CMS/WEDI/CAQH CORE Webinar Part 1: CMS Complaint Reports
Follow-Up Responses from the CMS Division of National Standards

6.27.19

In the first webinar of a two-part summer collaboration between the Centers for Medicare and Medicaid Services (CMS), WEDI and CAQH CORE, the CMS Division of National Standards presented on findings from its investigation of complaints received of non-compliance related to the Administrative Simplification requirements in HIPAA.

CMS has submitted the following responses to outstanding questions received from webinar attendees.

ASETT

1. **Why does the ASETT tool require users to provide personal information including a social security number?**

This is a CMS system security requirement for multi-factor authentication (MFA).

2. **What variables influence whether a transaction file that passes in ASETT will also pass in the Compliance Review finding? What are some examples of cases in which the transaction will not pass?**

A complaint-related transaction file tested by the complainant in our EDIFECS X-engine testing tool is typically one file per transaction. Transaction files tested during a compliance review contain multiple records and cover a defined time period. Artifact files for all transactions that an entity is conducting are tested in the same EDIFECS X-engine testing tool. Violations may be detected in the larger sample that were not detected during the test of a single file.

3. **Are there any plans in the near- or long-term future to modify or enhance the ASETT tool?**

We implement regular releases for system enhancements. Some of these enhancements are transparent to the external user. We welcome suggestions for future improvements.

4. **Does CMS anticipate building a portal to submit service requests**?

There are no immediate plans for portal development for service requests.

5. **Are there any plans to de-identify complaints requiring corrective action and summarize and publish the de-identified issue and resolution? This would be very helpful to promote awareness and encourage other entities to research within their own organization and verify compliance.**

We encourage feedback on our revised complaint statistics reports. In an effort to provide more details about our existing complaints, this suggestion will be considered for a future report.

6. **How can industry participants share their recommendations concerning the ASETT tool with CMS?**

Please submit comments/suggestions to our mailbox hipaacomplaint@cms.hhs.gov. Also, let us know about any additional enforcement-related education that we can provide.

7. **Several attendees requested an end-to-end demo of ASETT**.

We will consider this for a future webinar.

Regulatory Process

8. **What is the process once NCVHS makes a recommendation for a proposed operating rule to NCVHS?**

Once the NCVHS makes a recommendation for a HIPAA standard, CMS evaluates the recommendation and determines next action.

9. **What is the status of the health plan certification of compliance regulation?**

That regulation has been rescinded at this time.

Compliance

10. **Do the HIPAA administrative simplification requirements apply to Medicaid fee-for-service or just Medicaid managed care?**

Medicaid fee-for-service and Medicaid managed care both meet the HIPAA definition for a covered entity health plan and are subject to HIPAA Administrative Simplification requirements.

11. **If a health plan receives a complaint against them for non-compliance with the 278, but no clearinghouses will transact the 278 for them (for dental), what are the health plan's options?**

If a health plan is notified that a complaint has been filed against them for failure to conduct the 278, they have 30 days to respond. Their response should indicate the reason that they are not compliant. We will consider their response and work with the health plan on corrective action, or another interim solution.

12. **30-45 days is a very short timeframe to address some development changes. Does the 30-45 day time frame refer to just forming the corrective action plan or to the plan, development, testing, and deployment?**

The 30-day response time applies to the corrective action plan. The plan will include timeframes needed for development, testing and deployment.

13. **What if the FAE response is that they do not agree with the complaint and they provide evidence for their decision? Will the complaint be denied or is that done earlier in the process?**

If the FAE decides that the entity is compliant and disputes the complaint, we review the information and follow up with the complainant to determine any additional action that may be needed.

14. **Do the penalties differ based on the degree of non-compliance? For example, is CMS more predisposed to sanction FAEs that failed to implement a standard as opposed to a Filed Against Entity (FAE) that implemented a standard incorrectly?**

For either violation a corrective action plan is required. The corrective action plan must be approved by CMS. Based on the corrective action plan, the need for additional enforcement and remediation are then determined.

15. **What happens if a health plan has not submitted a corrective action plan and it has been over a year? What type of penalties would be given? In general, what variables influence the type of penalties given to a health plan?**

If a complaint entity is not responsive to our requests, the complaint is escalated and reviewed for further enforcement activity. We do not wait a year to determine that an entity is not responsive.

16. **If an entity was found to be non-compliant, but completed a corrective action plan, would they still be fined?**

No, once an entity completes their corrective action plan, CMS monitors progress and communicates with the entity until successful implementation of the corrective action plan.

Statistics

17. **How many health plans and/or clearinghouses have been audited through the Compliance Review process started in April? When will these numbers/results be available?**

We are currently nine entities. They are in various assessment phases of our compliance review process. When we have results, we intend to post reports, which are currently in development. We also are conducting a compliance review pilot on three volunteer providers.

18. **What is the breakdown of stakeholder types submitting complaints to CMS?**

Complaints typically are filed by health plans, clearinghouses, providers, vendors, consultants and attorneys.

19. **What is the breakdown of stakeholder types FAEs?**

FAEs consist of health plans and their business associates, the same types of entities that file complaints.

CMS/WEDI/CAQH CORE Webinar Part 1: CMS Complaint Reports
Follow-Up Responses from the CMS Division of National Standards

6.27.19

20. **How many patients file a complaint each year? What types of complaints do they file?**

Patient complaints are typically invalid for HIPAA transactions, code sets, identifiers and operating rules enforcement. They normally relate to quality of care and billing issues.

21. **Are complaints more commonly filed regarding the interpretation of implementing specific portions of a transaction (i.e. complainant disagrees with how the FAE implemented a transaction) as opposed to instances where an entity has not implemented a transaction at all (i.e. FAE failed to implement the 270/271 or any of the other transactions)?**

No, we receive a wide variety of each type of complaint.

22. **What is the volume of complaints received from entities that a trading partner refuses to implement certain transaction? Specifically, what is the volume of complaints from providers concerning plans that refuse to implement the 278 for Prior Authorization?**

We have not received many complaints regarding 278 transactions; however, there are a fair number of other types of transactions not conducted until after the filed-against entity completes their corrective action plan.

23. **What is the volume of 270/271 complaints related to discrepancies between web portal and 271 response data?**

The complaint volume is low for the 270 and 271 transactions.

24. **What types of complaints have you received related to EFT and ERA?**

A common complaint related to the EFT and ERA is that the entity does not conduct these transactions for a non-participating provider. Another common EFT/ERA complaint received is for the filed-against entity charging excessive fees for those transactions.

25. **What types of complaints do you receive concerning the use of web portals?**

We have not received complaints about the use of web portals.