



Center for Medicaid and State Operations
Disabled and Elderly Health Programs Group (DEHPG)

AUG 22 2006

From: Director
Disabled and Elderly Health Programs Group

Subject: Digital Healthcare Inquiries

To: All Associate Regional Administrators
Division of Medicaid and State Operations

We have become aware that numerous health care plans and other payers and providers have received letters and follow-up automated phone calls from a company named Digital Healthcare (Digital). From a review of copies of the letters that have been shared with CMS it is apparent that Digital is requesting that health plans and managed care organizations "open a gateway" to their subscriber/dependent eligibility files and either send their entire eligibility files to Digital, or respond to eligibility inquiries from Digital. The broadcast letters, in various iterations, state that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires these other covered entities to conform with this request.

It is CMS policy that neither the Administrative Simplification provisions of HIPAA nor the Transactions and Code Sets Standards Rule (codified at 45 C.F.R. Parts 160 and 162) addresses with whom a covered entity may choose to do, or not to do, business. Consequently, these provisions do not prohibit health plans from rejecting standard transactions based on business reasons other than the fact that the transactions are "standard transactions." See 45 C.F.R. § 162.925(a)(2). Additionally, see the preamble language at 65 FR at 50315 which states:

"[W]hile we interpret HIPAA to mean that a health plan cannot refuse to conduct a transaction because it is a standard transaction, we do not believe that use of standard transaction can create a relationship or liability that does not exist."

See also the preamble language at 50336 which notes the need for covered entities to agree to exchange transactions before the standard can be required:

"Under this rule health plans are only required to accept COB transactions from other entities, including those that are not covered entities, with which they have trading partner agreements to conduct COB. Once such an agreement is in place, a health plan may not refuse to accept and process a COB transaction on the basis that it is a standard transaction. For example, a health plan receives a standard ASC X12N 837 transaction from a health care provider with which it has a COB trading partner agreement. If the health plan is not the primary payer, it must accept and process the COB information to adjudicate the claim. If the

health plan has decided to conduct COB transactions with another payer, it must accept and store the COB information to use in a COB transaction with the other payer. If the health plan is the primary payer and does not have a trading partner agreement with the secondary payer, then it may simply dispose of the COB information and leave the COB activity up to the health care provider. If a health plan electronically conducts COB with another health plan it must do so using the standard transaction. A health care provider that chooses to conduct COB electronically with a health plan must do so using the standard transaction. A COB transmission between a health care provider and a payer that is not a health plan would not be subject to the requirements of this rule; nor would the transmission of a COB transaction from a health plan to another payer that is not another health plan.”

In their letters, Digital states that they are representing the Medicaid programs in the States of Arkansas or Kansas in performing claims audits. If health plans would respond to requests from these State Medicaid programs, they could respond to representatives of the programs. If there is any concern about Digital, health plans should contact the respective State Medicaid program.

If a health plan or provider should make a voluntary decision to enter into a business relationship with Digital or any other private company making such a request, we stress that necessary Trading Partner Agreements be negotiated and put in place; that personally identifiable health information be protected by sharing the minimally necessary amount to accomplish the intended result and that the health plan or provider ensure that Digital Healthcare or any other contractor has a plan in place for safeguarding this information. This would include assuring the data is only used for the intended purpose and that there are security arrangements to safeguard the data when it is placed in storage.

We hope that this memorandum is helpful to Regional Offices in responding to inquiries you may receive from States or others on this issue. The CMS Office of E-Health Standards and Services (OESS) is the CMS lead for information on HIPAA transactions and code set issues. Questions related to HIPAA generally may be directed to Stanley Nachimson at 410-786-6513.

If you have any questions regarding this information, please call Phil Otto at 410-786-7252.


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