

**Edited Transcript of the
CENTERS FOR MEDICARE & MEDICAID SERVICES
HIPAA Roundtable**

**Moderator: Bernice Catherine Harper
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2:00 pm ET**

Operator: Good afternoon. My name is (Kimberly) and I will be your conference facilitator today. At this time I would like to welcome everyone to the Centers for Medicare and Medicaid Services Eighth National HIPAA Implementation Roundtable. All lines have been placed on mute to prevent any background noise.

After the speakers' remarks there will be a question and answer period. If you would like to ask a question during this time simply press star, then the number 1 on your telephone keypad. If you would like to withdraw your question press the pound key. Thank you.

I would now like to turn the call over to Dr. Bernice Catherine Harper. Ma'am, you may begin.

Bernice Catherine Harper: Thank you, Ms. (Nielsen). Good afternoon to those of you on the east coast and good morning to those of you on the west coast. I'm going to be serving as your moderator today.

This roundtable call is being conducted by the Centers for Medicare and Medicaid Services or CMS which is part of the Department of Health and Human Services. Our subject today is the Health Insurance Portability and Accountability Act of 1996 or better known as HIPAA, H-I-P-A-A and specifically the administrative simplification provisions.

There are four administrative simplification provisions and I'm going to repeat them for you twice. First, you need identifiers; you need identifiers, Two – privacy, privacy, three, electronic transaction and code sets, electronic transaction and code sets, four – security, security. Our call today will focus on the last two – electronic transaction and code sets and security.

This afternoon we also will have on this call a representative from the Office for Civil Rights. (Linda Sanches) will probably be joining us and joining us around 3 o'clock and we'll have an opportunity to ask privacy questions at that time.

Now it's my pleasure to turn the call over to (Karen Trudel).

(Karen Trudel): Good afternoon. My name is (Karen Trudel) and I'm the Deputy Director of the Office of HIPAA standards here at CMS. And there are a few points that I'd like to make before we start in on our usual questions and answers.

As of today we have 169 days left until the October 16th, 2003 deadline for implementing the HIPAA transactions and code set. Time is short. There is a lot left to do but it's still doable.

Some people have said that HIPAA will go away or congress will give us more time or we don't have to worry about this right now. Well, my response to that is first, HIPAA's the law. It could be said that congress has already given us more time; time that is up on October 16th, 2003, and it began last October 16th with the extension.

And deciding to ignore these requirements is a real gamble and it's one with high stakes because cash flow is the lifeblood of a healthcare provider and a

healthcare claim is how that blood flows. If the flow of claims stops because of a non-compliance issue then the cash flow stops too.

The only way to assure this does not happen is to implement compliant transactions and then to test them with the health plan to make sure the claims can be submitted and processed and that accurate payments can be made.

We're hearing that many plans and providers aren't yet ready to test with training partners. In part that's because covered entities and their vendors and business associates, some of them, waited until the regulation that modified the transaction standards – what we call the addenda – were published.

Well here's where we are now. The addenda have been published and the standards are set for the compliance date 169 days from now. So it's time to test now. Medicare's now ready to test the claim and the remittance advice with providers using the new 4010A addenda version.

Call your carrier or a fiscal intermediary and make an appointment for testing as soon as you can. They also have information on their Web site showing their testing information and which submitters, like clearinghouses, have already tested successfully with them. If yours has done so you're in good shape.

The longer you wait the harder it will be to arrange for testing. We expect a crowd of testers at the last minute and it may be difficult to accommodate them all. Remember the long lines at the post office on income tax day.

But don't stop there. Call the other plans you submit claims to and talk to them about testing also. If your vendor hasn't supplied you with a compliant

version of their software yet, find out when they will and ask for help if you need it.

Professional associates...

Operator Ladies and gentlemen, please stand by.

(Karen Trudel): Professional associations have a wealth of information available for their members and CMS also has free outreach materials available. But the bottom line is, don't underestimate the importance of the October 16th deadline. Don't underestimate the work that's involved in becoming compliant. And prepare and plan ahead to assure that your cash flow remains steady.

Okay, that concludes our introductory remarks and we would like to begin opening the lines for questions. And perhaps the operator would like to go over the instructions again.

Operator: At this time I would like to remind everyone in order to ask a question please press star, then the number 1 on your telephone keypad. Please hold for your first question.

Your first question comes from (Greg Alston).

(Greg Alston): Hi, thank you for taking my call. I have a question regarding the security regulations and audit controls.

(Karen Trudel): Yes?

(Greg Alston): I'm wondering if you can clarify that. Do you mean audit controls within the software itself like our clinical system must track who was looking at what

record or do you mean a little more globally in our network systems who's accessing which software service?

(Karen Trudel): Actually I'm going to give you probably a less direct answer than you would probably like because you have to remember again that the security standards are scalable. That means that they apply to the smallest provider that doesn't even have an electronic medical record as well as to the largest university hospital complex.

So when we talk about audit controls what we really need you to do is to identify the places where you would have risks from inappropriate access, whether that be your clinical records system, whether that would be a billing and administrative system and make decisions about where the risks are going to occur and where you need to mitigate those risks by applying audit controls.

(Greg Alston): Okay, thank you.

(Karen Trudel): You're welcome.

Bernice Catherine Harper: May we have the next question please?

Operator: Your next question comes from (Unintelligible).

Man: Hello.

(Karen Trudel): Yes.

Man: Hi, I had a question about the security standards.

(Karen Trudel): Yes?

Man: I was calling – I know that according to my research there appears to be training that is required for all the staff for covered entities. I was calling to see – I know there's a HIPAA video out. I think CMS has put one out called Version III and I was wondering do you know if there's any other videos or if that's the only video that's out as far as training purposes to insure compliance with the security standard?

(Karen Trudel): Well there are two different things involved here. One is that of course CMS does plan to do outreach on the security standards in general and we do have a video that's being developed right now.

However that is not the sort of thing that you need to train your workforce. What your workforce needs to be trained on is what your own personal security requirements are, not the general requirements of HIPAA.

So that you as a provider presumably will have developed security procedures about how to report a potential virus incident, requirements about what a password should look like, how big should it be, how often should it be changed. You should have procedures about not sharing training passwords.

In other words that's the sort of provider-specific training that you need to provide to your workforce. And what our general video would do would be to help you walk through the process of developing those specific security measures.

Man: But you still haven't answered my question. I'm trying to find out if there is a video available for covered entities that can if not provide the training, at least

be a tool in guiding them and kind of leading the way to compliance. So is there or is there not a video that is available?

(Karen Trudel): There is not one right now. There will be one. The regulation was just passed a few months ago and we are still working on the script for that video.

Man: So there will be one before the compliance deadline.

(Karen Trudel): Yes, there definitely will and I'm going – I'm sorry, I interrupted you, sir. I'm going to ask (Elizabeth Holland) who's our outreach team lead to give you the information about a list, sir, that you can sign up for.

Man: Okay, I did sign up for that. I didn't mean to interrupt you but I did sign up for that.

(Karen Trudel): Okay, all right. Well if you signed up for that list, sir, and I'll have (Elizabeth) mention it for everyone else too, notices of when that security video will be available will come to you.

Man: That is fantastic.

(Karen Trudel): We'll provide that information to everyone at the end.

Man: Okay. Thank you very much. That was a wonderful answer.

(Karen Trudel): Thank you.

Bernice Catherine Harper: You're welcome. Next question please?

Operator: Your next question comes from (Julia Mathis).

(Julia Mathis): Hi. This is (Julia Mathis) with Siemens' Home Health. We're a software vendor. Thank you for taking this question. It's actually a two-part question.

The first is, I understand that WEDI SNIP sent a letter to HHS I believe it was about two weeks ago sort of suggesting that the readiness of providers and vendors and payers in this process is a little behind – not terribly so, not so that we would need to not do HIPAA at all – but such that we were supposed to be testing software in April if you applied for the ASCA extension.

Well we as a vendor are still waiting for companion guides from the payers so our providers don't have our software to test with nor are we able to test with the payers yet for some of the Medicais. We are in great shape for Medicare pretty much but the Medicais – we've got about 30% of the guides right now that we need.

So I was wondering what WEDI SNIP had suggested with a six-month delay in enforcement or up to a six-month delay and I was wondering if HHS has a stance on this.

And my second quick question is in response to a statement that was made. We at Home Health have been trying to test with all four Medicare intermediaries – United Government Services, Cahaba, Palmetto and Associated Hospitals of Maine – and with the Version 4010A1, UGS is the only one ready to test with us. The others as of yesterday are still not up on Version 4010A. It's coming; they're close. But I don't believe it's necessarily a fact that they're ready today.

And our customers again are asking us why they don't have the software and they don't have it because we haven't been able to complete a successful test.

They have Version 4010 software from us but they all are waiting to test with Version 4010A1. So if you can comment on that too, that would be great.

(Karen Trudel): I'll take the second one and then Jared is here who's the Director of the Office of HIPAA Standards will address your first question.

It is my understanding from speaking with the folks who are in charge of electronic data interchange for Medicare that all carriers and FI's were ready to test with 4010A. I hear you telling me that UGS is the only one who actually seems to be ready in terms of the Home Health intermediaries and I will take that back to them to the folks in our central office and have them go out and make sure that if some of the FI's are not ready to test now, that they will be ready to test as soon as we can possibly get them there.

(Julie Mathis): Thank you. I think some of them have indicated to us, early May is when they'll be ready.

(Karen Trudel): Okay. Well that's tomorrow.

(Julie Mathis): Well yeah. I'm looking for like before May 15th. That's what we're planning on now.

(Karen Trudel): I understand. Okay. All right, thank you.

(Julie Mathis): Thank you.

(Karen Trudel): Thank you for the information.

(Jared Adair): This is (Jared Adair). The first point of your question was that the Secretary received maybe a week and a half ago, a letter from the WEDI, the

Workgroup for Electronic Data Interchange bringing him up to date on their view of the state of readiness most notably having to do with providers. And they asked the Secretary to take under consideration some options having to do with the October 16th deadline.

For those of you who are not aware, WEDI is a group that advises - that per the HIPAA legislation - advises the Secretary in some of the HIPAA areas. And what I can tell you is that we did not so long ago receive that letter and we are certainly taking a look at it. There is no prepared response right now to the letter.

I would hearken back to something that (Karen) gave in her opening remarks which was you need to remember the HIPAA compliance date was in reality October 16th, 2002. A number of entities went to congress and said that they did not feel that the vast majority of the healthcare industry would be able to meet that date.

Congress took that under consideration and they passed a bill that said fine, if an entity would like to request an extension they can and we will give them till October 16th, 2003, if they submit a plan on how they will become compliant by October 16th, 2003.

That plan was to include such information as what were they doing in resources, where were they in their gap analysis. There were various steps that would gear you to get ready by the appropriate time. So it was a feeling that many would consider that a grace period has already been provided and that that grace period was October 2002 to October 2003.

So I am cognizant to the letter that came in but I just think that we do have to remember that there has been an extension provided already.

(Julie Mathis): And if I might just make one more comment and I appreciate your stance on this; I have the same view. But I think the disconnect and maybe we hadn't thought of it when the extensions were applied, is that payers I do believe will have their software ready to receive transactions by October because of the plans they submitted.

But the reverse is that vendors who create software for providers to send compliant transactions are dependent on the payers providing the specs back to them. And that's the part where we're so far behind because by payers delaying a year on spec development, providers and vendors who supply the provider software are unable to react.

So it will look like the providers aren't ready but in fact are delayed, are very much tied to payers extending when maybe the payers should have kept going. Just a comment.

(Jared Adair): Fair enough and I have the responsibility to remind people of what the law is, as it is right now. And what provisions it has and acknowledge that the WEDI letter did come in.

(Julie Mathis): Right. And I want to acknowledge that Medicare very much is not part of the problem, that their specs were very much on time.

Thank you.

Bernice Catherine Harper: Thank you very much. Next question please.

Operator: Your next question comes from (Nancy Murphy).

(Nancy Murphy): Hi there. I would like to ask you to comment on the applicability of the standards to workers' compensation and disability insurance. Additionally, my company works with those lines of insurance and we are having issues in getting clinical information from providers where the workers' comp or disability regulations allow for release of information. So that's the second kind of part of the question.

As well, issues regarding faxing information. You know, they have providers who refuse to fax information on workers' comp and disability citing HIPAA as the reason that they can't. That's it.

(Stanley): Okay, this is (Stanley Nachimson). There are several parts to your question. Part of them has to do with the applicability of the privacy standards to your situation and if I'm not mistaken we're having some folks from the Office for Civil Rights join us a little later in the call. They'll be able to address some parts of the question.

Let me talk at least about the applicability of all of the HIPAA standards to workers' comp programs and those were specifically carved out of the applicability section so companies that deal only with workers' compensation programs do not have to follow the HIPAA standards, that is the health plans themselves.

Although providers that are dealing with protected health information and the release of that, if they are covered entities, if they have been doing electronic transactions with health plans they're bound by the requirements of the privacy regulations.

So I think the interface between what providers have to do and what information they can release to workers' comp and disability plans is something that the folks from the Office for Civil Rights should address.

The other question you had was that about faxing. At least in terms of the transactions and code sets outside of the workers' comp issue, it actually is not considered an electronic transaction unless, if they fax from a personal computer or from a computer. If you are doing a facsimile transmission from a stand alone fax machine that would not be considered an electronic transaction.

So a provider that is let's say faxing claims to a health plan and is doing it from a standalone fax machine, it would not be considered a covered entity based on that fact. But the transmission of information though whether it's electronic or not electronic is still covered by the privacy rules.

So the question of whether or not providers can fax information or send information in any other way, the workers' comp plan is again something that needs to be address by the Office for Civil Rights folks under privacy provisions.

(Nancy Murphy): Okay. Will the question be passed on or should I hit star 1 again or how will that be...?

(Jared Adair): We will pass it on.

(Karen Trudel): And let's make sure that we understand exactly what the question is. Why don't you repeat it for us?

(Nancy Murphy): Basically I was just asking for commenting on the applicability of the standards to workers' compensation and disability insurance. And more so from a provider education perspective, my concern is that providers are not aware or not fully aware of the non-applicability of the standards to those lines of insurance.

So it's an educational thing more so than anything.

(Karen Trudel): Okay. Thank you; we've got it.

Bernice Catherine Harper: Thank you. We'll try to get your question answered.

(Nancy Murphy): Thank you.

Bernice Catherine Harper: Next question please?

Operator: Your next question comes from (Louis Hanson).

(Louis Hanson): Yes, hi. We have a question here about in the event that a covered entity is working exclusively with one business associate in data exchange, do they have to abide by the transaction requirements of converting everything over to X12 or (unintelligible) compliant data? Or could that be considered internal use rather than disclosure?

(Karen Trudel): I'm answering the question that I think you're asking and if I don't have it right let me know.

I'm assuming that you're speaking from a provider perspective first of all and a provider always has the option of doing transactions electronically or doing them via paper. And that can be a decision that they make transaction-by-

transaction, payer-by-payer. You know, I submit my claims electronically to Medicare but I don't submit them that way to Blue Cross. But if they do make a decision to transact a transaction electronically then they must use the HIPAA standard to do that.

There's no requirement that the HIPAA data standards be used internally within a provider's or a plan's information system. It's only in the transactions themselves as they go for instance from a provider to a plan or a plan back to a provider.

If I didn't answer part of your question please restate it for me.

(Louis Hanson): I think you answered it very clearly. But the question then becomes, if within a covered entity different departments can share information not resorting to X12, why then is (sic) an exclusive arrangement between two parties have to be fully portable and interchangeable with outside parties that will never come in contact with this relationship?

(Karen Trudel): Because generally speaking it's rather rare for a provider to do business with only one health plan. And the point of HIPAA is that we're trying to make electronic data interchange easier by doing it the same between everyone. So that a provider may do business one way with one plan but he has the option now of being able to use that exact same transaction and to send it to another plan and the plan has to take it.

So part of the point of this, if you turn it around it is that it does make it easier to expand electronic data interchange and that was actually the purpose of the legislation.

(Louis Hanson): Okay, thank you.

Operator: Your next question comes from (Sandra McDonald).

(Sandra McDonald): Yes, thank you for taking the question. Could you repeat what transactions Medicare is ready to test with?

Bernice Catherine Harper: We're getting an answer; just a minute.

Janis Nero-Phillips: Hi, this is (Janis Nero-Phillips). We can answer this question for you. The Medicare contractors have been ready to test since last year and we are now testing on the 837 inbound and outbound. The 837 is the institutional and professional healthcare claim. We're also ready to test on the 835-remittance advice and also the 276/277 will be ready to test in one week. So those are the transactions that we're testing on with numerous submitters and providers nationwide.

So we encourage all submitters be they clearinghouses, vendors, providers, please contact your Medicare contractors and schedule (sic) testing if you have not, in earnest.

(Sandra McDonald): Thank you very much.

Bernice Catherine Harper: Next question please?

Operator: Your next question comes from (Barbara Zimdars).

(Barbara Zimdars): Hi, thanks for taking my call. I'm another software vendor like the previous caller. I work for the Echo group and our clientele is primarily behavioral health. And we're experiencing the same issue as the earlier caller.

We're ready with the transaction standards but most of the state Medicaid departments have not even issued companion documents yet. And also we've also been given a response from one of the states, and I'm not going to say the name here but if somebody wants more information I'm happy to share off this call, that they don't even have to comply with this, that they had a special waiver. And this is the first time we've heard of this and this sounded very strange to us. And I just wanted to know if you can comment on these two factors.

Seems like the state Medicoids are just definitely not ready.

(Jared Adair): I cannot comment on those and it sounds like you have a piece of information you would like to share offline. Let me give you my email.

(Barbara Zimdars): Okay.

(Jared Adair): And (Karen) is like grimacing as I'm...

(Barbara Zimdars): Yeah we grimaced when we heard that too about the waiver. That was really upsetting.

(Jared Adair): I'm not only grimacing about that. (Karen) thinks that I'll get a lot of emails now that I'll never... Well we could have you send – if you would send it to the askhipaa?

(Barbara Zimdars): I'm sorry, could you repeat that?

(Jared Adair): Sure. It's askhipaa@cms.hhs.gov.

(Barbara Zimdars): Okay.

(Jared Adair): And if you would put the information in there it will get to me and I will do what I can with the information.

(Barbara Zimdars): Okay, that would be great. Thank you very much.

(Karen Trudel): However just a general point. There is no waiver for states to be able to opt out of HIPAA.

(Barbara Zimdars): That's kind of what we thought but we weren't going to argue with them right at that point in time. I'm glad to get the answer back from you because now I have some teeth to put behind my response when I tell them I think they got incorrect information and they need to reevaluate it.

(Jared Adair): If you could try to send that email today because I'm having some meetings that that would be helpful for.

(Barbara Zimdars): Yeah, I will let you know the states that we're getting that response from.

(Jared Adair): Thank you.

(Barbara Zimdars): Thank you.

Bernice Catherine Harper: Next question please?

Operator: Your next question comes from (Ali) .

(Ali): Our question's similar. We deal with three Medicare intermediaries and three state Medicais and all of them are not ready for the new format and even with the State of California saying that they will not be ready until the end of

September for the 837i (sic). And so we're wondering why they're lacking when it's holding us up, our vendor from making the changes on their specifications.

(Karen Trudel): Right, I understand. And again if you could do likewise and let us know which contractors and which states are not prepared for testing. We can provide that information and check back and see what's going on.

(Jared Adair): Right. And I have gotten some comments in the past having to do with specific intermediaries. It's very helpful if I have information to go back to the people we work with there and kind of say this is the information they got when they talked to these people.

Sometimes it's a miscommunication, sometimes people are talking to the wrong folks and so it really does help if you could offer us some specifics so that we could try to correct it. It is important that people get into testing and if they're running into barriers we would like to do what we can to alleviate it.

And we would also like to be working with state agencies to make sure that they put up on their Web sites what their schedule is going to be.

(Karen Trudel): Yeah, that would be helpful.

(Stanley Nachimson): That being said and with the understanding that clearly Medicare and Medicaid are the vast majority of most providers' businesses, you should also be looking for other health plans in your area that are available to test and start your testing with them and should certainly give you a leg up when it comes time to testing with Medicare and Medicaid.

On the WEDI Web site there is a list of health plans that have sent in their information as to when they're ready to test and which transactions they are already ready to test. So looking beyond just Medicare and Medicaid for other opportunities to test would be valuable.

Bernice Catherine Harper: Thank you. Next question please.

Operator: Your next question comes from (Ruth) .

(Ruth): Hi. My question is regarding – we are a covered entity both as a providers' healthcare and a self-insured health plan among other things and we use a third party administrator for our health plan. My question is regarding the transactions that will be related to our health plan and other responsibility for assuring the appropriate formats and testing that goes on. Can you give me any guidance on where to start determining that and how to go about addressing it with the third-party administrator?

(Stanley Nachimson): If you're saying that the third-party administrator is basically the company that does the claims, the processing and other items like that for you should certainly be talking to them to make sure they understand what the HIPAA standards are and what their testing and production schedules are.

(Ruth): Correct.

(Stanley Nachimson): As a third-party administrator they should be well aware of what their responsibilities are in terms of supporting the HIPAA standards and if they're not familiar at all with the HIPAA standards, aside from perhaps looking for another third-party administrator I think you need to talk to them about if they're going to be ready to support these national transaction standards and when they're going to be ready.

(Ruth): They have addressed them slightly but they're waffling and avoiding a lot of things right now and that's my concern.

I had one other short question regarding privacy I think but if I could just leave it out there. We also have the pathology reference lab for outside providers. When we act as a pathology reference lab we're not sure how we need to go about getting our notice of privacy practices or if we have to, to a patient specimen if we don't see the patient.

(Stanley Nachimson) And that would be a question for the privacy folks.

(Ruth): Right.

(Karen Trudel): Yes and we've written it down so when the folks come on we'll raise that.

(Ruth): Thank you. Thank you very much.

(Stanley Nachimson): One additional item on the third-party administrator question. Even though they're the ones that are actually doing the claims administration, the responsibility for supporting the standard transaction lies with you at the health plan.

(Ruth): Right, I understand.

(Stanley Nachimson): Okay.

(Ruth): Thank you.

Bernice Catherine Harper: Thank you. Next question please?

Operator: Your next question comes from (Dorinne Baluchi).

Bernice Catherine Harper: We can't hear you.

(Enid Jacobi): Let's see, this is (Enid Jacobi) from (Unintelligible) Healthcare, I'm sorry for that delay. Let's see, one of our lines of business is home infusion therapy and there was a CMS fact (sic) that was released on March 31st that made it clear that home infusion therapy would use the X12 837 format and not the NCPDP format.

And then on April 11th there was a program memorandum that came out and in that program memorandum it was about billing to the deemer and it again referred to how we bill compound drugs and it specified nebulizers and immunosuppressive compounds. And it again is referring to billing on the NCPDP format.

And so these two sources of information seem to be in conflict with each other and we're not sure again how to interpret them.

Bernice Catherine Harper: We're having a consultation in the room.

(Stanley Nachimson): Well I think it's fair to say that home infusion providers are not considered retail pharmacies so they can use the 837 format to bill. However anyone else that is a retail pharmacy and bills for nebulizers and the other items must use the NCPDP format and has to follow the instructions that were in the program memorandum.

Woman: Yes, that's true for the nebulizers, a provider; retail pharmacy would have to use the NCPDP format. That's what was in program memorandum that went out in April, yes.

(Stanley Nachimson): So that the instructions to use the NCPDP format are targeted at retail pharmacies, not home infusion therapy providers.

Woman: Right.

(Enid Jacobi): Okay. So then all of the services that we bill to the deemers we would bill using the 837.

Woman: For home infusion.

(Enid Jacobi): For home infusion.

Woman: Yes.

(Enid Jacobi): Okay.

Bernice Catherine Harper: Thank you. Next question please?

Operator: Your next question comes from (Jerry Koenig).

(Jerry Koenig): A question on the clarification. You said you'd offer guidance on the (IRS-125) or flexible benefits or the DDE exception. Have you had any success on clarifying what those are?

(Karen Trudel): I can clarify the flexible spending account. We do have a legal opinion on that. As far as direct data entry is concerned we just received within the last

few days some input from the Workgroup for Electronic Data Interchange and we have been waiting to review that input to take it into account before we issue a clarification on that. So I expect that that will not be too long in the making.

As far as flexible spending accounts, I'm sure someone from the Office for Civil Rights could give you a much more legal perspective on this but the bottom line is that FSAs are not treated any differently from any other healthcare. So if a flexible spending account includes healthcare there's no opt out for it and it meets the definition of a group health plan.

(Stanley Nachimson): There is a frequently asked question on the OCR Web site that specifically address flexible spending accounts. Basically it refers people to the definition of group health plan benefits already in the regulations, the definition section of the regulations so you would need to see, as (Karen) mentioned, if your flexible spending account is basically in a (ERISA) plan with 50 or more members or is not self-administered.

(Karen Trudel): Right but I think the question came because people thought that for some reason perhaps, flexible spending accounts would be treated differently and I think the bottom line is that they're not. So if they meet all of the other requirements for being a group health plan under HIPAA then they're a covered health plan.

Bernice Catherine Harper: Thank you.

(Karen Trudel): And let me just add something. When we do have guidance ready for the direct data entry issue we will be posting that on the CMS Web site.

Bernice Catherine Harper: Next question please?

Operator: Your next question comes from (Mark Ande).

(Mark Ande): Hi. This is actually a two-part question. Because of the local Medicaid the state has informed us that their local code remediation or crosswalks will not be ready on time. Many of our providers are indicating that if they bill on paper that they can still use local codes. What options do we have to tell them?

(Stanley): Are you a provider or from a health plan perspective?

(Mark Ande): We're from a health plan and our providers are telling us that they have been told that if they bill on paper they can still use local codes until the state has remediated all the local codes later, after the implementation date. And the state's telling us they're not going to make the timeframes so I wonder if there's any plans to help out at all.

(Karen Trudel): If the states are willing to take paper claims and they're willing to take local codes on paper claims that's their prerogative.

(Mark Ande): Okay so it's up to the state whether or not but as a health plan can we take paper claims with local codes?

(Stanley Nachimson): The HIPAA standards do not apply to paper transactions so you're free to use whatever codes that you choose on paper claims.

(Mark Ande): Okay. And then the second part of the question is, because the state is not going to be able to remediate all of the local codes is there any plan for CMS to help some of the states that are having trouble remediating those local codes?

(Jared Adair): We've had many conversations regarding the local codes and it appears we need to be having even more conversations with the states about what their backlog of local codes is. So please know that we will take that away as an action item.

(Mark Ande): Okay. Thank you.

Bernice Catherine Harper: Thank you. Next question please?

Operator: Your next question comes from (Patty Brinkmeyer).

(Patty Brinkmeyer): Yes. I have a question. We have a small group health plan that is requesting for us to send just the 4010 after October 16th, 2003.

(Karen Trudel): The 4010 or the 4010A?

(Patty Brinkmeyer): Forty-ten.

(Stanley Nachimson): The small group health plan is requesting that you send that to them as a claim?

(Patty Brinkmeyer): Yes, after October 16th, 2003.

(Stanley Nachimson): Yeah, October 16th, 2003, is also the deadline for small health plans to meet the HIPAA standards which on October 16th, 2003, say that it's the 4010A version.

(Patty Brinkmeyer): Right but they were not going to be ready for the 4010A version on that date.

(Jared Adair): I apologize; I was distracted for a moment. You say that that is a health plan that is going to be requiring that of you?

(Patty Brinkmeyer): Yes it is.

(Jared Adair): Okay. I think that a suggestion you might want to make to them is to take a look at what they are legally required to do by that date.

(Patty Brinkmeyer): I've already made that suggestion. So what should our response be to them? That we're going to send the claims on paper to them?

(Jared Adair): It's a very good question and I am pondering the answer and I apologize it's not quite there for me right now. But I guess I would just go back to them once more and remind them that that is in fact the law and that as we stand right now, that enforcement action could be taken against them if they are not in a position to be able to take the 4010A on October 16th.

(Patty Brinkmeyer): But would we be also liable at that point?

(Jared Adair): If you are in a position to be sending the 4010A and you sent it and they were not able to accept it, you would be able to file a complaint against that plan for not being able to take your HIPAA compliance forms.

(Patty Brinkmeyer): Okay.

Bernice Catherine Harper: Thank you. Next question please?

Operator: Your next question comes from (Catalina Ramirez).

(Catalina Ramirez): Thank you very much but it seems that the question has already been addressed in regards to the (Medi-Cal) carriers or the Medicaid carriers. Our concern from this standpoint is when the claims cross over from Medicare to (Medi-Cal), the problems that it's going to pose. As it is, crossovers seem to be a big problem as a (unintelligible) issue all over the state with our association members. And with Medicaid not being ready by the October 16th deadline the concern has further escalated even more.

So if and when the issue is corrected how would we be notified so that we can disseminate the information through our membership?

(Karen Trudel): I would say one thing is that you need to continue to monitor the Medi-Cal Web site and what they're saying about this. As far as crossover claims that Medicare crosses over to Medicaid, I am making a note right now that we need to look into what any potential problems the state might have, how that would affect our ability to send them crossover files because we do provide crossover files to many Medicaid programs from Medicare.

(Catalina Ramirez): Right. Yeah, that's just the biggest concern. As the gentleman stated earlier, Medi-Cal is stating that their implementation date is going to be sometime during or after the September 22nd date that they've set. Yeah, and this information they have put publicly on their Web site so it's been up there for a couple of months.

(Karen Trudel): Okay.

Bernice Catherine Harper: Thank you. Next question please?

Operator: Your next question comes from (Kathleen Peterson).

(Kathleen Peterson): Have the billing codes for the home- and community-based waivers been approved yet?

(Larry Cutler): Yesterday we met with the group that actually does the approval of the codes and we have 30 more codes that were approved yesterday. They will be made available on our Web sites toward the end of June or probably sooner but they'll be published by the end of June and that they will have an effective date of October 1st. So many more, I think just about all of the waiver codes that have been submitted to this point have now been approved.

(Kathleen Peterson): Thank you very much.

Bernice Catherine Harper: You're welcome, Ms. (Peterson). Next question please?

Operator: Your next question comes from (Margo Williams).

(Margo Williams): I'm from a medical specialty society that represents a lot of small practices and we have been asked after April 14th even though they have begun sending or they do send electronic transactions and they are therefore now a covered entity and thus comply with privacy and all HIPAA, can they go back to paper and therefore un-, you know, get themselves out?

(Karen Trudel): Actually I think (Linda Sanches) from the Office for Civil Rights is on the line and that actually at this point is kind of privacy-related policy issue. I will ask (Linda) if she'd like to take a shot at that.

(Linda Sanches): Okay sure. Hi, (Karen). Let me see if I understand the question. You're saying that you're working with providers who are covered entities and they are thinking about stopping doing electronic transactions?

(Margo Williams): Yes.

(Linda Sanches): To no longer be a covered entity?

(Margo Williams): Yes. Now that April 14th has passed is that possible?

(Linda Sanches): You know, I guess the question is, if they have conducted any electronic transactions on or after April 14 then they are a covered entity so they're covered now. So you're wondering if they can stop being covered by stopping these transactions.

(Margo Williams): Right.

(Linda Sanches): I don't believe we have put out guidance on whether you can take back your covered entity status. I would not count on it but we'll look at it.

(Margo Williams): Well we were just – if the question's been raised...

(Linda Sanches): I think it might be safe for them to assume that they are still covered.

(Margo Williams): Right.

(Karen Trudel): I'd like to follow up on that from a different perspective and that is that there are other things to consider about ceasing to do electronic transactions. One of them is that if you are a Medicare provider, stopping electronic transactions and dropping back to paper means you will get paid more slowly. Effective October depending upon the size of your practice, the number of fulltime equivalent employees, Medicare may not even accept your paper transactions anymore.

(Margo Williams): Well these are small providers with less than 10.

(Karen Trudel): Okay if they're small providers they would fit under the waiver but again, there are economic implications here for cash flow.

(Margo Williams): Yeah, we recognize that.

(Karen Trudel): And so there are other things to consider is all I'll say.

(Margo Williams): All right. Thank you.

(Karen Trudel): And I guess (Linda) is making a note to look into possibly having some guidance on that issue.

(Linda Sanches): Yeah but I would suggest that – we don't have guidance on this yet and I wouldn't assume that they can get rid of their covered entity status.

(Margo Williams): Okay, thank you.

Bernice Catherine Harper: Ms. (Sanches), since it's so close to 3 pm Eastern Standard Time, would you just like to have the audience ask you questions at this time and we can take the first question relative to privacy?

(Linda Sanches): Sure.

(Jared Adair): Before we take those questions if we could, Dr. Harper, there were two questions that came.

(Karen Trudel): (Linda), we have two questions that were related to privacy and rather than make the people jump back into the queue we noted them and so I will ask them.

One of them was a pathology reference laboratory. It was wondering how they could go about providing a note of the privacy practices when they never saw the patient.

(Linda Sanches): Well I would suggest that the caller take a look at the guidance on our Web site regarding indirect treatment providers. Indirect treatment providers do not have a requirement to send out notices to people. They are required to have a notice and to post it and to provide them upon request but they do not need to for instance send them out to every person who you running specimens on.

If you are providing the results back to a primary provider and not directly to the individual themselves then you're considered an indirect treatment provider and therefore do not have to provide the notice up front.

(Karen Trudel): Okay. That's what I thought the answer was. Thank you.

(Linda Sanches): But I believe we do have information about this on our Web site.

(Karen Trudel): Okay. And at the end of this both (Linda) and we will repeat our Web site information several times for people to take down.

The other question had to do with workmans' compensation and disability insurance programs and the fact that they are not covered entities and the fact that providers very often are not aware of this point. And (Stanley), maybe you want to...

(Stanley): Yeah and just to elaborate a little bit there, it was a concern addressed from someone who I believe is from a company that does workers' comp saying that providers post April 14th are saying they cannot release information to these health plans because of the HIPAA privacy regulation. So the question is, what is the relationship of workers' comp and disability health plans to providers under privacy.

(Linda Sanches): Okay. Well that's a broad topic but I can make some general points. One is that covered entities can disclose under the privacy rule to anyone as needed for payment purposes. So they are not limited to only sending claims to health plans if in fact the payer is a different type of organization like workers' compensation or disability or even auto insurance companies. They can certainly disclose claims. They can send claims, bills to these other payers.

There are special concerns around workmans' compensation and we have a special provision in Section 154512 that basically states and I'm paraphrasing, that covered entities may disclose for workers' compensation purposes consistent with state law.

So it may be more than or different than as required normally for payment purposes and you may do so if it is consistent with state law. You cannot disclose more than that.

This is a sort of complex area because every state has different workers' compensation programs and requirements. Some state laws require reporting, some just allow it and some organizations are self-insured, some are not. So it is very complex. So I would suggest you look.

We do have guidance available on this. But generally speaking a covered entity may disclose to workers' compensation carriers for workers'

compensation purposes. There may be times when they would need an authorization from the individual to make certain disclosures but they are permitted to make disclosures.

Bernice Catherine Harper: Thank you very much. Ms. (Nielson), I think that you might want to restate the instructions for those persons who want to ask questions regarding privacy.

Operator: Again if you would like to ask a question at this time please press star, then the number 1 on your telephone keypad.

Your first question comes from (Sue Dill).

(Sue Dill): Yes, my name is (Sue Dill) and I'm from a hospital in Ohio. And just a little bit ago right before we came into this meeting we had received an authorization for the release of protected health information. And we wrote our policy and we made sure our authorization form had all the core elements and we developed a list of core elements that our staff could check.

But this one was a release of information and it lists as pursuant to the Social Security Administration, the Bureau of Disability, and I guess our question is because I haven't had time to research this since it just came in, so I thought I would ask on this call but when you've got two federal laws we've kind of been complying with both of them. But what about the authorization form that's pursuant to the Social Security Administration, Bureau of Disability but it's not HIPAA compliant in its core elements for the authorization?

(Linda Sanches): Well I think I have seen drafts of the Social Security authorization and I don't have it in front of me so I can't really speak to its contents but my recollection of it is that it actually did contain all the core statements and elements. It did

contain a whole lot of other things as well because they're mainly privacy act requirements and some others so there's a lot verbiage there.

But my understanding was that the Social Security authorization was compliant with the rule. I think probably if you had your staff go through the checklist that you provided which I think is a great idea, that they'd actually find all the elements.

Bernice Catherine Harper: Any other comments in the room?

(Sue Dill): Yes. I actually went through it myself and we did a list of core elements and it didn't have a statement of revocation, it didn't contain all of the core elements. It only contained I think four or five of the core elements. And when we contacted the individual, our health information management department did, they just said well, you know everybody else is releasing it pursuant to that.

(Linda Sanches): I would suggest – well let's see.

(Mike): (Linda), this is (Mike) (Pagels). Can I say something?

(Linda Sanches): Great.

(Mike Pagels): We looked at that authorization form. It's very specific, the disability. It's actually Social Security's way of authorizing the release of information from a provider to them to determine disability. So it's very specific to the Social Security Administration. Actually it says right at the top, this is an authorization for the release of information for the Social Security Administration to get disability information.

But it does, (Linda) by the way, have a statement in there that it is HIPAA-compliant and I think that that's the disconnect for people out there. I don't think that form is probably intended to be used as the general authorization form. I think it's very specific to this particular business need.

(Linda Sanches): Okay. Well I don't know what to say offhand since I don't have it in front of me and I can't really critique it for you. What I might suggest you do is – did you say that you contacted Social Security?

(Sue Dill): No, we haven't. We contacted the person that sent it to us that wanted us to send a complete copy of our medical records protected health information to them.

(Linda Sanches): You might want to contact Social Security's HIPAA office with your concern because I do know that they have a HIPAA office. And maybe you could walk through your concerns with them. And I will certainly take a look at the authorization form after this meeting.

(Sue Dill): Okay. I'd be happy to send you a copy with of course all the information.

(Linda Sanches): I believe it's on their Web site so they can just pull it off from there.

Bernice Catherine Harper: Thank you, Ms. (Dill). Next question please?

Operator: Your next question comes from (Simone) Stilson.

(Simone) Stilson: Hello, can you hear me?

(Karen Trudel): Yes.

(Simone) Stilson: Okay. My question is directed to OCR. I need a confirmation or I've been trying to get confirmation from HHS that crime victim compensation programs are exempt from HIPAA. I've posted questions in several forms and at different times to both HHS and OCR through letters and electronic questions to the Web sites and submitted comments to the open comment period we were going through private (unintelligible).

And I still have some confusion about that. I know the National Association of Crime Victims Compensation Board's also have some confusion so I'm wondering whether some clarification about that has been published and I've missed it or whether you're planning to clarify that unequivocally. It's been problematic.

The research that I've done showed me that in the final privacy rule there was a comment saying we agree, we meaning HHS, agree that crime victim compensation programs are not covered entities if they're not health providers or health plans. And so then when you look at definition of health plans it refers you to any policy plan or program to the extent that it provides or pays for cost of accepted benefits in the U.S. codes.

So if you go to acceptance benefits it says that (unintelligible) coverage.

(Linda Sanches): Okay, let's stop for a second. You are wondering if you're covered by the rule because you pay for healthcare?

(Simone) Stilson: No, I'm asking whether crime victim compensation boards are considered covered entities under HIPAA because when you look at the exemptions, the PIP and workers' comp, it also includes an exception for accepted benefits. And the comments say we never intended to cover crime victim boards but I don't think there's a consensus about that.

(Linda Sanches): Right. Well the list of exceptions are pretty specific to other types of benefits mentioned elsewhere in HIPAA. And there are all kinds of things that would not be covered entities under the rule and the only way you would be a covered entity is if you were a covered provider, a clearinghouse or a health plan.

(Simone) Stilson: Right.

(Linda Sanches): So I'm assuming you're asking if you're a health plan.

(Simone) Stilson: Well I don't believe we are and I used the algorithm that you've published under government-funded programs.

(Linda Sanches): Right. We actually have available on the Web site a tool you can walk through to figure out if you are a health plan.

(Simone) Stilson: I did that.

(Linda Sanches): And if you don't think you're a health plan then okay. I mean we...

(Simone) Stilson: Well it's not a matter of whether I think I'm a health plan. I walked through that whole thing and it says does the program provide only accepted benefits. And then again is what I was trying to say – sorry it was long-winded – but it all comes down to this definition of accepted benefits.

And the accepted benefits...

(Linda Sanches): Well I think the issue here more is not maybe the accepted benefits but whether you meet the core definition of being a health plan. And it's not clear to me that your program would.

(Simone) Stilson: Well we pay healthcare (sic) benefits for those people who have applied for and received crime victims' compensation benefits for victim of crime per our state law if they qualify as victims of crime. They applied for healthcare benefits which are secondary. Actually they're the benefits of a last resort.

(Linda Sanches): How about this? I personally don't have an answer off hand on this. Have you actually written an actual letter to the Office for Civil Rights?

(Simone) Stilson: Yes.

(Linda Sanches): When did you send that letter?

(Simone) Stilson: Last April.

(Linda Sanches): Last April. And what's your name?

(Simone) Stilson: (Simone) Stilson.

(Linda Sanches): (Simone) – spell your last name?

(Simone) Stilson: S-t-i-l-s-o-n. I sent one to Tommy Thompson and I submitted an electronic comments. You know, when you go to the OCR's Web site you can...

(Linda Sanches): Oh, these were comments, not a letter.

(Simone) Stilson: Well no, I did all three. I sent a letter.

(Linda Sanches): Okay. Well here's the reason I'm asking. If you sent a letter I can actually go into our database, find it, figure out why it wasn't answered and deal with it. If you sent a comment we're not going to respond to comments. But if you actually sent a letter other than a comment, I can go in and try to track that down for you.

(Simone) Stilson: Well my comment was submitted during open rule period and that's closed so I assume no one would be able to respond to that.

(Linda Sanches): Right. We don't respond to comments.

(Simone) Stilson: Yeah. And then I sent a letter April 26th to Tommy Thompson and I directed it to the Office for Civil Rights.

(Linda Sanches): Okay. Then I'll take a look for that.

(Simone) Stilson: Okay. And then again through your opportunity to ask questions to your Web site. I submitted one through that.

(Linda Sanches): Okay. All right. Well I will take a look at this.

Bernice Catherine Harper: Thank you very much.

(Simone) Stilson: Thank you.

Bernice Catherine Harper: Could we have the next question please?

Operator: Your next question comes from (Shawna Sharpe).

(Shawna Sharpe): Hi there. We have a lot of occupational medicine that we're doing here at our hospital and I just wanted to hear your all (sic) comments as far as releasing information back to their employers. Do I need an authorization in order to do that?

(Linda Sanches): That's a tough question. Generally speaking if you're going to be releasing information to an employer you do need an authorization. There are some public health provisions that allow disclosures to employers absent an authorization if you're doing workplace surveillance for instance and that might be a specialized field that you're involved in. So there are some times when you'd be allowed.

We've actually had several meetings with your professional organization so you might actually want to follow up with them because they've actually done a great deal of work with us trying to get information out on occupational medicine issues.

(Shawna Sharpe): Follow up with who, I'm sorry. Who did you say it was?

(Linda Sanches): Well I'm trying to think. It's the OCEM or shoot – there's a national association of people involved in occupational medicine.

(Shawna Sharpe): Okay.

(Linda Sanches): That organization.

(Shawna Sharpe): All right. Thank you.

(Linda Sanches): Okay.

Bernice Catherine Harper: Thank you. Next question please?

Operator: Your next question comes from (Linda Meredith).

(Linda Meredith): Thank you. I just wanted to clarify about the fax issue. It was my understanding...

(Linda Sanches): I'm sorry, what issue?

(Linda Meredith): The fax issue that someone brought up before about releasing information via fax. I really feel like that was the issue, not whether information could be release to a workers' comp carrier but whether you should be faxing protected health information.

(Linda Sanches): Are you asking whether it's permitted to use a fax machine?

(Linda Meredith): Right.

(Linda Sanches): Oh. Well we don't say you cannot use a fax machine. What we actually say is you need to take appropriate safeguards.

(Linda Meredith): Right. And I think that that's – I guess I wanted to get that message back to any of the health plans out there that I am a covered entity, I'm a hospital provider, that we have taken the position that since it's so much hassle to verify that it's a secure fax and who has it and if it's going to the right direction, if it's not an emergency our policy is we're not to fax.

(Linda Sanches): Well you can certainly take that position. I mean that's one way of implementing it. We don't say that you cannot fax. We're just saying you need to have some sort of verification that it's actually going to the right

organization. You know, you need to be sure that the fax number you have matches what's on their organization material, you know, et cetera.

(Linda Meredith): Yeah, I agree with all that. There's not a problem. But I just wanted to make sure that we're not having everybody call us and say hey, we heard it on the telephone call that you can fax it to us. Well like yeah, we know we can but we decided not to.

(Linda Sanches): Yeah, I mean it's certainly one way of implementing the rule.

(Linda Meredith): Okay, thank you.

Bernice Catherine Harper: Thank you, Ms. (Meredith). Next question please?

Operator: Your next question comes from (Matthew).

(Matthew): I was wondering if two providers share an office suite but have independent offices, do they each need to post the policy separately or can they formulate a policy for posting that refers to both of them in their reception area as the requirement is that it be posted in full view?

(Linda Sanches): Sure. You could certainly create a joint notice. You would of course both be bound by the statements on the notice but you know if you want to share it and say this applies to Drs. Jones and Smith, that's fine.

(Matthew): So you would just have to indicate that if you are Dr. Jones' patient you'd contact him. If you're Dr. Smith's you would contact him. Because you have to give contact information.

(Linda Sanches): Exactly, right. If you're not sharing administrative staff or a privacy (unintelligible) officially as opposed (unintelligible).

(Matthew): Right. It's totally independent practices. We're just a sharing a suite.

(Linda Sanches): Right. So I mean again, as long as all the statements really do apply to both of you and it clearly reflects that it applies to both of you, then that's fine. We don't require you to have two separate pieces of paper if you can use the same one.

(Matthew): Next part of the question is, as mental health providers does the mental health element have to be in that notice in terms of the accessibility or non-accessibility basically to psychotherapy notes, et cetera? Does it have to be part of that posted notice?

(Linda Sanches): Do psych notes have to be referenced in the notice?

(Matthew): Because there is an exception as I understand it that mental health progress notes are not accessible by the (unintelligible).

(Linda Sanches): There is a provision in the rules saying that psychological notes which are defined as progress notes that are not kept in the medical record, which are kept separate...

(Matthew): As a mental health provider your whole record is a mental health record so to speak.

(Linda Sanches): Not exactly. I mean I would actually suggest you look at this on our Web site because this is an important issue for you.

(Matthew): Right.

(Linda Sanches): There's some information for instance, diagnosis or a treatment plan, et cetera, that we would not consider psych notes. Those are things that someone should be able to access.

(Matthew): Right.

(Linda Sanches): But there are other things; that you might jot down as notes to yourself during a session that if you keep those separately from the general medical file then you would not have to release those to the individual. But this is obviously an issue of great concern for you so I would really suggest you look on our Web site about this.

(Matthew): So you would have to redact that information or begin to keep those notes as separate parts of the record.

(Linda Sanches): Well it has to actually not be kept together. If you keep it together then they get access to the whole thing.

(Matthew): Right, that's what I'm saying. But you have to begin to really keep separate parts of a record so to speak.

(Linda Sanches): Yes. You couldn't just redact once they ask. You'd have to actually keep them separate from the beginning.

(Matthew): If its information that was accrued prior to the implementation of HIPAA, how might you be able to bifurcate that? Up until now there was no need to separate your comments about what you think the diagnosis is from the

comments that the person is making in the sessions that led you to that conclusion.

(Linda Sanches): Right. There are lots of standards and protocols and laws regarding how one keeps medical records. So I can't really provide advice as to whether you could take something out of the record at this point. I would really have to defer to other standards on that.

You know if they are not in the medical record and they refer to things beforehand you would not have to provide them to the individual. But I really couldn't speak to whether you could take them out at this point because that's really dependent on whether you're permitted to do so under your own professional standards.

I can't state offhand whether you need to mention the psych notes provision in the notice. I don't think so but again we actually have extensive guidance on what needs to be in the notice on our Web site.

Bernice Catherine Harper: Thank you very much. Next question please?

Operator: Your next question comes from (Rusty).

(Rusty): Hi, (Linda), this is (Rusty). I'm an IT vendor who also operates a clearinghouse and we're clearly business associates of our customers in the role of supporting their IT function. And we're clearly a covered entity in a role as a clearinghouse.

My clearinghouse sends claims from our customers directly to an insurance payer. Do we need to have a BAA (business associate agreement) with the payer under this arrangement? When I've been trying to obtain a BAA payers

are telling us that they are also covered entities and therefore it's not necessary.

(Linda Sanches): Well let me take the second part first. One, it is quite possible that you could have two covered entities and one covered entity would be the business associate of another. So the second statement is perhaps a misunderstanding of the rule.

If you are a clearinghouse providing a service to that covered entity and you are say their contractor – they're actually paying you – then that really would make you their business associates.

If on the other hand you're being hired by a different person to transmit the information to the payer and you're actually being paid by that third party, not by the insurance payer, then you would not be a business associate of the insurance company.

So it really depends on who you're acting for.

(Rusty): Okay, thank you because we've been trying to get some clarification on that. I appreciate it. Thank you much.

(Linda Sanches): And again we do have information on this on our Web site.

(Rusty): Okay. Thank you.

(Linda Sanches): You're welcome.

Bernice Catherine Harper: Ms. (Nielsen), we have time for one more call.

Operator: Your last question comes from (Trisha McNamara).

(Trisha McNamara): Hi. I wanted to clarify something that was brought up on the last HIPAA privacy call regarding accounting of disclosures of personal health information when state oversight agencies look at patient records during an inspection or a complaint.

In Pennsylvania our state oversight agencies do not always disclose which patient records they look at during an inspection so we don't know sometimes if they have been looked at or not. And just do you have some advice for how providers...?

(Linda Sanches): Sure. If you look at the definition of disclosure because I'm sure you have the rule right out there, right, but if you look at the definition of disclosure it includes providing access to information. So in a way any records that this oversight board had access to while they were there, there's technically a disclosure of those records.

So even if you don't know which ones they actually looked at, what you could do is if someone asks for an accounting for disclosures you could say that this oversight body was here on x dates and they had access to your record on those dates. And that would be true for anyone they had access to.

So if they had access to a particular room of records that would be disclosures of all those records. If they had access to certain databases then those would be disclosures of every record in the database whether or not they actually looked at it or not.

(Trisha McNamara): Okay. Can they put that in their general statement to the patient as just a kind of blanket statement at the beginning of the year?

(Linda Sanches): Well I mean they don't have to keep these as a running accounting. It's only if someone asks. So if someone said what disclosures were made in the year 2004, then you could go back – I'm sure you're keeping a record of when they're coming in and you would say well, they were here on the x dates and therefore disclosures were made on those dates.

(Trisha McNamara): All right, okay. Thank you.

(Linda Sanches): You're welcome.

Bernice Catherine Harper: Thank you very much, Ms. (Sanches).

(Linda Sanches): You're welcome.

Bernice Catherine Harper: I want to thank each person for participating today and now I'm going to turn the call over to Mrs. (Trudel).

(Karen Trudel): I'd like to just make sure that both we and (Linda Sanches) one more time state what the Web site information is because I know that (Linda) has mentioned there's a lot of valuable guidance on OCR's Web site. Likewise there's a great deal of valuable information on CMS's Web site. So I'll ask (Linda) to go first and slowly announce again the Web site information for OCR.

(Linda Sanches): Sure. It's www.hhs.gov/ocr/hipaa.

(Karen Trudel): Okay. And (Elizabeth Holland) will provide the CMS Web site information.

(Elizabeth Holland): Our Web site is www.cms.hhs.gov/hipaa/hipaa2. On our Web site you can get information on how to sign up for either of our listserves. We have a regulation listserve which will tell you when proposed or final rules on HIPAA have been issued. We also have an outreach list serve that will give you information on various outreach materials and events that we have scheduled.

We also have an informational series on HIPAA available from the Web site. We have the covered entities decision tool. We will have dates for future roundtables posted there and there will also be posting of the transcript for this roundtable probably in the next several weeks on the Web site as well.

Bernice Catherine Harper: Thank you very much and good evening.

Operator: That does conclude the Centers for Medicare and Medicaid Services Eighth National HIPAA Implementations roundtable. You may now disconnect.

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