



Information Brief: HIPAA

A publication of the National Association of State Budget Officers

September 28, 2001

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The Health Insurance Portability and Accountability Act of 1996 (HIPAA) establishes standards for electronic healthcare transactions. The recently promulgated regulations partly implementing HIPAA could cost states significant sums. This information brief outlines HIPAA-related issues state budget officers face. While the federal legislative landscape changed significantly after the terrorist attacks, NASBO continues to track this issue carefully.

Introduction

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) establishes standards and privacy guidelines for electronic healthcare claims transactions. It applies to all public and private health care providers, all payers, and all other holders of individually identifiable health information.

States face significant challenges in complying with HIPAA. While the expense of making Medicaid-related information systems HIPAA-compliant will be shared with the federal government, many other non-Medicaid state health programs must also comply with HIPAA's requirements. These result in significant costs affecting state budgets.

Also, only two of the nine HIPAA regulations have been finalized: transactions and code sets (the standards relating to the actual transfer of electronic healthcare information) and privacy. It is unclear what the ramifications will be of requiring states to comply with them before the others even have been written: national provider identifiers, national employer identifiers, security, national health plan identifiers, national individual identifiers, claims attachments, and enforcement.

Non-Medicaid Programs Affected

HIPAA explicitly covers only Medicaid and utilizes a pre-existing reimbursement mechanism to assist states in upgrading their Medicaid Management Information Systems (MMIS). However, HIPAA affects numerous other state health programs but leaves states liable for the costs of compliance with both HIPAA's administrative simplification and privacy requirements. Programs throughout state government are affected, ranging from employee health plans, public health programs and health services in departments of corrections.

"Simplifying" Electronic Claim Transactions

HIPAA requires the U.S. Department of Health and Human Services (HHS) to adopt national standards for electronic health care transactions. HHS has chosen to apply private sector standards to the parties covered by HIPAA: all health

plans, all health care clearinghouses, and all health care providers who transmit health information electronically.

The new standards—which HIPAA will allow to be updated once a year—are referred to in HHS regulations but have not been published. Instead, HHS has chosen to use the same identifying information and practices for electronic health information that already are in common use by private firms, referred to in the regulations as transactions, code sets, and identifiers (TCI). These include specific electronic standards for information regarding diagnoses and inpatient services, professional services, dental services, and pharmacy transactions. Local versions of this information will be eliminated in favor of a national Common Procedure Coding System (CPCS).

Mandated Electronic Transaction Standards

- ✓ 9 specific electronic data interchange standards (compliance by October 16, 2002)
- ✓ Coordination of health benefits information
- ✓ Unique identifiers for individuals, employers, health plans, and health care providers
- ✓ Security, confidentiality, and electronic signatures
- ✓ Privacy for individually identifiable health information (compliance by April 14, 2003)

Privacy

HIPAA also required HHS to promulgate rules regarding the privacy of medical information if Congress missed a self-imposed August 1999 deadline for passing legislation addressing the subject. That deadline was missed, HHS published final rules in the Federal Register in late December 2000, and after a delay of all new rules while the new administration settled in, the compliance date now has been set at April 14, 2003. Even more than the provisions dealing with administrative simplification, complying with HIPAA's privacy provisions may pose a substantial fiscal burden.

Mandated Privacy Regulations

- ✓ Covers individually identifiable health information held or disclosed by a covered entity in any form
- ✓ Preempts state laws that provide less stringent privacy protections
- ✓ Establishes an individual's right to written notice of health plan and provider information practices, to inspect and copy protected health information and to obtain a copy of disclosures, to request records be corrected or amended, to consent before information is released, and to request restrictions on uses and disclosures

- ✓ Sets security standards for health information (regarding how it is stored and how access is limited)
- ✓ Creates accountability and establishes penalties for violations (civil penalties of \$100 per violation per incident up to \$25,000 per person, per year for each standard violated; federal criminal penalties of up to \$25,000 and up to 10 years in prison for knowingly or improperly disclosing or obtaining protected health information)

Pending Legislation to Delay Implementation: Estimates of State Impact

Two bills introduced in Congress, S. 836 and H.R. 1975, would delay implementation of the administrative simplification regulations for two years after all regulations have been promulgated in final form. This delay would exclude the privacy regulations discussed above that are set to become effective on April 14, 2003.

The National Governors Association is working to support the more reasonable time frame for implementation. A letter from Governor Sundquist of Tennessee, chair of NGA's human resources committee and Governor O'Bannon of Indiana, it's vice-chair, to the chairmen and ranking members of the Senate Finance Committee and the House Energy and Commerce Committee is attached for your information.

In assisting NGA in this effort, NASBO is seeking any detailed cost information that states have developed regarding HIPAA implementation. If you have cost information to share, please contact Stacey Mazer (smazer@ssso.org or 202-624-8431).

States need to be aware of the potentially huge additional costs the HIPAA regulations may add to state budgets. With the current tight fiscal situation in many states, being aware of HIPAA is very important.



Letter

August 22, 2001

The Honorable Max Baucus
Chair
Senate Finance Committee
203 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable W.J. Tauzin
Chair
House Energy and Commerce
Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John D. Dingell
Ranking Member
House Energy and Commerce
Committee
2322 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Baucus, Senator Grassley, Chairman Tauzin, and Representative Dingell:

We are writing on behalf of the nation's Governors concerning the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Governors urge Congress to make changes in the HIPAA statute that would allow for a more workable implementation schedule for states and covered entities.

The Governors fully support the administrative simplification goals of HIPAA, understanding that the administrative complexity of the health care system must be reduced. However, as states have begun the implementation efforts required by HIPAA, the necessity for a longer and more structured implementation period has become clear. The statute directs the U.S. Department of Health and Human Services (HHS) to develop a series of regulations, each with its own implementation deadline. Since each HIPAA administrative simplification regulation is reliant upon another, it is very difficult for states to comply in an efficient and cost-effective manner until all relevant regulations have been finalized and their implications can be assessed as a whole. HIPAA implementation will require a major new investment of state financial and

workforce resources, and states must be absolutely certain of the regulatory guidance before finalizing their approaches.

Governors are increasingly concerned about the unintended mandates and consequences of HIPAA. This groundbreaking legislation will fundamentally alter the way doctors, hospitals, insurers, and government agencies operate. In addition to the mandate that Medicaid and state employee health benefits plans comply with HIPAA, all state agencies that collect health data, provide or pay for health services, conduct research, or develop health policy will need to comply with HIPAA uniform standards in order to conduct business and protect public health. The reach of HIPAA is truly vast, ranging from public health agencies to correctional facilities to schools. The current implementation period does not provide adequate time to identify, analyze, and address this broad range of needs. The Governors believe that a thoroughly planned and carefully coordinated process would serve the important goals established in HIPAA better than the piecemeal approach currently anticipated. Also, without sufficient federal resources to meet imminent deadlines, the provision of states' health care services may be compromised.

Therefore, the Governors call on Congress to act quickly to make amendments to HIPAA that would allow states a sufficient and reasonable time period to implement this complex law and its numerous regulations. Specifically, the Governors request that Congress amend HIPAA to establish a single, uniform date of compliance for most required system changes after the finalization of all HIPAA administrative simplification regulations. It is important that action be taken quickly to extend the current deadline so that states can calibrate their processes accordingly. Pending House and Senate bills, H.R. 1975 and S. 836, offer a promising approach that extends the deadlines for most administrative simplification requirements for at least two years without affecting important privacy protections.

We appreciate your consideration and look forward to working with you on this complicated issue. Please contact us if you have further questions, or you may contact Cheryl Scism, NGA Legislative Associate for Health Policy, at (202) 624-5391.

Sincerely,

Governor Don Sundquist
Chair
NGA Human Resources Committee

Governor Frank O'Bannon
Vice Chair
NGA Human Resources Committee