



Workgroup for
Electronic Data Interchange

April 15, 2003

The Honorable Tommy Thompson
Secretary of Health and Human Services
440D Hubert Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Thompson:

In its advisory role under the Health Insurance Portability and Accountability Act (HIPAA), the Workgroup for Electronic Data Interchange (WEDI) periodically brings to your attention issues related to Administrative Simplification that it believes merit review and consideration by the Secretary.

In this instance, WEDI believes that a substantial number of covered entities are not sufficiently far along to achieve compliance with HIPAA Transaction and Code Set (TCS) standards by the October 16, 2003, deadline as required under the Administrative Simplification Compliance Act (ASCA). As a result, a number of covered entities that will be compliant are worried about trading partners or transactions that will not be compliant. These covered entities and several states, such as New Jersey, are considering contingency plans in order to avoid unintended consequences and adverse impacts, notably rejection of non-standard electronic transactions, disruption of payment flows to providers under Medicare, Medicaid, and private sector health plans, and reversion to paper transactions by covered entities that currently are capable of generating transactions in a non-standard format.

Much progress has been and is being made by the healthcare industry to comply with HIPAA TCS standards and ASCA. There is considerable industry support for HIPAA TCS standards and their successful implementation, and the healthcare industry looks forward to realizing the benefits of successful implementation. The issue at hand is how does the industry make the short-term transition from its current state to a successful implementation, given a substantial degree of noncompliance in October 2003, and thus avoid the so-called *train wreck* that will result from reversion to paper claims or stoppage of cash (payment) flows.

Several courses of action may mitigate unintended consequences and adverse impacts. WEDI has catalogued these and identified potential solutions for reducing unintended

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consequences and adverse impacts in Exhibit 1 to this letter. Two are outlined here for consideration by the Secretary:

- Permitting compliant covered entities to utilize HIPAA TCS standard transactions that may not contain all required data content elements, if these transactions can otherwise be processed to completion by the receiving entity, until such time as compliance is achieved or penalties are assessed.
- Permitting compliant covered entities to establish a brief transition period to continue utilizing their current electronic transactions in lieu of reversion to paper transactions.

WEDI respectfully requests that the Secretary provide guidance to the healthcare industry not only on these courses of action, but also on what is meant by the term “compliance,” the interpretation of which may provide some short-term transitional space for attaining a successful implementation of HIPAA TCS standards. WEDI also would like to emphasize the time sensitivity of its request for guidance, and respectfully requests that the Secretary provide such guidance to the industry within 60 days, by June 15, 2003. This timing is necessary for effective communication of such guidance to the healthcare community.

The healthcare industry believes that the goals underpinning a successful implementation of HIPAA TCS standards are to sustain cash flows from payers to providers, to minimize disruptions to business activities in the healthcare industry, and to allow sufficient time for covered entities that are making the effort to comply with HIPAA TCS standards transactions to make the transition to a successful implementation. For example, a large clearinghouse that is now compliant with the HIPAA TCS standards indicates that it has completed testing with only about 10% of over 1,000 payers, and that it will not be able to complete testing by October 16, 2003, because it is having difficulty with its payers scheduling testing because of the payers’ time constraints. Industry participants have indicated that a transition of approximately six months should be sufficient to achieve critical mass for a successful implementation.

Finally, WEDI is prepared to assist the Secretary and CMS in any effort to avoid the unintended consequences and adverse impacts described herein, and to respond to any questions that the Secretary may have on this matter.

Sincerely,

Ed Jones
Chairman

cc: Dr. John Lumpkin, Chair, NCVHS

Exhibit 1: HIPAA TCS Standards Compliance Issues

Background

On October 16, 2003, the extension for covered entities to comply with HIPAA transactions and codes sets, granted by the Administrative Simplification Compliance Act (ASCA), will expire. HIPAA requires that claims and other standard transactions be submitted either in X12n 4010A1 national standard electronic format, or on paper. At the same time, ASCA stipulates that providers submitting claims to Medicare for reimbursement will be required to submit claims electronically in the national standard format or face potential non-payment.

Industry Readiness and Impact

WEDI has assessed potential impacts of non-compliance with the HIPAA TCS standards and believes that they are significant, particularly disruption of business transactions and payments. This assessment is based on anecdotal evidence from a representative cross-section of the healthcare industry, which indicates that a substantial number of covered entities and several states, such as New Jersey¹, are not now sufficiently enabled to achieve a state of compliance with HIPAA TCS standards by October 16, 2003.

Quantitative estimates are difficult to construct. However, to give an order of magnitude to the problem, even if 95% of current electronic claims submitters were ready and in production with their current trading partners on October 16, 2003, the cost and the cash flow delays associated with the remaining 5% would have an adverse impact on the healthcare industry.

If WEDI's assessment is correct - and WEDI believes that it is - then providers and health plans would be forced by HIPAA to revert to paper submission to avoid non-compliance. Should any material reversion to paper be the only option for compliance, WEDI believes that providers and health plans would expend significant time, resources, and money that could be more productively allocated to ensuring a successful HIPAA TCS standards implementation. For many health plans, resources, personnel, and time necessary to gear up for an avalanche of paper would not be available. In short, payments to providers would be seriously disrupted, affecting providers nationwide.

Over the past ten years, measurable progress has been made to eliminate paper as the common form of information exchange among covered entities in healthcare in an effort to reduce the cost of healthcare administration. The industry has done this by implementing means of electronic communication and by transitioning to national standard formats. Electronic transactions, although not yet completely standard, are at historically high levels and growing. Since the final HIPAA TCS standards were published in the Federal Register in August 2000, the industry has achieved momentum in remediating, upgrading, or replacing IT systems to enable compliance with those standards.

Courses of Action to Attain Successful Implementation

Based on its discussions with representative health plans, providers, and clearinghouses in the healthcare industry, WEDI has identified four possible scenarios based upon compliance readiness levels of health plans and providers as trading partners. The clearinghouse may act for the health plan or the provider, in which case substitute *clearinghouse acting for provider* or *clearinghouse acting for payer*, as appropriate. Note that each trading partner readiness assessment applies to each transaction, and therefore, a specific trading partner may experience a different scenario for each transaction or a set of transactions.

Scenario 1: Health plan and provider are each compliant with HIPAA TCS standard transaction: sending party is able to send standard transaction and receiving party is able to receive standard transaction.

No action required.

Scenario 2: Health plan compliant with HIPAA TCS standard transactions, but provider is not.

Alternative courses of action:

- a. Provider utilizes a clearinghouse to convert its data into standard format and translate data into correct data content and code set definitions.
- b. Provider submits data in standard format, but not in standard data content, but health plan agrees to accept content information for adjudication, if adjudication is possible.
- c. Provider is unable to support standard format or standard data content. One course of action is use of clearinghouse by provider at provider's expense. Another course of action would be for health plan, which is compliant, to receive and adjudicate the electronic claims in a nonstandard format with nonstandard data content for a transitional period of up to six months while provider attains compliance with HIPAA TCS standards.
- d. Provider uses DDE option if offered by health plan.
- e. Provider reverts to paper claims. Many health plans, including Medicare under ASCA, and some state Medicaid programs require electronic claims, and large private sector health plans would not accept paper claims. This course of action has unintended consequences and adverse impacts for the healthcare industry.
- f. For transactions other than claims, health plans cease to support nonstandard submissions by providers.

Scenario 3: Health plan not compliant with HIPAA TCS standard transactions, but provider is compliant.

Alternative courses of action:

- a. Health plan engages clearinghouse to convert inbound standard transactions from provider to its nonstandard format, and utilizes clearinghouse to convert its outbound nonstandard format transactions into standard format and content.
- b. For health plans that fail to accept inbound standard transactions or to adopt clearinghouse solution (a), providers should file complaint with CMS.

Scenario 4: Neither health plan nor provider is compliant with HIPAA TCS standard transactions.

Alternative courses of action:

- a. Each party should engage clearinghouse to support HIPAA TCS standard format and standard data content.
- b. Each party reverts to paper transactions. This course of action has unintended consequences and adverse impacts for the healthcare industry.

Courses of Action

WEDI believes that reversion to paper has the highest potential for unintended consequence and adverse impacts for the healthcare industry. WEDI also believes that there are available courses of action, such as using a clearinghouse, but that such courses of action have cost consequences that are difficult to quantify and costs that may be prohibitive for large health plans or providers.

The highest potential for mitigation of risk of unintended consequences and adverse impacts and for diminishing materially the need to revert to paper transactions is in two areas:

- Allowing covered entities that have achieved HIPAA TCS standards compliance to choose to accept for a short transitional period beyond October 16, 2003, standard transactions, even if data content is partially incomplete, as long as such compliant covered entities are able to process the transaction to completion. We believe this form of operational compliance will smooth the transition to HIPAA TCS formats and data content requirements.
- Allowing covered entities that have achieved HIPAA TCS standards compliance to choose to utilize for a short transitional period beyond October 16, 2003, non-standard electronic transactions from trading partners who have not yet achieved,

but are close to achieving compliance with HIPAA TCS standards transactions. Existing non-standard electronic transactions are equivalent to paper in content, but much superior in format.

These two courses of action do not adversely impact compliant covered entities. Further, they eliminate the need for covered entities that are in the process of achieving but will not achieve HIPAA TCS standards compliance by the deadline from diverting scarce resources to reverting to paper as a temporary fix to avoid non-compliance. The choice to accept a non-standard electronic transaction would be at the discretion of the covered entity. Nothing would compel a covered entity to forego its rights or obligations, nor would it preclude a compliant covered entity from filing complaints with CMS. In fact, WEDI believes that CMS's complaint-based enforcement approach will be an incentive to hasten compliance with HIPAA TCS standards transactions, as will competition in the healthcare marketplace.

WEDI would welcome any inquiry the Department may have of our observations. We intend to work closely with the Department and support any effort to increase the levels of compliance prior to the October deadline. WEDI believes this issue needs to be resolved by June 15, 2003. This timing is necessary to communicate this policy to the healthcare community, and prevent costly alternatives from being pursued. WEDI is prepared to support the Department's efforts in this matter through its education programs, and communications via the WEDI website. We seek to avoid any catastrophic impact to the implementation of the standards at this late date.

Need for Guidance from the Secretary

WEDI believes that neither additional legislation nor regulation is needed to achieve a successful implementation of HIPAA TCS standards transactions. In either case, there is insufficient time to change or adopt legislation or promulgate regulations to alter the course for the October 16, 2003, compliance deadline. Further, neither legislation nor regulation could reasonably be expected to accelerate HIPAA compliance by October 16, 2003. Ultimately, market forces will generate sufficient incentive for covered entities to achieve HIPAA compliance after that date.

WEDI respectfully requests on behalf of the healthcare industry that the Secretary provide guidance to the industry not only on the courses of action outlined in this exhibit, but also on interpretation of the term *compliance*. In addition, the industry requests guidance on how claims that were submitted prior to October 16, 2003 and rejected should be treated when resubmitted after that date, as resubmitted claims may not have the required data elements.

In the cover letter, WEDI noted that covered entities and several states, such as New Jersey², are considering contingency plans in order to avoid unintended consequences and adverse impacts, notably rejection of non-standard electronic transactions, disruption of payment flows to providers under Medicare, Medicaid, and private sector health plans,

² Please see attached memorandum (Exhibit 2) from the State of New Jersey to NAIC Commissioners' Round Table, nd.

and reversion to paper transactions by covered entities that currently are capable of generating transactions in a non-standard format. The document referenced in the footnote, and attached hereinafter as Exhibit 2, discusses these issues and may provide insight to the Secretary.