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December 20, 2001

Congress of the United States

House of Representatives COMMITTEE ON WAYS AND MEANS

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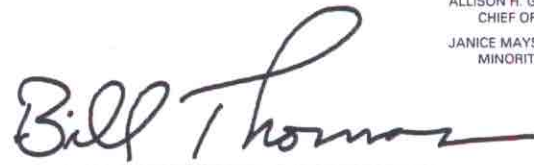
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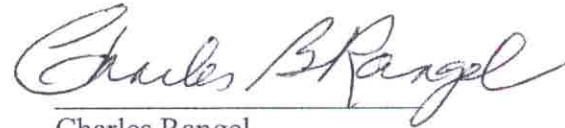
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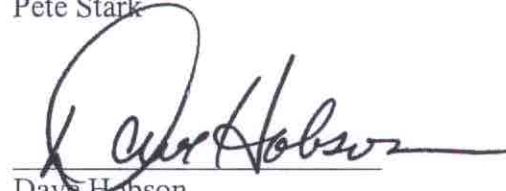
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Dave Hobson

Mr. Thomas, for himself, Mr. Rangel, Mrs. Johnson, Mr. Stark and Mr. Hobson inserted the following comments in the Congressional Record of December 20, 2001 regarding H.R. 3323.

Legislative History and Intent Concerning H.R. 3323, the Administrative Simplification Compliance Act.

Background and Need For Legislation

The administrative simplification provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 will improve administrative efficiencies in the health care market by facilitating electronic transactions between covered entities --

health plans, clearing houses and health care providers. Indeed, the Department of Health and Human Services estimated that administrative simplification will save \$29.9 billion over 10 years as a result of increased efficiencies.

Many covered entities believed coming into compliance with the October 16, 2002 deadline set by the regulations implementing the transactions and code set standards required by HIPAA was an insurmountable hurdle. As such, they argued that a one-year delay in implementing the standards was necessary.

The Committee was concerned, however, that a one-year delay in the implementation of these standards had the potential to result in an indefinite delay, as advocates for the status quo would present more excuses next year in asking for an additional extension, which could lead to indefinite extensions. The Committee also believes entities should undertake actions to prepare to come into compliance.

However, a number of covered entities presented legitimate reasons why they could not come into compliance by the October 2002 deadline, and the Committee determined legislative action was necessary.

H.R. 3323

The House and Senate passed legislation, H.R. 3323, the Administrative Simplification Compliance Act, to address this issue and to provide a glide path for covered entities to come into compliance.

Specifically, the legislation requires that any entity that has not come into compliance by the October 2002 deadline may receive a year extension if they submit a compliance plan with the Secretary demonstrating how they will come into compliance within the next year. The compliance plan forces entities to think deliberately through what it will take to come into compliance and to go on record with the Secretary that they intend to come into compliance. The bill also requires the Department of Health and Human Services to issue model compliance plans, which include critical benchmarks such as establishing a compliance budget, a work plan and an implementation strategy for coming into compliance. The Secretary is not required to approve the compliance plans (as this would compel a review and decision on millions of applications), yet is required to widely disseminate reports containing effective solutions to compliance problems identified in the compliance plans.

Finally, to provide a disincentive to going back to paper claims, the bill requires covered entities to submit electronic Medicare claims to the Centers for Medicare and Medicaid Services (CMS) as a condition of payment. The Committee does not foresee this requirement as being problematic in any way since 98% of Part A providers and 85% of Part B providers already submit claims electronically. In addition, the legislation has exceptions from the electronic submission requirement for cases in which no method is available for the submission of claims other than in written form and for small providers

(defined as having fewer than 25 full time equivalent employees for facilities or 10 for physician practices).

In submitting the Committee's legislative intent, the authors make the following specific observations.

Additional Time

The Committee encourages those entities that can reasonably become compliant with the original October 16, 2002 deadline for electronic transactions and code sets to continue their efforts. It is the clear intent of the Committee that the additional twelve-month extension not delay compliance efforts already underway.

The Committee also encourages the Department to not penalize a compliant entity that must send non-compliant transactions because their trading partners have filed for the extension. This should be considered "good cause" for non-compliance pursuant to Sec. 1176(3) of the HIPAA law.

Summary Compliance Plans

The Committee intends that the plan submitted to the Secretary under Section 2(a)(2) of the bill will be a minimal reporting requirement. The plan will provide summary information regarding the work to be completed for the covered entity to be compliant with the transactions and code set standards by October 2003. The Committee intends that submission of a compliance plan will force covered entities to analyze and consider the exact steps needed to ensure compliance with the regulation by the compliance date, and to achieve those steps.

In preparing the plan, it is important for the covered entity to generally indicate that it has or will begin, accomplish, or is working towards completing, a particular task, in addition to the summary information relating to the task itself.

Model Form and Timing of Submission

If a covered entity so chooses, it may use the model form promulgated by the Department of Health and Human Services (HHS), or it may provide the information in an alternative format at any time prior to October 16, 2002. Entities do not need to wait until HHS promulgates a model form in order to file a compliance plan. The model form promulgated by HHS should be concise, and the Committee encourages the Department to immediately post the mailing and electronic submission address for extension filings on their website.

The Committee recognizes that compliance with respect to long-term care insurers and providers has been delayed by the absence of standard code sets for long-term care services. The Committee also recognizes that long-term care covered entities have been working diligently with the Secretary to correct this problem. The Committee

encourages the Secretary, when issuing the model form, to provide guidance regarding the form's submission that addresses the unique situation facing long-term care insurers and providers.

Report and Analysis

It is the Committee's intent in enacting this legislation that the National Committee on Vital and Health Statistics (NCVHS) will perform analysis of compliance extension plans, conduct hearings, and disseminate reports to HIPAA covered entities.

The Committee realizes that clearinghouses, the vendors of software programs and computer services, and the vendors of remediation services will play a role in helping providers and plans come into compliance with the transactions and code set standards as well as the other administrative simplification standards. The Committee expects the Secretary and the NCVHS to consult with all entities listed in the statute and the vendor community or their representatives directly.

The Committee intends that information provided in compliance plans will be redacted when provided to NCVHS so as to prevent the disclosure of trade secrets, commercial or financial information that is privileged or confidential. The Committee, however, believes that a covered entity that has submitted a compliance plan should inform as many of its trading partners as possible of the anticipated timelines for its compliance activities, including its schedule for beginning testing, in order to avoid confusion.

Scope and Application of Confidentiality Rule

In this legislation, the Committee has sought to ensure that entities become compliant with the April 14, 2003 HIPAA confidentiality requirements despite the fact that the final transaction standards will not be effective until six months later. With regard to clearinghouses, the Committee appreciates that there are healthcare information technology vendors, such as applications service providers (ASPs) that create, adjudicate and process claims in other ways than converting data into standard transactions formats other than HIPAA standardized formats. The Committee does not intend to create any new covered entities under any of the HIPAA rules during this time.

The Committee does not intend to modify the April 14, 2003 effective date of the confidentiality regulation in this legislation.

Filing of Paper Claims

This legislation requires the electronic filing of claims with Medicare, with exceptions. It is not the intent of the Committee to preclude a Medicare beneficiary from submitting a paper claim for covered services. Although virtually all Medicare claims are filed on behalf of a beneficiary by the provider rendering services, there are situations where a beneficiary receives a covered service by a non-Medicare enrolled provider and

would, therefore, be eligible for reimbursement. Such claims are likely to be filed on paper, and nothing in this legislation should be construed as preventing the filing of a paper claim Medicare claim directly by a beneficiary.

Completion of Additional Rules

The Committee strongly encourages the Department of Health of Human Services to complete, in final form, the outstanding rules provided for in the original statute, namely the provider identifier, plan identifier, and employer identifier. Congress also strongly encourages the Department to issue the final security and electronic signatures regulation.

Use of Authorization

The Committee intends the authorization of funds included in Section 5 would be used to speed the issuance and final promulgation of all HIPAA administrative simplification rules. In addition, the authorization is not intended to be used for direct individual compliance activities of covered entities, but to broadly provide technical and educational assistance. Because the Committee expects timely compliance by the private sector with these standards, the Committee wants the Secretary to issue the model form in a timely manner. Failure to meet the deadline outlined in the legislation jeopardizes authorized funds.