

Health Law

ADVISORY BULLETIN



CONTENTS

HIPAA Transactions & Code Sets: Extension Procedures for New Compliance Deadline Announced

HIPAA TRANSACTIONS & CODE SETS: EXTENSION PROCEDURES FOR NEW COMPLIANCE DEADLINE ANNOUNCED

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On Thursday, March 28, 2002, the U.S. Department of Health & Human Services (DHHS) released the model form for covered entities under the Health Insurance Portability & Accountability Act of 1996 (HIPAA) to request a year's extension in complying with the HIPAA Transaction & Code Set (TCS) rules. This extension is the result of the Administrative Simplification Compliance Act passed by Congress in late 2001 and signed into law by President Bush in January 2002.

The present TCS compliance deadline is October 16, 2002 (except for small health plans). With the extension, the new deadline will be October 16, 2003; however, the extension is not automatic. A covered entity must submit an extension request by October 15, 2002 to receive the extension.

FILING PROCEDURE

The model form (or a similar form) must be filed with DHHS to obtain the extension. Filing is sufficient to obtain the extension – there is no approval process with respect to the submitted form. Since DHHS has an electronic filing system in operation, the form can be filed electronically. DHHS will send an electronic acknowledgement of an electronic filing.

The model form also may be filed by mail. In that case, DHHS will not acknowledge receipt. DHHS recommends that covered entities filing by mail use a return receipt, so they will have proof of filing.

COMPLETING THE FORM

The form and DHHS's instructions for filling it out can be found at www.cms.gov/hipaa/hipaa2/default.asp.

The form requires each covered entity to furnish information about its implementation strategy and budget for complying with the HIPAA TCS rules. DHHS expects every covered entity to have a TCS implementation strategy and budget. The DHHS extension form divides the implementation plan into three phases:

- (1) HIPAA Awareness
- (2) Operational Assessment
- (3) Development and Testing

The form features a series of short questions. Some are "yes-no" or multiple choice (from a menu of choices). Others require supplying a date (such as when a phase of TCS compliance was or will be completed) or a short answer.

SHOULD COVERED ENTITIES FILE FOR THE TCS EXTENSION

In most cases, the answer will be "yes."

The simple fact is that DHHS and various "Designated Standards Maintenance Organizations" or "DSMOs" still are refining the implementation guides to the TCS standards. Changes to the TCS implementation guides, often referred to as the "addenda," are expected to be issued by DHHS in the coming months. It will be more efficient and less expensive for covered entities to implement and test the standards after the next round of changes. Those changes, however, are unlikely to be made before the current deadline in October 2002. That is one reason why an extension makes sense.

Moreover, a covered entity's compliance with the TCS standards is dictated to some degree by the compliance of its business associates and

trading partners. Because the TCS standards are going to change and because most of the industry will seek the extension, chances are good that many business associates and trading partners will not, in fact, meet the TCS standards in October 2002. A covered entity likely will not be able to accurately represent to DHHS that it is in compliance with the TCS rules, if its trading partners apply for the extension and require the covered entity to submit or accept noncomplaint transactions. If a covered entity planned to rely on a clearinghouse to meet the TCS standards and that clearinghouse will be filing for an extension, then the covered entity will need to request an extension as well.

Finally, DHHS made every attempt to simplify the extension process. The form is streamlined and easy to complete. There is no filing fee for submitting an extension request. And grant of the extension occurs upon filing.

Any covered entity (other than a small health plan) that does not request an extension must be in compliance with the existing TCS standards as of October 16, 2002 – fewer than seven months away. It seems likely most covered entities will seek the extension.

THINGS TO KEEP IN MIND

This extension is for Transaction & Code Sets only. It does not change the compliance date for the HIPAA Privacy compliance, which is April 14, 2003.

To obtain the TCS extension, a covered entity is required to begin testing its TCS implementation no later than April 16, 2003, six months before the extended TCS compliance deadline of October 16, 2003. Therefore, covered entities should not use the extension as an excuse to procrastinate.

Finally, a covered entity that files the form and obtains the TCS compliance extension is representing to DHHS that it has a HIPAA TCS implementation plan and budget. A covered entity should be very careful in filling out the form, to ensure the responses accurately reflect the entity's TCS plan and budget.

CONCLUSION

Ready or not for TCS, a covered entity should seriously consider taking advantage of the opportunity to request a compliance extension.

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