



CLIENT ADVISORY

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The Centers for Medicare and Medicaid Services (“CMS”) announced the implementation of a contingency plan for covered entities that will not be in compliance with the National Provider Identifier (“NPI”) regulations as of May 23, 2007 (small health plans compliance date is May 23, 2008). The NPI is an identifier for electronic health care transactions. A covered entity must use an NPI on all HIPAA covered transactions requiring a health care provider identifier.

A covered transaction requires both participants to be compliant with this regulation. If a participant is not compliant, CMS will review such entity’s good faith efforts to become compliant with NPI standards in determining whether there is reasonable cause for the noncompliance and, if so, the extent to which the time for curing the noncompliance should be extended. Such good faith efforts might include:

- Increased external testing with trading partners;
- Lack of availability of, or refusal by, the trading partner(s) prior to May 23, 2007 for health plans to test the transaction(s) with the covered entity whose compliance is at issue;
- A health plans concerted effort in advance of the May 23, 2007 and continued efforts afterwards to conduct outreach and make testing opportunities available to its provider community; and
- A health care provider having obtained a NPI and having the ability to use it.

CMS will not impose any penalties on covered entities that deploy contingency plans for a 12 month period after the compliance date if such entity has made reasonable and diligent efforts to be compliant, and in the case of health plans, to facilitate the compliance of their trading partners. A covered entity may not extend its contingency plan beyond May 23, 2008.

The CMS’ will concentrate on voluntary compliance and use a complaint-driven approach for enforcement. When a complaint is received, CMS will notify the covered entity in writing that a complaint has been filed. The covered entity will have the opportunity to 1. demonstrate compliance; 2. document its good faith efforts to comply with the standards and 3. submit a corrective action plan.

It is encouraged that all covered entities intensify their efforts to achieve compliance with the NPI requirements.

