American Hospital Association

# HOSPITAL HIGHLIGHTS

*Prepared for AHA members whenever there is important HIPAA-related news.*
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# CMS CHANGES CONTINGENCY PLAN FOR TRANSACTIONS RULE

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On February 27, the Centers for Medicare and Medicaid Services (CMS) issued a program memorandum to its fiscal intermediaries (FI) and carriers that changes Medicare's contingency plan regarding implementation of the transactions and code sets rule promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). **The program memorandum delays payment of electronic claims that are not HIPAA-compliant (*i.e.*, claims that do not meet the HIPAA standards) as of July 1, 2004**. This program memorandum is available at www.aha.org, click on "HIPAA" under Key Issues. CMS also has published a provider education article about this change, which is available at http://www.cms.hhs.gov/medlearn/matters/mmarticles/2004/MM2981.pdf.

Calling it a "measured step toward ending the contingency plan entirely," CMS implemented the change to encourage providers to move more quickly with their efforts to achieve compliance with the HIPAA electronic transactions. **The AHA, however, is concerned that CMS' action inappropriately burdens and penalizes providers, including hospitals, when the lack of HIPAA-compliance may be caused by another party involved in the transaction,** such as a trading partner that is not ready to use, transmit or accept the standardized transactions.

Last fall, CMS implemented a contingency plan to ensure that Medicare would be able to continue receiving and processing claims after the deadline for complying with the HIPAA standards even if those claims were not yet HIPAA-compliant. The transactions rule requires that, as of October 16, 2003, all health care claims submitted electronically to a payer must meet certain format and content standards set forth under the transactions rule and related implementation guides. In addition, under the Administrative Simplification and Compliance Act, all claims submitted to Medicare (other than for certain small providers) must be submitted electronically as of October 16, 2003.

The contingency plan was intended to allow payers and providers to continue working towards compliance with the new standards. Under the contingency plan, CMS must encourage its trading partners to come into full compliance with the new standards. As such, CMS issued this program memorandum in an effort to prod providers to achieve compliance.

The program memorandum redefines CMS' current payment categories, clarifying that only electronic claims that are HIPAA-compliant will be eligible for the early payment floor. Under the existing payment floor law, CMS may not pay electronic claims any earlier than the 14th day after the date of receipt, and non-electronic claims may not be paid any earlier than the 27th day after the date of receipt. The program memorandum makes clear that only 837 claims version 4010A1 will be considered HIPAA-compliant for purposes of early 14th day payment timeline. Claims that are

filed through direct data entry also are considered HIPAA-compliant. However, claims that are filed electronically using an 837 version 4010 will be considered non-compliant.

This change in the payment floor requirement does not affect requirements for timely payment of clean claims (*i.e.*, the "payment ceiling"). The program memorandum is effective July 1, and the implementation date for the program memorandum is July 6. This means that as of July 1, electronic claims that are not HIPAA-compliant will not be paid until the 27th day after the date of receipt, resulting in an additional delay of at least 13 days in the payment of such claims. Thus, HIPAA-compliant electronic claims must be held 13 days and non-HIPAA compliant electronic claims or paper claims must be held for 26 days until they may be paid. This change is intended to encourage providers, including hospitals, to achieve HIPAA compliance as quickly as possible.

The AHA is concerned that this policy change will negatively affect hospital cash flow. This delay in the payment of non-HIPAA compliant electronic claims unfairly burdens and penalizes only the provider when the problem may be a trading partner that is not ready to use, transmit or accept the standardized transactions. Moreover, CMS has not indicated whether its own contractors will be able to receive HIPAA-compliant electronic transactions as of July 1.

The change does not create an incentive for all parties involved in the transaction process such as vendors, clearinghouses, and carriers to work together to achieve compliance. The AHA believes that, instead, CMS should encourage compliance through a rational transition plan that addresses the underlying barriers to moving compliance forward and offers a clear path for achieving compliance. The AHA has expressed these concerns in extensive discussions with CMS and will continue to urge a more appropriate solution.