



LEGAL ADVICE FOR HEALTH PLANS

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## **HEALTH LAW ALERT**

### **October 4, 2017**

## **HHS Withdraws Proposed Compliance Certification Rule**

### **Rule Would Have Required Certification of Compliance with HIPAA Transactions Standards and Operating Rules**

The Centers for Medicare and Medicaid Services (CMS) withdrew a proposed rule that would have established a process under which health plans would certify compliance with the HIPAA Transactions Rule (including CAQH CORE operating rules) (45 C.F.R. Parts 160 and 162). The proposed rule was intended to implement a provision of the Affordable Care Act that was supposed to go into effect at the end of 2013. CMS explained that the withdrawal will allow the agency “to re-examine the issues [raised in public comments concerning the proposed rule] and explore options and alternatives to comply with statutory requirements.”

The withdrawal is not a surprise. The proposed rule was based on a requirement that health plans obtain “Health Plan Identifiers” (“HPIDs”) in a manner similar to the process in which health care providers are assigned National Provider Identifiers (or “NPIs”). Under the proposed rule, health plans that had been assigned a “controlling health plan” HPID would have been required to certify that the health plan (and any of its “sub-health plans”—*e.g.*, subsidiaries) complied with applicable standards for certain electronic transactions and Operating Rules: the health care electronic funds transfer and remittance advice (ASC X12 835) transaction, the eligibility for a health plan (ASC X12 270/271) transaction, and the health claim status (ASC X12 276/277) transaction. But, CMS suspended enforcement of the Health Plan Identifier Rule in 2014, a week before the Rule required most health plans to obtain HPIDs. Without the HPID requirement in place, the proposed compliance certification rule could not work.

The withdrawal of the proposed rule is published at 82 *Federal Register* 46182 ([click here](#)).

Under the Affordable Care Act, CMS is given the authority to assess penalties of up to \$20 per covered life for failure to comply with the compliance certification requirements, with penalties doubling for a health plan that knowingly provides inaccurate or incomplete information in the certification process. These penalties **will not apply** until CMS publishes a final rule implementing a compliance certification process.

Nevertheless, under its existing enforcement scheme, CMS may impose penalties for failure to comply with the HIPAA Administrative Simplification standards (including applicable CAQH CORE Operating Rules). That scheme allows CMS to impose Civil Money Penalties of up to \$55,010 for each violation. (Penalties for such violations cannot exceed \$1,650,300 in a year.)

CMS therefore emphasizes that it “has established regulations pertaining to compliance with, and enforcement of, HIPAA Administrative Simplification standards and operating rules [and that the] withdrawal of this proposed rule does not remove the requirements for covered entities to comply with any of those [requirements].”

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