

COVERED ENTITIES REQUIRED TO COMPLY WITH HIPAA NATIONAL PROVIDER IDENTIFIER RULE BY MAY 23, 2007 BUT MAY QUALIFY FOR ENFORCEMENT RELIEF IN ACCORDANCE WITH NEW APRIL 2, 2007 NPI COMPLIANCE CONTINGENCY GUIDANCE

Tuesday, April 10, 2007

May 23, 2007 is the deadline for health plans (other than small health plans), health care providers, and healthcare clearinghouses ("covered entities") covered by the Administrative Simplification requirements of the Health Insurance Portability & Accountability Act of 1996 to begin using the National Provider Identifier rule (the "NPI Rule"). According to the National Provider Identifier Compliance Contingency Guidance (the "NPI Contingency Guidance") released on April 2, 2007 by the Centers for Medicare & Medicaid Services (CMS), however, covered entities that adopt appropriate trading partner contingency plans can qualify for special penalty enforcement relief. Absent this guidance, most HIPAA covered entities generally would be exposed to penalties for failing to comply with the requirements of the National Provider Identifier final rule by May 23, 2007.

The NPI Contingency Guidance emphasizes that May 23, 2007 is the final deadline for covered entities other than small health plans to begin complying with the NPI Rule. In recognition of some of the practical challenges that are likely to arise in implementing processes to comply with final NPI Rule, however, CMS announced in the NPI Contingency Guidance last week that CMS will not impose penalties for noncompliance with the NPI Rule on covered entities that deploy contingency plans to facilitate the compliance of their trading partners (e.g. those healthcare providers who bill them) in accordance with the NPI Contingency Guidance through May 23, 2008. Covered entities

CMS will host a National Roundtable on the NPI Contingency Guidance on Wednesday April 18, 2007, from 2:30 p.m. – 4:00 p.m., EDT for parties interested in learning more about the NPI Contingency Guidance.

NPI Rule Deadline and NPI Contingency Guidance Delay of Enforcement Penalties

The final NPI rule published in January, 2004, which established the NPI as the standard unique health provider identifier for healthcare providers, generally requires all covered entities to begin using the National Provider Identifier in accordance with the final NPI Rule by May 23, 2007. The deadline for small health plans to be in compliance is May 23, 2008.

The enforcement relief offered under the April 2, 2007 NPI Contingency Guidance through May 23, 2008 will be contingent upon a covered entity's ability to demonstrate to the satisfaction of CMS that it has deployed contingency plans to ensure the smooth flow of payments, have made reasonable and diligent efforts to become compliant, and, in the case of health plans (that are not small health plans), have made reasonable and diligent efforts to facilitate the compliance of their trading partners. Specifically with respect to health plans, the NPI Contingency Guidance states that as long as a health plan (that is not a small health plan) can demonstrate to CMS its active outreach/testing efforts, it can continue processing payments to providers.

In determining whether a good faith effort has been made, the NPI Contingency Guidance states that CMS will place a strong emphasis on sustained actions and demonstrable progress toward compliance with the NPI Rule. Covered entities wishing to position themselves to qualify for the enforcement relief afforded by the NPI Contingency Guidance should ensure that they take appropriate and well-documented steps to demonstrate their good faith and reasonable efforts to facilitate compliance with the rules by themselves and their trading partners. The NPI Contingency Guidance identifies potential factors that might be used to demonstrate good faith efforts as including:

- √ 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 (other than small health plans) to test the transaction(s) with the covered entity whose compliance is at issue coupled with

demonstrated concerted efforts by the health plan in advance of May 23, 2007 and continued efforts afterwards to conduct outreach and make testing opportunities available to its provider community

√ For a health care provider, having obtained an NPI and having the ability to use it on HIPAA transactions.

April 18 National Roundtable on the NPI Contingency Guidance

CMS announced yesterday that it will host a National Roundtable on the NPI Contingency Guidance on April 18, 2007 beginning from 2:30 – 4:00 p.m. EDT. The call will open with a presentation on the Contingency Guidance announced on April 2 followed by an opportunity for callers to ask questions of CMS subject matter experts.

Parties wishing to receive the call-in information must register for the call by the registration deadline at 1:00 p.m. EST on April 17, 2007. To register for the call, go to https://ww4.premconf.com/websvp/register?conf_id=7749423 and follow the instructions.

For those individuals who are unable to attend, an audio file of the conference will be posted on the CMS website at www.cms.hhs.gov/NationalProvIdentStand/04_education.asp.

The impending NPI Rule compliance deadline is only one of a series of recent developments relating to the HIPAA compliance obligations of HIPAA covered entities. Additional information about other recent selected developments and other HIPAA compliance resources is available at Cynthiastamer.com

For specific information about your organization's specific responsibilities under HIPAA or other related matters, please contact Ms. Stamer or other suitably qualified legal counsel.

We hope that this information is useful to you. If you have questions about HIPAA or other matters affecting covered entities and their operations, for other helpful agency links and materials, to request publications, information about upcoming programs, or for inquires about other matters, please contact: Cynthia Marcotte Stamer, P.C., Member, Glast, Phillips & Murray, P.C., 2200 One Galleria Tower, 13355 Noel Road, LB 48, and Dallas, Texas 75240. Telephone (972) 419-7188. E-mail cstamer@gpm-law.com.

For other helpful resources and information about data security and HIPAA, employee benefits and human resources matters, go to CynthiaStamer.com or contact Ms. Stamer. If you or someone else you know would like to receive future Alerts or announcements about other developments, publications or programs, please be sure that we have your current contact information – including your preferred e-mail – by registering on our website at cynthiastamer.com or by providing that information to us via telephone, fax or e-mail using the above contact information.

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