

# Healthcare

## SPECIAL REPORT

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### EXTENSION OF HIPAA OCTOBER 16, 2002 DEADLINE: COMPLIANCE PLAN REQUIRED

On December 27, 2001, President Bush signed H.R. 3323, which passed unanimously in the House and the Senate. H.R. 3323 delays the deadline for healthcare providers' compliance with HIPAA's transaction and code set standards from October 16, 2002 to October 16, 2003. **However, in order to qualify for the extension, healthcare providers *MUST* submit a compliance plan to the Department of Health and Human Services ("DHHS") by October 16, 2002.** Generally, the compliance plan must detail steps taken by the provider to comply with the transaction and code set standards to date and set forth a plan to achieve compliance by October 16, 2003. **H.R. 3323 does *NOT* change the April 14, 2003 deadline for compliance with the HIPAA privacy regulations.**

## HIPAA Manager

### *What is it?*

A program designed to manage your HIPAA obligations offered to providers by the Medical Association of Georgia and Morris, Manning & Martin, LLP

### *What does it include?*

- Monthly tasklists to help you meet HIPAA's deadlines
- Six training workshops (live or video conference)
- Database of providers' best practices
- Transaction Standards Compliance Plan Outline & Extension Form
- Provider-friendly HIPAA reference manual
- Sample forms and documents
- Answers to Frequently Asked Questions
- Updates of HIPAA developments

### *Advantages of this program*

- Tailored specifically for healthcare providers
- Scalable to meet your needs
- Cost and time efficient
- Tracks the latest HIPAA developments
- All the HIPAA information you need in one location

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The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) contains standards for “Administrative Simplification,” including standards for privacy, security, transaction and code sets, and national identifiers. These standards are designed to create approximately \$30 billion in cost savings by promoting the electronic transmission of healthcare information, while also establishing obligations to protect this information from unauthorized use and disclosure. The *privacy standards* delineate permitted uses and disclosures of healthcare information for certain purposes, while placing an obligation to keep such information confidential. Similarly, the *security standards* set forth requirements for protection of physical access to healthcare information, whether in electronic, paper, or verbal format. *National identifier standards* create one universal identification number for all of the players in the healthcare system, including providers, patients, payors, and employers. Finally, the *transaction and code set standards* provide standards for the submission, processing, and payment of healthcare claims, including universal standards for payment of claims and remittance advice, eligibility determinations, claim status, referral certifications and authorizations, coordination of benefits, coding, enrollment and disenrollment in plans, in submission of premium payments. Each of these standards is at various stages of adoption and implementation.

The transaction and code set standards have the earliest compliance deadline for providers – October 16, 2002. However, H.R. 3323 gives providers a one-year extension to comply with these standards *if* the provider submits an extension form, which will be available from DHHS March 31, 2002, and its compliance plan to the DHHS by October 16, 2002. The compliance plan must include (1) an analysis of current non-compliance of the covered entity; (2) a budget, schedule, work plan and strategy for achieving compliance by October 16, 2003; (3) a list of contractors or vendors who will assist the healthcare provider in achieving compliance; and (4) a method for testing compliance as of April 16, 2003. All claims submitted to Medicare must be submitted electronically by October 16, 2003, unless there is no electronic format for the claim or if the person submitting the claim is a small provider (a physician or facility with less than 10 full-time employees). Penalties for non-compliance include exclusion from Medicare if a provider fails to submit a plan or meet a compliance deadline. Notwithstanding, H.R. 3323 clearly states that the April 14, 2003 compliance date for the HIPAA privacy regulations remains unchanged, signifying the need for all healthcare providers to take immediate steps to meet these challenges.

## CMS' ANSWERS TO FAQs ABOUT HIPAA TRANSACTION STANDARDS EXTENSION

On February 20, 2002, the Centers for Medicare and Medicaid Services (“CMS”) released answers to some providers’ most commonly asked questions about the extension for compliance with HIPAA’s Transactions and Code Sets standards. A selection of these relevant FAQs appears below. The full text of all the FAQs can be found at [www.mmmlaw.com](http://www.mmmlaw.com)

**Q1: What will be the impact of the one-year extension?**

A1: The delay will give covered entities more time to build, test, and successfully implement the new Final Electronic Transactions and Code Sets required by HIPAA.

**Q2: Does the extension affect the compliance date for the HIPAA privacy standards?**

A2: No, the compliance date for the privacy standards is still April, 2003 or, for small health plans, April 2004.

**Q4: Do all covered entities automatically get an extension?**

A4: No. Covered entities must submit a compliance extension plan to the Department of Health and Human Services (HHS) before October 16, 2002 to get an extension.

**Q5: Why didn't Congress just give everyone an extension?**

A5: The requirement to submit a compliance extension plan provides assurance that covered entities have plans in place that will allow them to be compliant by the new deadline of October 16, 2003.

**Q6: Is HHS going to actually review and approve all these compliance extension plans? Will some be denied?**

A6: The law does not require approval or disapproval of plans. Submission of an extension plan is sufficient to secure the one-year extension.

**Q7: When will the model compliance extension form be available?**

A7: The form will be available by March 31, 2002.

**Q8: Where can I get a copy of the form? Do I have to use the form, or can I submit a compliance plan in another format?**

A8: We will publish the form in the Federal Register and will also make it available on several websites. The compliance extension form we are developing is a model. While we strongly recommend its use, covered entities may submit plans using other formats.

**Q9: How extensive will the model compliance extension form be?**

A9: We are still working on the form, but we intend to make it as simple and easy to complete as possible. The ASCA requires the plans to contain summary information regarding compliance activities, including: 1) budget, schedule, work plan and implementation strategy for achieving compliance; 2) planned use of contractors or vendors; 3) assessment of compliance problems; and 4) a timeframe for testing to begin no later than April 16, 2003.

**Q10: My organization has a very detailed, voluminous compliance plan – are we supposed to submit the whole thing?**

A10: No. The compliance extension form will ask only for summary information from your detailed plan. You do not need to send other information.

**Q11: Can I file the compliance extension form electronically?**

A11: Yes, we will encourage electronic filing of compliance extension plans, although we will also accept plans submitted on paper.

**Q12: What will be the application deadline for a delay?**

A12: Covered entities must submit their compliance extension plans by October 15, 2002.

**Q13: Where should I send my completed compliance extension form?**

A13: Please do not submit requests at this time. Instructions will be issued that will explain how to submit compliance extension plans.

**Q16: Can a [health] plan require its network providers to move to standard transactions before October 16, 2003?**

A16: This is a business decision between the plan and its provider network. Neither HIPAA nor ASCA [HIPAA Administrative Simplification Act] preclude plans from

requiring that their providers use standard transactions in advance of the compliance deadline, but HIPAA non-compliance penalties would not apply to a provider that has submitted a plan until 2003.

**Q17: What will be done with the information I provide?**

A17: ASCA requires that a sample of the plans will be provided to the National Committee on Vital and Health Statistics (NCVHS), an advisory committee to the Secretary of Health and Human Services. The NCVHS will review the sample to identify common problems that are complicating compliance activities, and will periodically publish recommendations for solving the problems.

**Q18: Will the information I provide be made public?**

A18: Under the Freedom of Information Act (FOIA), information held by the federal government is available to the public on request, unless it falls within one of several exemptions. The model form will be designed to avoid collection of any information that would be subject to exemption, such as confidential personal or proprietary information. If such information is submitted, both the FOIA and the ASCA require that it be redacted before the files are released either to the NCVHS or to the public.

**Q23: ASCA allows the Secretary of HHS to exclude covered entities from the Medicare program if they do not submit a compliance extension plan or achieve compliance by October, 2002. Will every such covered entity be excluded?**

A23: HHS will be publishing proposed regulations to address this new exclusion authority.

**Q24: Doesn't the law also require Medicare claims to be submitted electronically after October, 2003?**

A24: ASCA prohibits HHS from paying Medicare claims that are not submitted electronically after October 16, 2003, unless the Secretary grants a waiver from this requirement. It further provides that the Secretary must grant such a waiver if there is no method available for the submission of claims in electronic form or if the entity submitting the claim is a small provider of services or supplies. Beneficiaries will also be able to continue to file paper claims if they need to file a claim on their own behalf. The Secretary may grant such a waiver in other circumstances. We will publish proposed regulations to implement this new authority.

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