



**American Hospital
Association**

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February 27, 2014

Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: CMS-0037-P Administrative Simplification: Certification of Compliance for Health Plans; Proposed Rule (Vol. 79, No. 1, Jan. 2, 2014)

Dear Ms. Tavenner:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our 43,000 individual members, the American Hospital Association (AHA) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed rule concerning certification of health plans that have successfully implemented the operating rules required by the Affordable Care Act (ACA). These rules are designed to achieve greater standardization and consistent execution of the electronic transaction standards required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Specifically, the ACA calls for the operating rules to be developed by a private, not-for-profit, multi-stakeholder, consensus-based organization and then subjected to the same regulatory process used for electronic transaction standards.

The AHA is a strong proponent of the administrative simplification requirements adopted by the ACA. We have worked closely with the Council for Affordable Quality Healthcare (CAQH) Committee on Operating Rules for Information Exchange (CORE), and we supported their designation by CMS to develop the operating rules. **The AHA supports the overall proposed approach to certification, specifically:**

- **The designation of CAQH CORE as the entity responsible for development of the certification process; and**
- **The establishment of two alternatives for health plan certification: the voluntary certification program already offered by CAQH CORE and a new HIPAA Credential program to be developed by CAQH CORE.**



SPECIFIC COMMENTS

Briefly, the proposed rule would require that all controlling health plans (CHP)¹ provide the Secretary of Health and Human Services (HHS) with:

- Information on the number of covered lives in the CHP; and
- Documentation that demonstrates the CHP has obtained from CAQH CORE either a:
 1. Certification Seal for Phase III CAQH CORE electronic funds transfer and electronic remittance advice Operating Rules, which includes having earned either previously or simultaneously seals for Phases I and II regarding eligibility and claims status; or a
 2. HIPAA Credential, which is an attestation process that the CHP has conducted each of the transactions with providers.

CHPs must be in compliance according to the following schedule:

- For CHPs that obtain a health plan identifier (HPID) before Jan. 1, 2015, compliance is required by Dec. 31, 2015.
- For CHPs that obtain an HPID on or after Jan. 1, 2015 and on or before Dec. 31, 2016, compliance is required within 365 calendar days of obtaining the HPID.

DESIGNATION OF CAQH CORE

CAQH CORE is uniquely positioned as the only existing national health plan certification program for operating rules and standards that has multi-stakeholder approved test protocols and independent testing vendors. **Thus, the AHA supports the designation of CAQH CORE as the certification administrator for a vendor neutral certification process.**

CAQH CORE has a proven process that allows health plans and other entities to submit documents to demonstrate compliance with the HIPAA transactions standards and operating rules (utilizing an automated process to do so). Various educational and support tools are provided at no cost to the public on the certification programs it offers, and it recognizes independent testing vendors interested in conducting testing. For the CORE certification testing, the CORE-authorized testing vendors set their own prices. Any vendor can build an online testing site per the CORE multi-stakeholder approved test protocols and approval by a CAQH CORE multi-stakeholder committee. There is only one CORE-authorized testing vendor at this time because a previously authorized testing vendor is no longer participating, but additional vendors have indicated their interest in applying given the proposed rule. The AHA supports a vendor neutral certification process because it enables multiple sources for testing and can avoid the potential for bottlenecks in the certification process.

¹ **Controlling health plan** (from HPID regulation 45 CFR 162.103) is defined as a health plan that controls its own business activities, or is controlled by an entity that is not a health plan; and if it has subhealth plans (SHPs) exercises sufficient control over the SHPs to direct their business activities.

Furthermore, CAQH CORE has no conflict of interest arising from its existing role as CORE Certifier or the proposed HIPAA Credential administrator. It uses an independent testing process for the CORE Certification Seal. For credentialing, the proposal is clear that CAQH CORE *will not* be responsible for: setting the fees, investigating what a CHP knew or did not know if it submits an inaccurate credential application package, or addressing any claims that it may receive about a CHP's intent following any inaccuracies or incomplete information.

AVAILABILITY OF TWO CERTIFICATION OPTIONS

CMS also has provided a low-cost, documentation-focused attestation alternative to the existing and well recognized CAQH CORE certification process. **CAQH CORE is very well qualified to serve in the proposed administrator capacity for both options.**

Although there has been some discussion about multiple certification administrators during this initial phase, the fee structure as proposed for HIPAA credentialing is insufficient to cover costs for multiple administrators, all of whom would be required to develop or retool information technology, develop their own test scripts and processes (for the testing option), hire and train staff, and develop the comprehensive knowledge base necessary to answer questions – all for the first certification of compliance which is a one-time process with the administrator having a very short-lived role. CMS's proposal clearly contemplates that, for later phases of the HHS health plan certification, the overall framework and components of the process will be revisited.

As an experienced administrator, CAQH CORE can implement the very basic initial HIPAA Credential process quickly due to its certification experience, while keeping HIPAA Credential costs within the nominal fee structure proposed. While the HIPAA Credential submission process is not yet fully available, its content requirements are. CAQH CORE's multi-stakeholder board and open industry collaboration process² assures a commitment to developing a HIPAA Credential process that is not materially different than that proposed.

SCOPE OF CERTIFICATION

The proposed certification process is focused on health plans and any penalties would apply at the CHP level, in accordance with the underlying ACA provisions. We understand that there are some stakeholders who believe certification should be required of all entities that touch the processing of a claim, that they too become certified in the same way as CHPs, and that the same penalties be applied. **The AHA recommends against extending the requirement for certification to health care providers because we do not believe it is necessary.** Health care providers do what they must to obtain payment from health plans and government programs. For a provider to implement the operating rules before the health plans or clearinghouses with whom they do business would create an environment of confusion and potentially undermine existing processes. While we have urged our member hospitals and health systems to engage in the CAQH CORE process and open discussions about compliance with their health plans and any clearinghouses through which they must

² See http://corecertification.caqh.org/CORE_certification_proposed for examples of the forms being proposed.

submit claims, it is the health plans that dictate the point at which their vendors and providers will need to comply with operating rules in order to be paid. A requirement that the testing of a plan's compliance with the operating rules involves at least a sampling of all types of entities that are involved in processing the transaction at issue would be sufficient. Finally, any provider that does not comply on a timely basis already is subject to compliance with HIPAA transaction standards and their operating rules, and HIPAA has its own provisions related to fines for noncompliance.

SELF-INSURED HEALTH PLANS

The number of self-insured plans that would meet the definition of a CHP as defined in Sec. 162.103 is estimated in the proposed rule to number in the tens of thousands. Self-insured health plans may be self-administered, administered by other health plans under an administrative services only (ASO) agreement, or administered by a third-party administrator (TPA). As such, a given ASO or TPA may have many self-insured plans it is administering – resulting in the 30 percent testing threshold being repeated many times for the same transaction production systems. Given the massive volume of self-insured health plans, the industry needs a way to crisply execute implementation of health plan certification for self-insured plans if self-insured plans are part of this regulation.

The AHA recommends that the final rule specify whether self-insured health plans are or are not required to obtain certification, referencing appropriate health plan definitions. Further, we recommend that if self-insured health plans are required to obtain certification, CMS recognize a way to facilitate their certification through compliance by their ASOs or TPAs. A proxy system would be efficient and useful. For example, an option would be for the ASO or TPA to provide documentation to each of its self-insured health plan clients on the services it provides, the ASO's or TPA's compliance with the operating rules, and support it offers for the self-insured health plan's certification. The contracts between self-insured health plans and ASOs or TPAs should determine accountability for noncompliance, including the payment of any penalties. Once clarified whether self-insured plans must be certified, CMS should conduct extensive education and outreach to ensure that stakeholders are fully aware of their obligations to obtain health plan certification, especially self-insured health plans.

Thank you for consideration of our comments. We look forward to working with you and your staff on the further implementation of the ACA's administrative simplification provisions. If you have any questions, please feel free to contact me or Ellen Pryga, policy director, at (202) 626-2267 or epryga@aha.org, or George Arges, senior director for health data management, at (312) 422-3398 or garges@aha.org.

Sincerely,

/s/

Linda E. Fishman
Senior Vice President, Public Policy Analysis & Development