-dragging, maybe, but as long as people are really hustling to try to get into compliance, we're going to try to help them rather than punish them. At the same time, we don't want to give the impression that there's a blank check here and that they can stall.

Question: Is CMS concerned that the contingency plan may cause CEs to 'slack off'?

Answer: Well, we're deliberately phrasing [the plan] so that won't happen. We're telling people that this plan won't last forever. If we said CEs have another year, then people will wait 11 months and start again.

Question: Isn't it problematical that entities just don't know when you'll stop accepting non-compliant claims?

Answer: Any kind of date we set would have a problem, and so we're not going to set a date. If we come down six months from now and we see a high non-compliance rate, then we may make an announcement saying CEs have so

many days left. Sooner or later we're going to have to face [enforcement]. If we come down to a few hard cases, we'll go out and work with them one-on-one, and if they just refuse to comply at that point, then there are penalties provided by the law. Ultimately, [if they continued their non-compliance], the secretary could throw them out of the program - and that applies to Medicare as a payor. For Medicare as an enforcer, the industry statutes have penalties of \$100 per incident up to \$25,000 a year.

Question: As CMS continues to monitor entities' progress and sees that the numbers are going up, then don't you have to enforce the rule for those not in compliance?

Answer: We would clearly tell [those not in compliance] that this couldn't go on any longer. It doesn't mean we'll cut off your money tomorrow and doesn't mean we're going to fine you tomorrow, but we have to take steps to see it happen. If they refuse to do that, then we could throw them out of Medicare or we could impose penalties.

Question: Doesn't there have to be a point when these entities have to get into gear, and a point when you demand compliance?

Answer: Suppose we get to 80 percent [in compliance] and we only have 20 percent [in non-compliance]. We'll contact those 20 percent individually and say, 'OK, time's up. Give us a corrective action plan.' We're going to be looking at people all through this process and asking for signs of good faith efforts, and if we don't find it, we may do something to that [entity] now.

And another [entity] who's making a good faith effort, we may let him slide a little longer and then later we'll decide that's enough [time] for him. I don't know exactly what [the agency] will do down the road ... but setting another deadline is not the answer. It'll have to involve going after people and enforcing the rule.