

Don't expect 2007 to be a quiet year for HIPAA

Developments likely to include NPI deadline, increased enforcement

Aside from the publication of the final enforcement rule in February and the ongoing reports of privacy and security breaches, 2006 was a relatively slow year for HIPAA. But expect that to change in 2007. Along with the May 23 NPI compliance date, organizations are likely to see a lot of HIPAA-related activity, including an increase in enforcement and changes to the transactions and code sets standards.

The big development this year is the NPI compliance date, says **Peter Mancino, JD**, partner at Garfunkel, Wild & Travis, PC, in Great Neck, NY. Medicare expects to be ready, health plans may or may not be ready, and providers are the furthest behind, he says. CMS has already assigned some NPIs, but it's expecting a big rush in the spring, and a lot of due diligence needs to happen between now and then, says Mancino.

"I don't see CMS changing the May 23 date for [NPI] compliance, but I don't think the industry will be prepared to meet the deadline," adds **Chris Apgar, CISSP**, president of Apgar & Associates, LLC, in Portland, OR. The state of Washington's Medicaid agency has already notified all of its providers that they must use the Washington Medicaid legacy number instead of the NPI until the end of 2007, he says.

"And I don't think this will be an isolated incident. If the appropriate contingency communication does not occur between payers and providers, there is the potential for the proverbial train wreck with a significant increase in rejected claims, increased phone calls to payers, and providers reverting to paper transactions, all of which would be costly to the healthcare industry," says Apgar.

CMS has been very slow to provide information to the industry about the move to NPIs, he adds. As of presstime, CMS still had not released the dissemination notice, which was originally due in June 2006. This lack of information from CMS will significantly hamper organizations' efforts to successfully meet the NPI compliance deadline, Apgar says.

Privacy

The U.S. Supreme Court in 2006 declined to hear a case that would have reinstated the privacy rule's consent requirement. Plaintiffs, including the Patient Privacy Rights Foundation, argued that eliminating the consent requirement violated several constitutional rights, as well as Congress' intent under the HIPAA law.

The plaintiffs are considering amending the lawsuit or filing a new lawsuit against HHS, but the change will never happen, says **Edward F. Shay, JD**, partner at Post & Schell, PC, in Philadelphia.

"I don't see CMS changing the May 23 date for [NPI] compliance, but I don't think the industry will be prepared to meet the deadline."

—Chris Apgar, CISSP

"It's in the completely opposite direction from where the healthcare industry is headed," he says.

It may be more likely to see the research community mount a drive to change HIPAA's rules for research, says Shay.

HHS said in the 2002 final rule that it reserved the right to come back and look at ways to improve processes, and this may be an area it addresses, he says.

An even bigger concern is how HIPAA and state privacy laws relate to electronic health records (EHR) and regional health information organizations (RHIO), says Mancino.

HIPAA doesn't prevent organizations from sharing PHI for treatment purposes, but state laws can get in the way, he says. "There's talk of legislation to allow more sharing."

Privacy is becoming a commodity or way to sell healthcare services, adds Apgar. "As consumer-driven healthcare gains momentum, more healthcare organizations will look at marketing easy-to-access individual health information with the promise that they will keep it more private than the next guy."

But don't expect HHS to respond to the increase in technology with tougher standards, says Shay. "Organizations don't need more stringent rules. The challenge is one of enforcement."

Enforcement

There will be increased pressure this year on the OCR to actually levy civil penalties against covered entities that have violated the privacy rule, says Apgar. This is due to the increase in press coverage of inappropriate releases of patient information, including statements about the lack of HIPAA enforcement, he adds. "Increasing public pressure will force OCR to take a closer look at its current track record."

Most providers have reached a comfort level with privacy, says Mancino. "Security, on the other hand, is a question mark. We're not hearing too much about security complaints, so how is CMS going to enforce it?"

The interest and concern about security increased in 2006 and will continue to increase in 2007, says Apgar. Most of the privacy incidents were the result of security incidents, and healthcare organizations are more concerned about civil suits, bad press, and loss of reputation, he says.

"And national projects centered around the creation of state and national privacy and security solutions related to electronic health information exchange will increase awareness and be an important part in the creation of community EHRs, RHIOs, and more," adds Apgar.

Transactions and code sets, claims attachments

Expect Congress to soon set dates to adopt the ANSI X12 5010 version of the HIPAA transactions and the ICD-10 code sets, says Apgar.

Currently, there is heavy opposition from several associations (e.g., the American Medical Association) to the current compliance dates, but there is also pressure for the industry to move forward, he says.

Although this will likely be an area of focus in early 2007, don't expect changes too soon. "I don't think the move to the 5010 version of the HIPAA transaction will occur during 2007, but sometime in 2008," Apgar says. The industry must adopt the 5010 transaction before it can adopt the ICD-10 code set, he adds.

There is profound skepticism among providers regarding the cost of implementing ICD-10, says Shay. But ICD-10 is coming soon, adds Mancino. "It's another high-cost item, but eventually, you have to evolve."

Currently, there is also a movement to make the 835 transaction (remittance advice) more user provider-friendly, says Apgar.

This will become more of a concern as providers need to add more codes to provide the necessary detail to post claim payments and reconcile rejected claims.

There is an initiative underway sponsored by the Workgroup for Electronic Data Interchange, as well as local activity, Apgar says.

Expect to see a final claims attachment rule in the near future, says Mancino.

Some argue that it's difficult to implement. There will be necessary changes to providers' and payers' systems, he says, "but CMS may be more flexible in granting extension periods for compliance."

There's some resistance from providers, adds Shay. "It will be expensive to implement, and there's a widely held perception among providers that the return on investment is 80–20 for health plans. But it's still kicking around." ■

Insider sources

Chris Apgar, CISSP, president, Apgar & Associates, LLC, 10730 SW 62nd Place, Portland, OR 97219, 503/977-9432; capgar@easystreet.com.

Peter Mancino, JD, partner, Garfunkel, Wild & Travis, PC, 111 Great Neck Road, Suite 503, Great Neck, NY 11021, 516/393-2286; pmancino@gwtlaw.com.

Edward F. Shay, JD, partner, Post & Schell, PC, Four Penn Center Plaza, 1600 JFK Boulevard, Philadelphia, PA 19103-2808, 215/587-1151; eshay@postschell.com.