

HEALTH LAW ALERT
January 10, 2012

HHS Adopts Standards for Electronic Funds Transfers
Health Plans Must Use EFT on Request, Beginning 1/1/2014

Today, the Department of Health and Human Services (HHS) published an interim final rule, adopting standards for electronic funds transfers (EFTs) under the HIPAA Transactions Rule. The standards go into effect on January 1, 2014. Beginning on that date, health plans will be required use the standards adopted today by HHS to electronically transfer funds to health care providers that request EFT payments. As a result of implementing the standards, HHS estimates that EFT usage will increase from 15% of commercial (*i.e.*, non-governmental) health plan payments in 2010 to 79% of commercial plan payments in 2023. The EFT standard HHS adopted is the standard that banks and other financial institutions already use for EFT transactions through the Automated Clearing House Network, or “ACH.”

HHS estimates that implementation of the EFT standards will result in total savings of \$4.5 billion over ten years. Most of the projected savings will go to health care providers. Whereas commercial health plans will net \$10-\$13 million in savings over the first ten years the standards are in effect, the agency anticipates that physician practices will save \$2-\$3 billion and hospitals \$1-\$1.5 billion.

The interim final rule is published at 77 *Federal Register* 1556 ([click here](#)). Comments on the adoption of the standards are due on or before March 12, 2012. [Click here](#) for my compilation of the HIPAA Administrative Simplification Rules incorporating the standards (*see* second line under “Compiled Rules”) (or see the “Resources” page at [tbixbylaw.com](#)).

Under the interim final rule, health plans will be required to use ACH EFT standard, which most banks and other financial institutions already use for making EFT transactions. In addition, a health plan will be required to supplement information in the transaction with a “reassociation trace number.” Inclusion of this trace number is designed to help health care providers identify which claims give rise to the particular EFT payment.

ACH Standard

HHS explains that a health care EFT transaction takes place in three stages. In the first stage, the health plan submits instructions to its bank to initiate an EFT, including specifying the health care provider that is to receive payment, the provider’s financial institution and account number, and the amount of the transfer. In the second stage, the

health plan's bank communicates the information to the health care provider's bank and transfers the funds. In the third stage, the health care provider's financial institution furnishes information about the EFT to the health care provider. The standard adopted by HHS addresses only the first stage—the health plan's instructions to its bank. Accordingly, only health plans are required to implement the ACH EFT standard.

Under the interim final rule, health plans must conduct EFT transactions using the implementation specifications for the first stage of the ACH EFT transaction, as detailed in the National Automated Clearing House Association (NACHA) Corporate Credit or Deposit Entry with Addenda Record (CCD+) 2011 NACHA Operating Rules and Guidelines. Health plans may arrange to have their banks (or other financial institutions) put the information in the required standard format (see box, on right), but the health plan remains responsible for the bank's (or other financial institution's) failure to comply.

Reassociation Trace Number

Health care providers receive remittance advice electronically through an ASC X12N 835 standard transaction. HHS concludes providers often find it difficult to link actual payment with this remittance advice and that this difficulty is among the primary obstacles to broad adoption of EFTs in the health care industry. To alleviate this problem, HHS will require health plans to include in each ACH EFT transaction a "reassociation trace number" from an 835 remittance advice transaction. The trace number should permit providers to easily identify which payment is associated with which remittance advice transaction.

Banks do not Act as Clearinghouses or Business Associates

A health plan may provide its bank (or other financial institution) with information for an EFT in a non-standard format and have the bank (or other financial institution) reconfigure the information into the standard ACH EFT format. Any other entity that performs these functions would become a health care clearinghouse that the health plan would have to engage in a business associate agreement.

HHS explains, however, that the Public Health Service Act exempts financial institutions from the obligation to comply with the Transactions Rule when engaged in the activities of a financial institution, including conducting electronic funds transfers. Moreover, the ACH EFT standard does not require the health plan to furnish its financial institution with protected health information, such as a patient's name. Thus, HHS concludes that a bank (or other financial institution) may receive EFT instructions from a health plan in any format, translate the information into the ACH EFT standard format, and conduct the transaction on the health plan's behalf without becoming a health care clearinghouse or the health plan's business associate.

The interim final rule does not explicitly require the "reassociation trace number" to correspond to a specific remittance advice transaction. Nevertheless, HHS indicates that it is likely to impose such a requirement when it publishes operating rules for the ACH EFT transaction in the future.

Obligation to Make Payments Using EFTs

The Transactions Rule requires a health plan, upon request, to electronically conduct a transaction using the standard format with respect to any transaction for which HHS has adopted a standard. Under the interim final rule, HHS adopts standards for the transmission of payment from a health plan to a health care provider. Thus, when a health care provider requests a health plan to use the electronic standard format to transmit payment due to the provider, the health plan will be required to make the payment with an ACH EFT transaction.¹

The ACH EFT standard does not apply to transactions that include both remittance advice and an EFT in a single transaction. HHS will allow a health plan to conduct such a transaction, provided that an ASC X12N 835 transaction is used to provide remittance advice as part of the larger transaction. NACHA, for example, publishes an alternative ACH EFT standard that can incorporate an 835 transaction within an electronic funds transfer transaction.

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¹ A health plan and a health care provider may agree to conduct an EFT transaction using an alternative network, such as “Fedwire” rather than the ACH Network for EFTs. In that case, the parties are not required to use the standard format. As HHS explains, “health plans will only have to use the health care EFT standards adopted herein if the provider wants to receive health care claim payments via EFT through the ACH Network.”