
DIGEST ANALYSIS

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Administrative Simplification Compliance Act: Will A HIPAA Delay Make It Pay?

I. INTRODUCTION AND BACKGROUND

On December 27, 2001, President Bush signed the Administrative Simplification Compliance Act (ASCA). The introductory language in predecessor bill, H.R. 3323, 107th Congress, 1st Session, and ASCA's title in Pub. L. No. 107-105, states that the legislation's purpose is: "To ensure that covered entities comply with the standards for electronic health care transactions and code sets adopted under part C of title XI of the Social Security Act [being a part of the Administrative Simplification Subtitle of the Health Insurance Portability and Accountability Act of 1996, known as HIPAA] and for other purposes." (emphasis supplied).

Four hundred and ten members of the House of Representatives on December 4, 2001, and the Senate, by unanimous consent on December 12, 2001, voted in favor of the new law. ASCA is the first statutory amendment of the Administrative Simplification Subtitle of HIPAA. What started out as primarily a law to address health insurance portability and Employee Retirement Income Security Act (ERISA) issues with privacy, security, and health data at the end of the law, will end up revolutionizing healthcare privacy, confidentiality, security, and data transmission. Although the Senate had considered an alternative bill, S. 1684, 107th Congress, 1st Session, and other bills addressing HIPAA had been previously introduced, eventually Congress and the President settled on the final version of H.R. 3323, which is now law.

Perhaps one of the most interesting aspects of ASCA is its history. For several years, many people have been trying to eliminate, change, or delay HIPAA. Contro-

versy has surrounded the law and the individual rules, as well as the overall notion of imposing new requirements and standards on the healthcare industry.

Confusion ensued when a change of administrations from President Clinton to President Bush was occurring and a statutorily mandated report to Congress was lost in transit, thereby delaying the effective date of the final HIPAA privacy rule. At about the same time, President Bush postponed for sixty days the effective date of some rules issued under the Clinton administration and Congress was thought to be considering exercising authority under the Congressional Review Act, whereby the final privacy rule under HIPAA might have been eliminated. Nevertheless, HIPAA has exhibited a strength and resiliency beyond what some expected or would prefer.

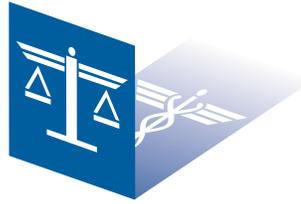
Under S. 1684, a one year delay in the compliance date for the final electronic transactions and data code sets rule would have occurred without action on the part of those seeking to benefit from the delay. But under the final version of H.R. 3323, those seeking a delay must file an ASCA compliance plan in a timely manner, and several other features are added to the process as well.

Interestingly, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Patriot Act), which became Pub. L. No. 107-56 on October 26, 2001, and contains many provisions thought by some to interfere with privacy and confidentiality, was being considered at the same time that consideration was being given to amending HIPAA. Perhaps the anti-terrorism legislation and related activities involving government investigations may have created a counterweight to efforts to amend HIPAA or to delay enforcement of HIPAA for

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HIGHLIGHTS

DIGEST ANALYSIS: This month's *Digest Analysis* discusses the background, elements, and implications of the Administrative Simplification Compliance Act, which delays for one year the HIPAA deadline for healthcare plans, providers, and clearinghouses to comply with the final electronic transactions and data code sets rule. The *Digest Analysis* appears at pages 3-11.

CONTRACTS: A California appeals court said that a health plan that entered into a risk-sharing agreement with a now bankrupt physicians group was not obligated to pay claims owed by the group for services rendered to plan subscribers. *See Desert Healthcare Dist. v. PacifiCare* at page 17.

DISABILITY ISSUES: The Ninth Circuit found that physician shareholders were "employees," not partners, for purposes of applying the ADA to a professional corporation. *See Wells v. Clackamas Gastroenterology Assocs., P.C.* at pages 21-22.

EMPLOYMENT ISSUES: The Fifth Circuit said that denial of a pay increase was an "ultimate employment decision" actionable under Title VII's anti-retaliation

provisions. *See Fierros v. Texas Dep't of Health* at pages 27-28.

FOOD AND DRUG LAW: A U.S. Court in New Jersey said a proposed generic oral contraceptive did not infringe a patent literally or under the Doctrine of Equivalents. *See Bio-Technology Gen. Corp. v. Duramed Pharm.* at page 29.

INDIVIDUAL/PATIENT RIGHTS: The Sixth Circuit said a prison psychologist was not entitled to qualified immunity because his conduct violated a suicidal prisoner's right to medical care under the Eighth Amendment. *See Comstock v. McCrary* at page 35.

INSURANCE: A U.S. Court in Minnesota held that a physician was not entitled to disability benefits. *See Zenk v. Paul Revere Life Ins. Co.* at pages 37-38.

LONG TERM CARE: A U.S. Court in Minnesota said independent nursing service agencies were likely to succeed in their claim that a state law capping billing rates violated equal protection because it exempted agencies that were affiliated with nursing homes. *See Allied Prof'ls v. Malcom* at page 45.

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MANAGED CARE: A New Jersey appeals court upheld the validity of the anti-assignment clauses in health service corporation contracts. *See Somerset Orthopedic Assocs. v. Horizon Blue Shield* at page 47.

MEDICAL MALPRACTICE: The Kentucky Supreme Court held that a medical malpractice plaintiff may bring suit and recover from a medical center under a vicarious liability theory without first obtaining judgment against the agent physician. *See Cohen v. Alliant Enters.* at page 49.

MEDICAL MALPRACTICE: An Illinois appeals court held that the emergency exception to obtaining patient consent does not apply where a patient has clearly refused a medical procedure. *See Curtis v. Jaskey* at pages 50-51.

MEDICAL RECORDS: A Pennsylvania appeals court said that a patient gave implied consent to release diagnosis information to her husband. *See Haddad v. Gopal* at page 57.

PAYMENT ISSUES: The Sixth Circuit reversed a Medicare reimbursement denial, finding the DHHS Secretary informally imposed a competitive bidding requirement not previously made part of the Medicare regulations. *See Maximum Home Health Care, Inc. v. Shalala* at page 59.

PAYMENT ISSUES: The Eighth Circuit held that the M+C formula was not unconstitutional and that geographic disparities in benefits did not violate equal protection or the constitutional right to travel. *See Minnesota Senior Fed'n v. United States* at page 62.

PRODUCTS LIABILITY: A U.S. Court in Kansas said that the learned intermediary doctrine protected a drug manufacturer from a failure-to-warn claim. *See Kernke v. Menninger Clinic* at page 65.

PROFESSIONAL RIGHTS: The Tenth Circuit held that a nurse anesthetist was not entitled to back wages from a hospital that suspended his privileges because he was an independent contractor, not a hospital employee. *See Ferraro v. Board of Trustees of Labette County Med. Ctr.* at page 69.

REPRODUCTIVE ISSUES: The Second Circuit said that a preliminary injunction against pro-life protestors was only unconstitutional with regard to the expanded buffer zones and the ban of sound amplification equipment. *See New York v. Operation Rescue Nat'l* at page 85.

TAX: A U.S. Court in Louisiana held that a hospital was entitled to a refund on employment taxes because physicians were properly treated as independent contractors. *See North La. Rehab. Ctr. v. United States* at page 89.

HEALTH LAW DIGEST

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several years. Although the Patriot Act makes no direct reference to HIPAA, and ASCA makes no direct reference to the Patriot Act, the final HIPAA privacy rule does provide exceptions that permit disclosures, without an individual's consent, for certain law enforcement purposes, to prevent or lessen a serious and imminent threat to health or safety, or for lawful intelligence, counter-intelligence, and other national security activities, and nothing in ASCA derogates from these exceptions.

In this regard, note the comments of Senator Larry E. Craig (R-Idaho) during the Senate proceedings relative to ASCA on December 12, 2001, as published in the Congressional Record:

Madam President, I share Senator [Dorgan's] concern that the compliance plans called for in the House bill not be unduly burdensome. The terrorist attacks of September 11th, and concern about bioterrorism, are putting an additional pressure on our already overtaxed public health system, so imposing new burdens is something we should try to minimize. Therefore, we strongly encourage Health and Human Services Secretary Thompson to ensure that the requirement to file a compliance plan imposes as little a burden as possible.

II. SUMMARY OF MAJOR PROVISIONS OF ASCA

The major provisions of ASCA are summarized as follows:

1. Section 2(a)(1) provides a limited one-year extension of the October 16, 2002 deadline for certain HIPAA covered entities to comply with subparts I through R of 45 C.F.R. pt. 162 (commonly known as the final electronic transactions and data code sets rule).
2. Section 2(a)(2) limits any extension to those who, before October 16, 2002, submit to the Department of Health and Human Services (DHHS) Secretary a plan—consisting of an analysis explaining any non-compliance; a budget, schedule, work plan, and implementation strategy for achieving compliance; whether the use of a contractor or other vendor is contemplated for achieving compliance; and a testing timeframe beginning not later than April 16, 2003—for coming into compliance with the final electronic transactions and data code sets rule not later than October 16, 2003.
3. Section 2(a)(3) permits electronic submission of ASCA compliance plans.
4. Section 2(a)(4) requires the Secretary, not later than March 31, 2002, to promulgate a model form for use in drafting an ASCA compliance plan.
5. Section 2(a)(5) provides for an analysis by the National Committee of Vital and Health Statistics (NCVHS) of sample ASCA compliance plans provided, in redacted form, by the Secretary and a report by NCVHS on solutions to compliance problems identified in the plans analyzed.
6. Section 2(a)(6) adds exclusion from the Medicare program as a penalty the Secretary may impose for non-compliance with the final electronic transactions and data code sets rule if an ASCA compliance plan is not filed before October 16, 2002, absent compliance on or after October 16, 2002.
7. Section 2(b)(1) disclaims any modification of the October 16, 2003 compliance deadline under the final electronic transactions and data code sets rule for a small health plan (a health plan with annual receipts of \$5 million or less), any modification of the April 14, 2003 deadline for compliance with the final HIPAA privacy rule generally, or modification of the April 14, 2004 deadline for small health plan compliance specifically.
8. Section 2(b)(2) provides that, from April 14, 2003 until October 16, 2003, a healthcare provider, or a healthcare clearinghouse that processes or facilitates the processing of information in connection with the final electronic transactions and data code sets rule standards, that would otherwise be treated as a healthcare clearinghouse absent ASCA, is to be so treated without regard to whether the processing or facilitating produces (or is required to produce) final electronic transactions and data code sets rule standard data elements or a standard transaction.
9. Section 2(c) sets forth cross-referencing definitions for the final electronic transactions and data code sets rule.
10. Section 3(a) provides that no payment may be made under Part A or Part B of the Medicare program for any expenses incurred for items or services for which a claim is submitted other than in an electronic form specified by the Secretary, subject to the Secretary's right to waive such an exclusion in cases in which there is no method available for submitting electronic claims, or in cases in which the claim is being submitted by a small provider of services or supplier (namely, a provider with fewer than twenty-five full-time equivalent employees; or a physician, practitioner, facility, or supplier, other than a supplier of services, with fewer than ten full-time equivalent employees), or in unusual cases.
11. Section 3(b) provides that the ASCA amendment permitting the Secretary to use a remedy of exclu-

sion from the Medicare program for failure to use an electronic form will apply to claims submitted on or after October 16, 2003.

12. Section 4 provides that the definition of "health plan" under the HIPAA Administrative Simplification Subtitle is restated to read: "Parts A, B, or C" of the Medicare program, in order to include Medicare+Choice organizations.
13. Section 5 authorizes a total of \$44,200,000 to be appropriated for technical assistance, education, outreach, enforcement, and adoption of the standards for information transactions and data elements under the HIPAA Administrative Simplification Subtitle, and penalizes the Secretary by specifying stepped reductions in the amount authorized if the ASCA compliance program model form is not promulgated by the Secretary in a timely manner.

Subsequent to the enactment of ASCA, a legislative history insertion was to be made in the Congressional Record of January 3, 2002, by Rep. William Thomas (R-CA), Chair of the House Ways and Means Committee. An unofficial copy of that legislative history has been made available by the Association for Electronic Health Care Transactions and a copy may be found on the Internet at <http://www.healthlawyer.com>. As of the date this article was written, no official publication in the Congressional Record of such legislative history has occurred. Note also that the Congressional Record of December 12, 2001, contains remarks made during consideration of H.R. 3323 in the Senate and that Rep. Tom Udall (D-NM) inserted a speech regarding H.R. 3323 in the Congressional Record of December 13, 2001 as an "extension of remarks."

III. HIPAA/ASCA TIMELINE

To put things in a proper perspective, a review of relevant HIPAA dates and relevant prefatory language, as affected by ASCA, is set forth below:

1. Not later than March 31, 2002—Last date for the Secretary to promulgate the ASCA compliance plan model form.
2. Before October 16, 2002—October 15, 2002 is the last date for submitting to the Secretary an ASCA plan for compliance with the final electronic transactions and data code sets rule, in order to extend the compliance date to October 16, 2003.
3. No later than October 16, 2002—Compliance date for the final electronic transactions and data code sets rule (for other than small health plans) for those who do not timely file an ASCA compliance plan.
4. No later than April 14, 2003—Compliance date for the final privacy rule (for other than small health plans).

5. No later than April 16, 2003—The latest date by which a timeframe for testing must begin, pursuant to an ASCA compliance plan.
6. No later than October 16, 2003—Compliance date for the final electronic transactions and data code sets rule for small health plans and for those who have timely filed a plan for compliance under ASCA.
7. No later than April 14, 2004—Compliance date for the final privacy rule for small health plans.

IV. HIPAA DELAY

ASCA begins by delaying for one year the compliance date for the final electronic transactions and data code sets rule, but only for a healthcare provider, health plan (other than a small health plan), or a healthcare clearinghouse that, before October 16, 2002, submits to the Secretary a plan of how compliance will be achieved. Specifically, ASCA requires "a plan of how the person *will come into* compliance with the requirements . . . not later than October 16, 2003." (emphasis supplied).

The implicit expectation, therefore, is that, on or before October 16, 2003, compliance will exist without qualification. ASCA does not address, however, what happens if on a day after the filing of an ASCA compliance plan, but before October 16, 2003, or on one day on or after October 16, 2003, compliance does not exist but the plan sets forth how it "will come into compliance." This is important because, as discussed more fully below, questions regarding the consequences of representations implicitly and explicitly made in ASCA compliance plans likely will arise in many different contexts.

Note that ASCA contains no exceptions for governmental covered entities. Therefore, it would appear that the Medicare program, the Medicaid program, and other federal and state governmental programs or entities considered to be covered entities under HIPAA will have to decide whether to file an ASCA compliance plan, or instead, to risk any adverse consequences of having to meet the original October 16, 2002 compliance date for the final electronic transactions and data code sets rule.

The condition for obtaining the extra year is based upon an ASCA compliance plan that is a summary, as specified in Section 2(a)(2) of ASCA, of:

- (A) An analysis reflecting the extent to which, and the reasons why, the person is not in compliance.
- (B) A budget, schedule, work plan, and implementation strategy for achieving compliance.
- (C) Whether the person plans to use or might use a contractor or other vendor to assist the person in achieving compliance.
- (D) A timeframe for testing that begins not later than April 16, 2003.

The implicit notion behind this condition would appear to be that the exercise of having to set forth this information, in a filing with the Secretary, will encourage and, perhaps to some extent, assure that compliance will occur not later than October 16, 2003. Note in this connection, the remarks of Rep. Tom Udall (D-NM) in the House of Representatives on December 4, 2001, appearing in the Congressional Record:

H.R. 3323 allows these health plans and providers that will be unable to comply by the original deadline, to delay HIPAA compliance until October 2003, provided that they submit a compliance plan to the Secretary of Health and Human Services. This document must summarize the entity's budget, schedule, work plan, and implementation strategy for becoming compliant by October 2003.

Mr. Speaker, I support the effort to allow delay for those plans and providers that will not be compliant by October 2002, provided that they do, in fact, have a plan to be compliant by October of the following year. Because H.R. 3323 requires plans and providers who wish to delay to submit a plan for compliance to the Secretary, I support this legislation.

Note also the following from the unofficial legislative history for ASCA referenced above, and expected to be published in the Congressional Record of January 3, 2002: "The [House Ways and Means] Committee intends that submission of a compliance plan will force covered entities to analyze and consider the exact steps needed to ensure compliance with the regulation by the compliance date, and to achieve those steps." In addition, note the following from the unofficial legislative history for ASCA referenced above and expected to be published in the Congressional Record of January 3, 2002: "The bill also requires the Department of Health and Human Services to issue model compliance plans, which include critical benchmarks such as establishing a compliance budget, a work plan and an implementation strategy for coming into compliance."

It is important to note that there is nothing in the condition language, or elsewhere in ASCA, that prevents the Secretary or anyone else from attempting to treat the ASCA compliance plan information as a representation or warranty made to the federal government, to the public, to customers or vendors, or to anyone else. In addition, there is nothing set forth in ASCA that prevents state governments from requiring the filing of copies of ASCA compliance plans with state governments, or to

prevent providers, vendors, or anyone else from asking covered entities that file such plans for copies. It will be interesting to see what disclaimers and exoneration language appear in ASCA compliance plans. One would expect that accounting firms that provide audit services and those who read documents filed with the Securities and Exchange Commission, as well as HIPAA business associates and perhaps insurance underwriters, will be interested in knowing what is said by HIPAA covered entities in ASCA compliance plans. Note also the likely absence of attorney-client privilege protections applying to matters involving the preparation of ASCA compliance plan filings.

There is no provision in ASCA mandating or permitting amendment to an ASCA compliance plan that has been filed but in which original information has become, or has been found to be, inaccurate, incomplete, or misleading. In addition, nothing in ASCA requires the Secretary to approve or evaluate any ASCA compliance plan either for accuracy or responsiveness to the ASCA condition, and nothing in ASCA prevents the Secretary from doing so. In this connection, note the following from the unofficial legislative history for ASCA referenced above and expected to be published in the Congressional Record of January 3, 2002: "The Secretary is not required to approve the [ASCA] compliance plans (as this would compel a review and decision on millions of applications), yet is required to widely disseminate reports containing effective solutions to compliance problems identified in the compliance plans."

Under Section 2(a)(3) of ASCA, the Secretary is required to accept ASCA compliance plans submitted electronically, so that implicitly Internet e-mail filings are encouraged. Note also that the Preamble to the proposed HIPAA security rule makes reference to online interactive transmissions using "[t]he Hypertext Markup Language (HTML) and interactions between a server and a browser by which the data elements of a transaction are solicited from a user." Perhaps the Secretary will create an Internet feature for electronic filing of ASCA compliance plans using HTML-related interactions. Recall that, in general, the Secretary discourages the use of facsimile transmissions for communications with DHHS.

Nothing is said in ASCA about encryption of any such electronic transmissions being permitted or required, about the use of a digital signature or other technology to authenticate identity with respect to ASCA compliance plans, or about non-repudiation. In fact, no reference is made in ASCA to the security portions of HIPAA, the proposed HIPAA security rule—the Electronic Signatures in Global and National Commerce Act for which neither the Secretary nor any other federal agency has

promulgated rules—or the Health Care Financing Administration (HCFA) (now the Centers for Medicare & Medicaid Services) Internet Security Policy (the Internet Communications Security and Appropriate Use Policy and Guidelines for HCFA Privacy Act-Protected and Other Sensitive HCFA Information, available on the Internet at <http://www.ecommercelawyer.com>), which was issued November 24, 1998 and is still in force.

V. ASCA COMPLIANCE PLAN FORMAT AND ANALYSIS

Regarding the format of an ASCA compliance plan, Section 2(a)(4) requires the Secretary, not later than March 31, 2002, to promulgate a model form “that persons *may* use in drafting [an ASCA compliance plan].” (emphasis supplied). ASCA contains no requirement that the model form be used, and the Secretary’s failure to promulgate a model form or any delay in such promulgation would not appear to derogate from the condition that an ASCA compliance plan be filed in a timely manner in order to extend the October 16, 2002 deadline for complying with the final electronic transactions and data code sets rule. In this connection, note the following from the unofficial legislative history for ASCA referenced above and expected to be published in the Congressional Record of January 3, 2002:

If a covered entity so chooses, it may use the model form promulgated by the Department of Health and Human Services (HHS), or it may provide the information in an alternative format at any time prior to October 16, 2002. Entities do not need to wait until HHS promulgates a model form in order to file a[n ASCA] compliance plan.

Although no analysis by the Secretary of ASCA compliance plans is mandated under ASCA, the Secretary is required to furnish NCVHS with a sample of ASCA compliance plans for analysis. NCVHS is established by 42 U.S.C. § 242k(k) as a “public advisory body to the Secretary of Health and Human Services in the area of health data and statistics. In that capacity [NCVHS] provides advice and assistance to the Department and serves as a forum for interaction with interested private sector groups on a variety of key health data issues.” See <http://ncvhs.hhs.gov/>.

The purpose of the NCVHS analysis, as indicated in Section 2(a)(5)(B) of ASCA, is to permit the publication and dissemination of reports containing “effective solutions to compliance problems identified in the [ASCA] compliance plans . . . for the purpose of assisting the maximum number of persons to come into compliance

by addressing the most common or challenging problems encountered by persons submitting such plans.” Thus, encouragement is given in the NCVHS portion of ASCA, albeit not directly in the compliance date extension portion of ASCA, for including “challenging problems” in the ASCA compliance plan. One wonders whether the Secretary’s ASCA model form might include a standard sentence such as: “One of the challenging problems in coming into compliance is the absence of any congressionally appropriated or other designated funding for HIPAA compliance.” Unfortunately, ASCA does not create “HIPAA Mae” as a governmentally-chartered vehicle for providing financing opportunities for HIPAA implementation (*see* Goldberg, *Analysis and Perspective: Give Them Money and They Will Follow You Anywhere/It’s Time for HIPAA Mae!* American Health Lawyers Association/BNA E-Health Law & Policy Report, Vol. 2, No. 24 (Dec. 17, 2001)).

Under HIPAA, before the enactment of ASCA, the Secretary was required, in connection with the adoption of standards, to rely on the recommendations of NCVHS, and to consult with appropriate federal and state agencies and private organizations. Consistent with this requirement, in connection with the publication of ASCA reports, NCVHS is to consult with certain organizations referenced in HIPAA (*see* 42 U.S.C. § 1320d-(c)(3)(B)) as organizations to be consulted by the Secretary before the adoption of certain HIPAA standards: (1) The National Uniform Billing Committee, (2) The National Uniform Claim Committee, (3) The Workgroup for Electronic Data Interchange, and (4) The American Dental Association, and with designated standard maintenance organizations (DSMOs) designated by the Secretary under 45 C.F.R. § 162.910(a) to maintain standards adopted under HIPAA, and to receive and process requests for adopting a new standard or modifying an adopted standard.

VI. DISCLOSURE OF ASCA COMPLIANCE PLANS

Under HIPAA and, “[e]xcept as otherwise required by law, a standard adopted [under HIPAA] shall not require disclosure of trade secrets or confidential commercial information by a person required to comply with [HIPAA].” See 42 U.S.C. § 1320d-1(e). Consistent with this part of HIPAA, Section 2(a)(5)(d)(i) of ASCA requires the Secretary to ensure that samples of ASCA compliance plans provided to NCVHS are redacted “so as to prevent the disclosure of any (I) trade secrets; (II) commercial or financial information that is privileged or confidential; and (III) other information the

disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”

This ASCA language appears to have been derived in part from the Freedom of Information Act (FOIA), 5 U.S.C. § 552, which contains the following as areas of exception from any obligation under FOIA of any federal agency to make information available to the public: “trade secrets and commercial or financial information obtained from a person and privileged or confidential” and “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” See 5 U.S.C. § 552(b). Note the omission in ASCA of the “personnel and medical files and similar files” language appearing in FOIA and the substitution of the word “information.”

As stated in Section 2(a)(5)(d)(ii) of ASCA, nothing in ASCA is supposed to be construed to affect FOIA’s application, including the exceptions from disclosure. It will be interesting to see what occurs regarding filings under FOIA with respect to ASCA compliance plans.

VII. EXCLUSION FROM THE MEDICARE PROGRAM

A new exclusion remedy is given to the Secretary in Section 2(a)(6) of ASCA regarding compliance with HIPAA. Specifically, a failure to be in compliance with the final electronic transactions and data code sets rule on or after October 16, 2002 can result in exclusion from the Medicare program (including exclusion from Part C or as a contractor) if the Secretary so elects, unless an ASCA compliance plan was timely filed. The concept of compliance therefore becomes especially challenging, because in theory non-compliance can occur on one day; compliance can exist on the following day; and many months thereafter, a day of non-compliance can occur.

In addition, because ASCA specifically requires an ASCA compliance plan to be filed before October 16, 2002, if a compliance delay is being sought, and nothing is said in ASCA about permitting any ASCA compliance plans to be filed thereafter or about *de minimis* non-compliance at any time, just one day of non-compliance on or after October 16, 2002 might be considered by the Secretary to be a basis for exclusion from the Medicare program, unless an ASCA compliance plan was filed and the ASCA exclusion remedy foreclosed. Therefore, some might conclude that the burden of filing an ASCA compliance plan, including the risk of information set forth in the ASCA compliance plan becoming public or being used by a governmental agency or anyone else for a purpose other than that intended under ASCA, is not so great as to encourage anyone to risk not filing an ASCA compliance plan in a timely manner and later finding out

that one day of non-compliance on or after October 16, 2002 occurred.

Further, as to exclusion from the Medicare program, ASCA provides that the portion of the Social Security Act establishing procedures for exclusion (*see* 42 U.S.C. § 1320a-7a, other than the first and second sentences of subsection (a) and subsection (b)) will be applicable to exclusion under ASCA to the same extent as exclusion or a proceeding otherwise under such portion of the Social Security Act. In other words, the administrative and judicial procedures of that portion of the Social Security Act will apply to ASCA exclusions. In addition, ASCA specifies that ASCA exclusion will not affect the imposition of penalties under the general civil penalty provision of HIPAA for failure to comply with requirements and standards (namely, 42 U.S.C. § 1320d-5), and therefore exclusion could be accompanied by the imposition of civil monetary penalties under HIPAA.

Of critical importance is that ASCA exclusion from the Medicare program may not occur if an ASCA compliance plan has been submitted in a timely manner, or with respect to a “person . . . (ii) who is in compliance with [the final electronic transactions and data code sets rule] on or before October 16, 2002.” See Section 2(a)(6)(D)(ii) of ASCA. It may therefore well be that the filing of an ASCA compliance plan in a timely manner would be the best way to foreclose the risk of any such exclusion, because proving to the satisfaction of the Secretary that a person was in compliance with the final electronic transactions and data code sets rule on or before October 16, 2002 could be a challenging endeavor. As should be clear by now, whether to file and what to say if one does file an ASCA compliance plan is yet one more challenge in addressing the requirements of HIPAA and likely will require a risk-tolerance analysis and the advice of legal counsel.

Small health plans are still required to comply with the final electronic transactions and data code sets rule not later than October 16, 2003.

VIII. THE FINAL HIPAA PRIVACY RULE

As to the final HIPAA privacy rule, ASCA provides that nothing in Section (a) of ASCA (the part discussed above that, *inter alia*, defers the date for compliance with the final electronic transactions and data code sets rule for those who file ASCA compliance plans) modifies the April 14, 2003 general deadline for complying with the final HIPAA privacy rule (or the April 14, 2004 deadline for small health plans).

How ASCA will affect compliance by healthcare providers or healthcare clearinghouses with the final HIPAA privacy rule, in light of the opportunity to defer

the compliance date for the final electronic transactions and data code sets rule, is addressed in Section 2(b)(2) of ASCA. Specifically, ASCA temporarily eliminates— for the period from April 14, 2003 to October 16, 2003— from the definitional provision that determines whether a healthcare provider is a covered entity/covered healthcare provider under HIPAA any need to consider whether an electronic transmission by a healthcare provider meets the standards of the final electronic transactions and data code sets rule. Absent ASCA, a healthcare provider would not be a covered entity under the final HIPAA privacy rule unless the healthcare provider transmits health information in electronic form in connection with a transaction referred to in the electronic transactions and data code sets portion of HIPAA. *See* 45 U.S.C. § 1172(a)(3).

This is necessary because, in connection with a determination whether a healthcare provider is a covered entity under HIPAA and must therefore comply with the final HIPAA privacy rule, HIPAA contemplates the availability and applicability of enforceable standards under the final electronic transactions and data code sets rule (note the definition in 45 C.F.R. § 160.102(a)(3) of a healthcare provider that is a covered entity: “A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.”).

But because of ASCA, the final electronic transactions and data code sets rule standards will not be enforceable for some covered entities until approximately six months after the final HIPAA privacy rule is enforceable. In order to address the gap period between the compliance day of the final HIPAA privacy rule and the ASCA-postponed date of the final electronic transactions and data code sets rule, ASCA provides that compliance with the final HIPAA privacy rule is required before the final electronic transactions and data code sets rule postponed compliance date, by a healthcare provider that “transmits any health information in electronic form in connection with a transaction described in subparagraph (C) [of Section 2(b)(2) of ASCA] . . . without regard to whether the transmission meets the standards required by [the final electronic transactions and data code sets rule],” 45 C.F.R. pt. 162.

Regarding healthcare clearinghouses, Section 2(b)(2)(B) of ASCA provides that compliance with the final HIPAA privacy rule is required, before the final electronic transactions and data code sets rule postponed compliance date, by an ASCA-temporarily redefined healthcare clearinghouse that “transmits any health information in electronic form in connection with a transaction described in subparagraph (C) [of Section 2(b)(2) of ASCA] . . . without regard to whether the transmission

meets the standards required by the [final electronic transactions and data code sets rule].” (45 C.F.R. pt. 162). Subparagraph (B) of Section 2(b)(2) of ASCA creates a new definitional term for healthcare clearinghouse during the period that begins on April 14, 2003 and ends on October 16, 2003 by redefining a health care clearinghouse, during such period, as follows: “an entity that processes or facilitates the processing of information in connection with a transaction described in subparagraph (C) [of Section 2(b)(2) of ASCA] and that otherwise would be treated as a healthcare clearinghouse shall be treated as a health care clearinghouse without regard to whether the processing or facilitation produces (or is required to produce) standard data elements or a standard transaction as required by the [final electronic transactions and data code sets rule].”

Thus, because of ASCA, those who process or facilitate the processing of information in connection with the transactions described in subparagraph (C), but do not engage in any conversion of data activities and might never intend to before or after the final electronic transactions and data code sets rule becomes enforceable, nevertheless might be required to comply with the final HIPAA privacy rule during the period that begins on April 14, 2003 and ends on October 16, 2003. But note the following that appears in the unofficial legislative history materials referenced above:

With regard to clearinghouses, the [House Ways and Means] Committee appreciates that there are healthcare information technology vendors, such as applications service providers (ASPs) that create, adjudicate and process claims in other ways than converting data into standard transactions formats other than HIPAA standardized formats. The Committee does not intend to create any new covered entities under any of the HIPAA rules during this time.

This would appear to be intended to indicate that ASCA does not change the definition of healthcare clearinghouse, except to the extent that, during the period that begins on April 14, 2003 and ends on October 16, 2003, those who would have been healthcare clearinghouses under the definition in HIPAA before ASCA’s enactment would be considered, for final HIPAA privacy rule purposes, to be healthcare clearinghouses during the period that begins on April 14, 2003 and ends on October 16, 2003, despite the fact that during such period the final electronic transactions and data code sets rule is not enforceable against them.

The eight transactions described in subparagraph (C) of Section 2(b) of ASCA are not co-extensive with the eight transactions already contained in HIPAA at

45 U.S.C. § 1173(a)(2); item (B) in § 1173(a)(2), “Health claims attachments,” is omitted in ASCA, as is item (G) in § 1173(a)(2), “First report of injury”; and ASCA adds, as item (iii) under subparagraph (C), “A coordination of benefits transaction.” ASCA subparagraph (C) transactions also are not co-extensive with the transactions contained in the definition of “Transaction” in 45 C.F.R. § 162.103 under the final electronic transactions and data code sets rule, in items (9), “First report of injury,” and (10), “Health claims attachments,” are omitted, as is item (11), “Other transactions that the Secretary may prescribe by regulation.”

Note that, under the final electronic transactions and data code sets rule in its current iteration, no standards have been adopted by the Secretary either for first report of injury or health claims attachments. It remains to be seen whether ASCA will be amended to take into account standards adopted by the Secretary before or after October 16, 2002, for first report of injury or health claims attachments, or any other standards adopted by the Secretary, pursuant to the authority granted under HIPAA, to adopt standards for “other financial and administrative transactions determined appropriate by the Secretary, consistent with the goals of improving the operation of the health care system and reducing administrative costs,” 42 U.S.C. § 1173, and under item (11) in 45 C.F.R. § 162.103, “Other transactions that the Secretary may prescribe by regulation.”

IX. ELECTRONIC FILING OF CLAIMS

Section 3(a) of ASCA, in effect, requires the electronic filing of claims under the Medicare program, by adding to 42 U.S.C. § 1395y (which already stipulates many exclusionary events) a further exclusion that no payment may be made under Part A or Part B of the Medicare program for any expenses incurred for items or services for which a claim is submitted other than in an electronic form specified by the Secretary. ASCA permits the Secretary to waive such an exclusion when there is no method available for submitting electronic claims, or when the claim is being submitted by a “small provider of services or supplier” (namely, “a provider of services with fewer than 25 full-time equivalent employees; or . . . a physician, practitioner, facility, or supplier (other than a supplier of services) with fewer than 10 full-time equivalent employees”), or in unusual cases.

In this connection, note also the following that appears in the unofficial legislative history for ASCA referenced above and expected to be published in the Congressional Record of January 3, 2002: “This legislation requires the electronic filing of claims with Medicare, with exceptions.” Note also:

Finally, to provide a disincentive to going back to paper claims, the bill requires covered entities to submit HIPAA compliant electronic Medicare claims to the Centers for Medicare and Medicaid Services (CMS) as a condition of payment. The Committee does not foresee this requirement as being problematic in any way since 98% of Part A providers and 85% of Part B providers [under the Medicare program] already submit electronically.

X. MEDICARE+CHOICE

Section 4 of ASCA provides that the definition of “health plan” under the HIPAA Administrative Simplification Subtitle is restated to read: “Parts A, B, or C” of the Medicare program, in order to include Medicare+Choice organizations.

XI. AUTHORIZED TO BE APPROPRIATED

As an indication of the enormous up-front cost of HIPAA, Section 5 of ASCA provides that there is “authorized to be appropriated” a total of \$44,200,000 for “technical assistance, education and outreach, and enforcement activities [related to the final electronic transactions and data code sets rule] . . . and adopting the standards required to be adopted” for information transactions and data elements under the HIPAA Administrative Simplification Subtitle, and penalizes the Secretary by stepped reductions in the amount so authorized if the ASCA compliance program model form is not promulgated in a timely manner. In this connection, note that the Antideficiency Act, 31 U.S.C. § 1341(a)(1), provides that:

An officer or employee of the United States Government or of the District of Columbia government may not—

- (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;
- (B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.”

XII. LATE PROMULGATION OF MODEL ASCA COMPLIANCE FORM

Indicating concern regarding the Secretary’s ability to promulgate the model ASCA compliance plan model form in a timely manner, Congress saw fit to include Section 5 in ASCA, which provides that the sum autho-

rized to be appropriated will automatically be reduced if such promulgation is late; fourteen days late means a 25% reduction; thirty days late means a 50% reduction; forty-five days late means a 75% reduction; and sixty days late means a 100% reduction.

XIII. CONCLUSION AND BEGINNING

As all the foregoing indicates, ASCA is not always clear and judgments will have to be made in anticipation of the dates, including those added by ASCA, before which and by which certain actions can, should or must be taken under HIPAA and under ASCA. Suffice it to say that Congress could have done much more to address HIPAA concerns; for now, we will have to be satisfied

with less, but certainly with enough to keep us interested. We are fortunate that the DHHS generally, and the Office for Civil Rights specifically, are dedicating substantial resources to HIPAA and continue to solicit our comments, suggestions, and ideas.

Now is a good time to recall the Secretary's introductory comments in the first DHHS guidance on the final privacy rule published July 6, 2001: "HHS and most parties agree that privacy protections must not interfere with a patient's access to or the quality of health care delivery." Hopefully, ASCA will enhance and not interfere with access to and the quality of healthcare delivery, because that is what HIPAA and ASCA should be all about. ■

Department of Health and Human Services
Health Insurance Portability and Accountability Act of 1996
Electronic Health Care Transactions and Code Sets Standards Model Compliance Plan

In 1996, the Health Insurance Portability and Accountability Act (HIPAA) became law. It requires, among other things, that the Department of Health and Human Services establish national standards for electronic health care transactions and code sets. October 16, 2002 was the original deadline for *covered entities* to comply with these new national standards. However, in December 2001, the Administrative Simplification Compliance Act (ASCA) extended the deadline for compliance with HIPAA Electronic Health Care Transactions and Code Sets standards (codified at 45 C.F.R. Parts 160, 162) one year – to October 16, 2003 – for all *covered entities* other than *small health plans* (whose compliance deadline is already October 16, 2003). In order to qualify for this extension, *covered entities* must submit a compliance plan by October 15, 2002. Completion and timely submission of this model compliance plan will satisfy this federal requirement, and assist us in identifying and addressing impediments to your timely and effective implementation of the HIPAA Electronic Health Care Transactions and Code Sets standards. If you are a *covered entity* other than a *small health plan* and do not submit a compliance plan, you must be compliant with the HIPAA Electronic Health Care Transactions and Code Sets standards by October 16, 2002.

For general information about HIPAA and instructions on how to complete this compliance plan, refer to our website, www.cms.hhs.gov/hipaa. You can go to the website and submit this on-line compliance plan electronically, and we will provide an on-line confirmation number as acknowledgment of your extension. This on-line compliance plan is a model only, and is provided for your information. *Covered entities* have the option of submitting their own version of a compliance plan that provides equivalent information. Refer to the instructions on our website for information on how to file alternative submissions. For those filing electronically, your electronic confirmation number will be the only notice that you have received an extension. No other notice will be provided for electronic or paper submissions. If your paper plan consists of the equivalent information required by the statute (*covered entity* and contact information; reasons for filing for the extension; implementation budget; and the three phases of the implementation strategy) your plan is complete and you may consider your extension granted.

For information on *defined terms* used in this document, refer to 45 C.F.R. 160.103 or 162.103.

Section A: Covered Entity and Contact Information

1. Name of *Covered Entity* 2. Tax Identification Number 3. Medicare Identification Number(s)

4. Type of *Covered Entity* (Check all that apply from these drop-down menus)
- Health Care Clearinghouse*
 Health Plan
 Health Care Provider

Dentist
DME Supplier
Home Health Agency
Hospice
Hospital
Nursing Home
Pharmacy
Physician/Group Practice
Other

5. Authorized Person 6. Title

7. Street
8. City State Zip
9. Telephone Number
-

Section B: Reason for Filing for This Extension

10. Please check the box next to the reason(s) that you do not expect to be compliant with the HIPAA Electronic Health Care Transactions and Code Sets standards (45 C.F.R. Parts 160, 162) by October 16, 2002. Multiple boxes may be checked.

- Need more money
 - Need more staff
 - Need to buy hardware
 - Need more information about the standards
 - Waiting for vendor(s) to provide software
 - Need more time to complete implementation
 - Waiting for clearinghouse/billing service to update my system
 - Need more time for testing
 - Problems implementing code set changes
 - Problems completing additional data requirements
 - Need additional clarification on standards
 - Other
-

Section C: Implementation Budget

This question relates to the general financial impact of the HIPAA Electronic Health Care Transactions and Code Sets standards (45 C.F.R. Parts 160,162) on your organization.

11. Select from the drop-down menu the range of your estimated cost of compliance with the HIPAA Electronic Health Care Transactions and Code Sets standards (45 C.F.R. Parts 160, 162):

- | | |
|--|-------------------------|
| | Less than \$10,000 |
| | \$10,000 - \$100,000 |
| | \$100,000 - \$500,000 |
| | \$500,000 - \$1 million |
| | Over \$1 million |
| | Don't know |
-

Section D: Implementation Strategy

This Implementation Strategy section encompasses HIPAA Awareness, Operational Assessment, and Development and Testing. For more details on completing each of these subsections, refer to the model compliance plan instructions at www.cms.hhs.gov/hipaa.

Implementation Strategy Phase One -- HIPAA Awareness

These questions relate to your general understanding of the HIPAA Electronic Health Care Transactions and Code Sets standards (45 C.F.R. Parts 160, 162).

12. Please indicate whether you have completed this Awareness phase of the Implementation Strategy.
 Yes No

If yes, skip to (14), and then to Phase Two – Operational Assessment. If no, please answer both (13) and (14). Have you determined a:

13. Projected/Actual Start Date:
(select month/year from this drop-down menu)

14. Projected/Actual Completion Date:
(select month/year from this drop-down menu)
-

Implementation Strategy Phase Two -- Operational Assessment

These questions relate to HIPAA operational issues and your progress in this area.

15. Please indicate whether you have completed this Operational Assessment phase of the Implementation Strategy.
 Yes No

If yes, proceed to (20) and then Phase Three – Development and Testing. If no, please answer all the following questions. Have you:

16. Reviewed current processes against HIPAA Electronic Health Care Transactions and Code Sets standards (45 C.F.R. Parts 160, 162) requirements?
 Yes No Initiated But Not Completed
17. Identified internal implementation issues and developed a workplan?
 Yes No Initiated But Not Completed
18. Do you plan to or might you use a contractor/vendor to help achieve compliance?
 Yes No Undecided

19. Projected/Actual Start Date:
(select month/year from this drop-down menu)

20. Projected/Actual Completion Date:
(select month/year from this drop-down menu)
-

Implementation Strategy Phase Three --- Development and Testing

These questions relate to HIPAA development and testing issues. ASCA legislation requires that testing begin no later than April 16, 2003. For more details, refer to the model compliance plan instructions at www.cms.hhs.gov/hipaa.

21. Please indicate whether you have completed this Development and Testing phase of the Implementation Strategy.

Yes No

If yes, proceed to (26). If no, please answer all the following questions. Have you:

22. Completed software development/installation?

Yes No Initiated But Not Completed

23. Completed staff training?

Yes No Initiated But Not Completed

24. Projected/Actual Development Start Date: (select month/year from this drop-down menu)

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25. Projected/Actual Initial Internal Software Testing Start Date: (select month/year from this drop-down menu)

--	--

26. Projected/Actual Testing Completion Date: (select month/year from this drop-down menu)

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**CLICK HERE TO
SUBMIT
ELECTRONICALLY**

**CLICK HERE TO CLEAR
PLAN**

FOR PAPER SUBMISSIONS:

Please mail paper versions of this model compliance plan to:

Attention: Model Compliance Plans
Centers for Medicare & Medicaid Services
P.O. Box 8040
Baltimore, MD 21244-8040

CMS will not provide an acknowledgment of receipt of paper submissions of this model compliance plan. For proof of delivery, we suggest that you use the U.S. Postal Service.

Department of Health and Human Services
HIPAA Electronic Health Care Transactions and Code Sets Standards
Model Compliance Plan Instructions

Overview

In 1996, the Health Insurance Portability and Accountability Act (HIPAA) became law. It requires, among other things, that the Department of Health and Human Services establish national standards for electronic health care transactions and code sets. October 16, 2002 was the original deadline for *covered entities* to comply with these new national standards. However, in December 2001, the Administrative Simplification Compliance Act (ASCA) extended the deadline for compliance with HIPAA Electronic Health Care Transactions and Code Sets standards (codified at 45 C.F.R. Parts 160, 162) one year – to October 16, 2003 – for all *covered entities* other than *small health plans* (whose compliance deadline is already October 16, 2003). In order to qualify for this extension, *covered entities* must submit a compliance plan by October 15, 2002. Completion and timely submission of this model compliance plan will satisfy this federal requirement, and assist us in identifying and addressing impediments to your timely and effective implementation of the HIPAA Electronic Health Care Transactions and Code Sets standards. If you are a *covered entity* other than a *small health plan* and do not submit a compliance plan, you must be compliant with the HIPAA Electronic Health Care Transactions and Code Sets standards by October 16, 2002.

You can submit this on-line model compliance plan electronically, and we will provide an on-line confirmation number as acknowledgment of your extension. This on-line compliance plan is a model only, and is provided for your information. *Covered entities* have the option of submitting their own version of a compliance plan that provides equivalent information. Refer to the “Alternative Submissions” section of these instructions for more information. For those filing electronically, your electronic confirmation number will be the only notice that you have received an extension. No other notice will be provided for electronic or paper submissions. If your paper plan consists of the equivalent information required by the statute (*covered entity* and contact information; reasons for filing for the extension; implementation budget; and the three phases of the implementation strategy) your plan is complete and you may consider your extension granted.

Completing this model compliance plan takes about 15-20 minutes. Simply answer a few questions about compliance concerns you may have, and tell us where you are in the implementation process.

The Centers for Medicare & Medicaid Services (CMS) will share information obtained from submitted compliance plans with the National Committee on Vital and Health Statistics (NCVHS) as required by the Administrative Simplification Compliance Act. The NCVHS serves as the statutory public advisory body to the Secretary of Health and Human Services in the area of health data and statistics. The NCVHS will use this information to identify barriers to compliance. All information shared with the NCVHS will have identifying information deleted.

For information on *defined terms* used in this document, refer to 45 C.F.R. 160.103 or 162.103.

Who Should File

If you are a *covered entity* and will not be compliant with the HIPAA Electronic Health Care Transactions and Code Sets standards by October 16, 2002, you must file a compliance plan in order to obtain an extension. A *covered entity* is a *health plan, a health care clearinghouse, or a health care provider* who transmits any health information in electronic form in connection with a transaction for which the Secretary has adopted standards at 45 C.F.R. Part 162. These terms are defined at 45 C.F.R. 160.103. The term “*health care provider*” includes individual physicians, physician group practices, dentists, other health care practitioners, hospitals, nursing facilities, and so on.

If you are a member of a group practice, the extension will be granted to all physicians/practitioners who are members of that practice. It is not necessary to file separate compliance plans for each physician in the practice if the practice files all claims on your behalf. However, if you submit claims for payment outside of the group’s claims processing system, you need to file your own compliance plan.

You do not have to file a compliance plan if you will be compliant by October 16, 2002 but one or more of your trading partners is not yet HIPAA compliant. But remember that you/your organization must be HIPAA compliant by this date (or by October 16, 2003 if you are filing a compliance plan) for all transactions that apply to you.

When to File

Compliance plans must be submitted electronically no later than October 15, 2002. Paper submissions should be postmarked no later than October 15, 2002. Compliance plans filed electronically and paper submissions received or postmarked after this date will not qualify for the extension.

How to File

Electronic submission is the fastest, easiest way to file your compliance plan. Just complete the model compliance plan on-line, click “Submit” at the end, and it will be on its way to us electronically. For those filing electronically, your electronic confirmation number will be the only notice that you have received an extension. No other notice will be provided for electronic or paper submissions. If your paper plan consists of the equivalent information required by the statute (*covered entity* and contact information; reasons for filing for the extension; implementation budget; and the three phases of the implementation strategy) your plan is complete and you may consider your extension granted.

Please do NOT electronically submit AND mail paper copies of this model compliance plan. One submission per *covered entity*, either electronically OR paper, will suffice.

Alternative Submissions

Covered entities that use the model compliance plan provided on our website, www.cms.hhs.gov/hipaa can file electronically. If you cannot submit your compliance plan electronically via our website, or you want to submit your own version of a compliance plan

that provides equivalent information, it must be printed and mailed to us. Please send paper submissions of your compliance plan postmarked no later than October 15, 2002 to:

Attention: Model Compliance Plans
Centers for Medicare & Medicaid Services
P.O. Box 8040
Baltimore, MD 21244-8040

CMS will not acknowledge receipt of paper submissions. For proof of delivery, we suggest you use the U.S. Postal Service.

Section A: Covered Entity and Contact Information

(1) Name of *Covered Entity*. Please enter the name of the *covered entity* for which you are filing this compliance plan. See “Who Must File” above for more information.

If you are filing for multiple related *covered entities* that are operating under a single implementation plan, list their names, tax identification numbers and Medicare identification numbers. Compliance plans for unrelated multiple *covered entities* or for related *covered entities* that are not included under the same implementation plan must be filed separately. Are you filing for a health plan, health care clearinghouse or other health care organization that has multiple components? If they are operating under the same implementation plan, then you can file one compliance plan on their behalf. If not, then you must file separate compliance plans for each entity. See also (5) “Authorized Person” for more information.

(2) Tax Identification Number. Enter each *covered entity's* IRS Employer Identification Number (EIN). If there is no EIN, enter the *covered entity's* Social Security Number. While an EIN or Social Security Number is not required, this information will facilitate ensuring that the correct *covered entity* obtains the extension.

(3) Medicare Identification Number.

Please enter the identification number that applies to each *covered entity* listed.

- If you are a Medicare physician or physician group, enter your UPIN number.
- If you are a supplier of durable medical equipment, enter your NSC number. If you have multiple locations under one EIN, just report the initial location's number (a 6-digit number followed by 0001)
- If you are an institution, enter your OSCAR number. This is your 6-digit Medicare billing number.

If you are not a Medicare provider, you need not enter any identification number in (3).

(4) Type of *Covered Entity*. Tell us which *covered entity* category applies to your organization. Check all boxes that apply.

(5) Authorized Person. Provide the name of a person who is authorized to request the extension and provide the information. This might be the individual physician, business/practice

manager, a corporate officer, chief information officer or other individual who is responsible for certifying that the information provided is accurate and correct. (You may include a title, e.g., Dr.). If filing for multiple *covered entities*, this person should be authorized to request the extension for all the listed *covered entities*. Otherwise, a separate compliance plan must be filed to indicate the authorized person for each respective *covered entity*.

(6) Title. Provide the title for the person shown in (5).

(7) Street. Enter the street mailing address/post office box for the person shown in (5)

(8) City/State/Zip. Enter this information for the person's address as shown in (5).

(9) Telephone Number: Enter the telephone number (including area code) for the person shown in (5).

Section B: Reason for Filing for This Extension

(10) Please let us know the reason(s) why you will not be in compliance with the HIPAA Electronic Health Care Transactions and Code Sets standards (45 C.F.R. Parts 160, 162) by October 16, 2002. Check all boxes that apply. If the reason you will not be compliant is not shown, check "Other" and briefly specify the reason for non-compliance.

Section C: Implementation Budget

This question asks about the estimated financial impact of HIPAA compliance on your organization. Please respond to (11) by indicating on the drop-down menu which category most closely reflects your estimate of your HIPAA compliance costs. If you're not sure, check "Don't Know."

Section D: Implementation Strategy

This section asks about overall awareness of the HIPAA Transactions and Code Set Standards, Operational Assessment, and Development and Testing. These are collectively referred to as the Implementation Strategy.

Implementation Strategy Phase One -- HIPAA Awareness

If you have completed this Awareness phase of the Implementation Strategy, check YES (12) and skip to (14), indicating your completion date for this phase. Then proceed to Phase Two – Operational Assessment. If you answer (12) NO, answer (13) and (14).

To complete this Awareness phase you should

- obtain information regarding HIPAA Electronic Transactions and Code Sets Standards;
- discuss this information with your vendors; and
- conduct preliminary staff education.

Tell us when you started or plan to start this activity (13), and when you completed or plan to complete activity for this Awareness phase of the Implementation Strategy (14).

Implementation Strategy Phase Two -- Operational Assessment

If you have completed this Operational Assessment phase of the Implementation Strategy, check YES (15) and skip to (20), indicating your completion date for this phase. Then proceed to Phase Three – Development and Testing. If you answer (15) NO, answer all questions (16) through (20).

To complete this Operational Assessment phase you should

- inventory the HIPAA gaps in your organization;
- identify internal implementation issues and develop a workplan to address them; and
- consider and decide whether or not to use a vendor or other contractor to assist you in becoming compliant with the HIPAA Electronic Health Care Transactions and Code Sets standards.

Indicate your progress for tasks (16) through (18), and projected/actual start and completion dates for this phase in the boxes provided (19) and (20).

Implementation Strategy Phase Three -- Development and Testing

If you have completed this Development and Testing phase, check YES (21) and skip to (26), indicating your completion date. If you answer (21) NO, answer all questions (22) through (26).

To complete this Development and Testing phase, you should

- finalize development of applicable software and install it;
- complete staff training on how to use the software; and
- start and finish all software and systems testing.

Show your progress for tasks (22) and (23) for resolving computer software conversion to a HIPAA compliant system and training your staff. Indicate your projected/actual development start dates (24), projected/actual initial internal software testing date (25) and final testing completion date (26).

The model compliance plan is now complete. You may click on “Clear Plan” to delete your entries and revise your information, or “Submit Electronically” to electronically submit this model compliance plan; or print it and follow the instructions for paper submissions in the “How to File” section of these instructions.