



AMERICAN ACADEMY OF
FAMILY PHYSICIANS
STRONG MEDICINE FOR AMERICA

August 31, 2011

Donald Berwick, MD
Administrator
Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attention: CMS-0032-IFC
P.O. Box 8013
Baltimore, MD 21244–8013

Re: Adoption of Operating Rules for Eligibility for a Health Plan and Health Care Claim Status Transactions

Dear Dr. Berwick:

On behalf of the American Academy of Family Physicians (AAFP), which represents more than 100,300 family physicians and medical students nationwide, I am writing to offer our comments on the interim final rule, as published in the July 8, 2011 *Federal Register*, that adopts operating rules for two *Health Insurance Portability and Accountability Act* (HIPAA) transactions, eligibility for a health plan and health care claim status.

We appreciate and support the Department of Health & Human Services' (HHS) recognition of the valuable role of operating rules in achieving administrative simplification and its adoption of the Council for Affordable Quality Healthcare's (CAQH) Committee on Operating Rules for Information Exchange (CORE) Phase I and Phase II Operating Rules related to eligibility and claim status transactions.

While the AAFP applauds the detailed evaluation made regarding the CORE operating rules and the proposal to adopt six of the Phase I rules, the AAFP must disagree with the proposal to not adopt the operating rules for "Acknowledgment" transaction standards. Most physicians view Acknowledgment transactions as essential to improving the end-to-end process of transactions. Eliminating the Acknowledgments would create ambiguity for the physician and result in the inefficient use of staff resources who would need to revert to more manual processes (e.g. telephone, logging into a separate portal) to track a claim. For family physicians, many of whom operate practices on very thin margins, this is an expense that could be eliminated with the adoption of Acknowledgments. Delaying inclusion of Acknowledgments in operating rules diminishes the benefits and return on investment for all stakeholders.

The AAFP believes that the goals of administrative simplification will be negatively impacted if the mandatory use of Acknowledgments is delayed until they are adopted by HHS as a HIPAA standard, as discussed in Section II.D.a. of this proposed regulation. Congress did not limit the scope of operating rules under Section 1104 of the *Affordable Care Act* to address only HIPAA-mandated standards. Rather, Section 1104 of the ACA amends HIPAA to permit the development of operating rules that meet common business needs for functions that HIPAA does not address, including those that "provide for timely acknowledgment..."

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As outlined in Table 2 of the proposed regulation, the critical criterion for an operating rule is that it support, and not conflict with, an existing standard mandated under HIPAA. There is no conflict between the CAQH CORE Operating Rules related to Acknowledgments with an existing HIPAA standard. Furthermore, operating rules for Acknowledgments fit squarely within the statutory definition of operating rules because they support and fill gaps to the existing 270/271 eligibility standard and the 276/277 claim status standard. Operating rules for Acknowledgments enable even greater and more rapid adoption of HIPAA transactions.

Finally, the fact that HHS proposes to formally adopt a HIPAA transaction for Acknowledgments in the future does not prohibit the agency from mandating Acknowledgments now as operating rules. From a legal perspective, HHS possess authority to proceed in this way given that operating rules are needed now to promote administrative simplification. Fundamentally, the CAQH CORE Operating Rules do not repeat or conflict with what is in the standard. If and when a HIPAA transaction is mandated, the operating rules can be revised to ensure the ACA definition of operating rules is maintained.

As discussed in Section II.D.b, the AAFP supports the proposal on maintaining voluntary certification for health plans, vendors, clearinghouses, and providers, as exemplified by the CAQH CORE integrated model.

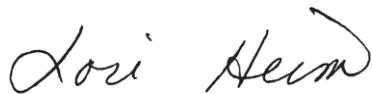
Based on the ACA requirements and industry needs, the AAFP urges HHS to issue regulatory guidance on this topic, and when appropriate leverage the CAQH CORE experience. CAQH CORE Certification for Phase I and II has demonstrated proven benefits for a wide variety of stakeholders. Monitoring of CAQH CORE Certification processes has confirmed that the maximum return on investment is achieved when all entities in the chain of data exchange follow the rules and have online, easily assessable testing through authorized testing entities, independent from certification.

Currently, CMS plans to finalize the rule by January 1, 2012, based on the ACA compliance date of January 1, 2013. The AAFP urges CMS to finalize the regulations prior to January 1, 2012, if at all possible. This will provide health plans, vendors, clearinghouses, and providers with additional time to coordinate implementation of the rule's provisions with implementation of HIPAA version 5010 standards updates. This time to coordinate will help reduce costs and facilitate sharing of best practices.

Finally, we restate that the AAFP recommends that CMS adopt, without exception, the CAQH CORE Phase I and II Operating Rules as a complete set as developed by industry stakeholders. The Operating Rules, as designed by multi-stakeholders, are interdependent and must be used together in order to achieve the maximum ROI for all transactions.

We appreciate the opportunity to provide these comments and make ourselves available for any questions you might have or clarifications you might need. Please contact Robert Bennett, Federal Regulatory Manager, at 202-232-9033 or rbennett@aafp.org.

Sincerely,

A handwritten signature in cursive script that reads "Lori Heim".

Lori J. Heim, MD, FAAFP
Board Chair