

January 2007 LEGAL ALERT Notice:

HIPAA's National Provider Identifier (NPI) – Why Health Plans Should Care

Beginning on May 23, 2007, yet another of the Health Insurance Portability and Accountability Act's (HIPAA's) administrative simplification provisions will go into effect. On that date, all covered health care providers must have obtained a new national unique identifier, known as the National Provider Identifier, or "NPI." The Centers for Medicare and Medicaid Services (CMS), which oversees NPI implementation, has taken measures to educate the health care community regarding the new requirement and the suggested compliance steps. CMS has included the health plan community within the scope of these educational efforts, but why? For the most part, employer health plans are not considered health care providers so, at least in theory, these plans should not be concerned with the NPI. However, as this Alert explains, employer health plans may have obligations arising from the adoption and implementation of the NPI. Moreover, health plans and business associates that have not started taking steps to comply may have a difficult time meeting the deadline.

Understanding what the NPI requirement means to health care providers may make understanding the implications to health plans a little easier. Typically, health plans and networks assign health care providers an identification number in order to participate in the health plan and/or network. Each plan and/or network may use its own numbering system. This means that a single health care provider has several, if not many, identification numbers that it must track in order to bill for its services. Keeping these numbers straight (i.e., using the right number at the right time) can be a full-time administrative job. Mistakes can be costly, both in terms of the time it takes to correct them, as well as the failure to receive timely payment for services. Often, despite best efforts, the chaos resulting from the array of

numbers that apply to the same health care provider can be daunting and result in all kinds of billing mistakes. At a minimum, having so many different numbers simply slows the whole system down.

Congress hoped to correct this and other related problems by requiring the Department of Health and Human Services to implement a unique identification system for health care providers. The result is the National Provider System (NPS) which will assign an NPI to each health care provider who conducts standard transactions electronically. Standard transactions are another HIPAA administrative simplification requirement and include submitting claims for payment, determining eligibility, making referrals, determining claim status, enrollment and disenrollment, and coordination of benefits. Health care providers who perform standard transactions electronically, either directly or through a business associate, are called "covered health care providers." Those health care providers who do not engage in standard transactions electronically are also eligible to obtain NPIs, and the CMS, which oversees the implementation of the NPS, encourages all health care providers to obtain NPIs.

The final NPI regulations specify two types of health care providers: individual health care providers and organization health care providers. In both cases, the NPS will assign the health care provider a unique 10-digit identifier – the NPI. The health care provider will be required to use the NPI as the provider identifier on any of the standard transactions – even though a health plan had previously assigned the provider a different participation identification number. Consequently, health plans must be able to electronically recognize and accept these new numbers in all standard transactions where the provider's identifier is required. Health plans

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are also going to need to be able to cross-reference the new NPI to the health plan's legacy participation identification number for that provider, because as of the compliance date, health plans cannot require providers to provide those legacy participation numbers on standard transactions.

The implementation of the NPI has ramifications for employer health plans, particularly self-insured plans. In those instances where the plans perform their own electronic transactions, the plans must take steps to ensure that their own automated systems can accommodate the NPIs and cross-reference them, as needed, to legacy participation identification numbers. This effort will require systems modification and testing – which can be time-consuming tasks. These health plans should also be communicating with their provider community to encourage them to begin using their NPIs prior to the compliance date and to include their legacy plan identification numbers until the compliance date. Having both the NPI and the legacy number will assist health plans in building the crosswalk that will be required to work from the old operations to the new. Finally, in the event that the employer health plan qualifies as a covered health care provider, the plan must also obtain its own NPI.

Perhaps the greatest exposure for employer health plans with respect to NPI arises from the health plans' use of business associates for plan administration and related purposes. CMS has taken the position that the health plan remains responsible for the actions of its business associates. Thus, the failure of a business associate to comply with the NPI regulations may expose the health plan to

liability if the health plan had reason to know about the noncompliance and failed to take reasonable steps to cure it, including terminating the agreement where necessary. Health plans that fail to hold their business associates accountable for complying with the NPI requirements may therefore find themselves liable, in accordance with the federal common law of agency, for civil money penalties. These fines can be as much as \$100 per violation and \$25,000 per year for identical violations.

Employer health plans should contact their business associates to verify that they are prepared to accept and transmit NPIs and that they will meet the related NPS requirements. This is also a good opportunity for employer health plans to review existing business associate agreements to ensure that the agreements are up-to-date and address, even indirectly, implementing NPIs. Finally, employer health plans should review their template business associate agreements and modify them as necessary to explicitly require business associates to accommodate the NPI requirement and other administrative simplification requirements.

Regardless of which steps may apply to your employer health plan, you should not waste any time in taking them. The May 23, 2007 deadline (May 23, 2008 for small plans) is fast approaching.

Patricia C. Shea

patricia.shea@klgates.com

717.231.5870

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