ACTION REQUESTED: Submission of Comments to CMS on IFC Administrative Simplification: Adoption of Standards for EFTs and Remittance Advice. ***Comments are due to CMS by 5 pm on March 12, 2012.***

March 6, 2012

Dear CORE Participant:

Attached is the final CAQH CORE model letter for the above noted interim final rule with comments (IFC). We hope this is useful. Some key points to bear in mind:

- The IFC relates to the ***Standards for Health Care Electronic Funds Transfer (EFT) and Remittance Advice***. Many industries use EFTs under the NACHA Operating Rules & Guidelines; however, there are no health care standards that have been adopted by the federal government for EFTs, and thus this IFC (and subsequent operating rules) will help ensure coordinated use of the standard to meet the needs of the health care industry. CMS issued a press release that describes streamlined EFTs and related saving of more than $16 billion over 10 years.
- CAQH CORE anticipates that ***a separate IFC for operating rules for health care EFTs and ERAs*** will be issued later this year. The National Committee on Vital and Health Statistics (NCVHS), as advisor to CMS under the Affordable Care Act (ACA), has recommended that the health care operating rules for EFT and ERA from CAQH CORE, which were developed in collaboration with NACHA, be adopted.

CAQH CORE appreciates the comments received from participants on the draft model letter, all of which were supportive of adding the CCD+Addenda as a mandated HIPAA standard. The key area of controversy related to the reference of CTX in the IFC. Some participants strongly supported the IFC allowing the use of CTX and other formats, while others proposed limiting Federal standards only to the CCD+Addenda; cost and privacy were referenced by both views. Additionally, CAQH received a few technical corrections and comments beyond the scope of the IFC, which relate to EFT Phase 1: Payment Initiation process. Given this, the letter has been updated with the first part outlining comments directly related to the IFC scope, and a second part on other issues for CMS consideration.

Your input to CMS is very important. We urge you to send comments on the IFC for Adoption of Standards for Health Care Electronic Funds Transfers (EFTs) and Remittance Advice, published January 10, 2012. Comments are due **March 12, 2012**. Two items are attached:

- Attachment 1: Instructions for submitting your comments to CMS via several methods.
- Attachment 2: The final CAQH CORE model comment letter with language that might be useful as your organization finalizes its comments for direct submission to CMS. The model letter is based on the draft sent to you on February 10th with the above noted adjustments.

If your organization submits comments directly to CMS, we would appreciate it if you would email us a copy of your letter (CORE@CAQH.org). Beyond the IFC, CAQH CORE is continuing to ensure coordination between the financial services and the healthcare industries on EFT in relation to:

- The NACHA adjustments to the *NACHA Operating Rules* for financial services
- The draft CAQH CORE EFT/ERA Operating Rules
- Education/outreach on EFT
- Testing needs for EFT
- Tracking return on investment

Thank you again for the immense contributions that all of you are making to administrative simplification. Should you have any questions, please contact me at glohse@caqh.org.

Sincerely,
Gwendolyn Lohse
Deputy Director, CAQH and Managing Director, CORE

ATTACHMENT 1

Instructions for Submitting Comments on CMS-0024-IFC: *Administrative Simplification: Adoption of Standards for Health Care Electronic Funds Transfers (EFTs) and Remittance Advice*

CMS-0024-IFC is at: http://www.gpo.gov/fdsys/pkg/FR-2012-01-10/pdf/2012-132.pdf)

Comment Date: To be assured consideration, comments must be received at one of the addresses provided below, no later than **5 p.m. on March 12, 2012**.

Addresses: In commenting, please refer to file code CMS-0024-IFC.

You may submit comments in one of four ways (please choose only one of the ways listed). CMS will not accept Faxes.

1. **Electronically**. You may submit electronic comments on this regulation to http://www.regulations.gov. Follow the "Submit a comment" instructions.

2. **By regular mail**. You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-0024-IFC, P.O. Box 8013, Baltimore, MD 21244-8013. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. **By express or overnight mail**. You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-0024-IFC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. **By hand or courier**. If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

    a. For delivery in Washington, DC: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

    b. For delivery in Baltimore, MD: Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-1066 in advance to schedule your arrival with one of the staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For further information contact the following CMS Staff: Matthew Albright (410) 786-2546 or Denise Buenning (410) 786-6711.

ATTACHMENT 2

MODEL COMMENT LETTER

<Add organization LOGO in Header>

<Date>

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-0024-IFC
P.O. Box 8013
Baltimore, MD 21244-8013

Re: CMS-0024-IFC: *Administrative Simplification: Adoption of Standards for Health Care Electronic Funds Transfers (EFTs) and Remittance Advice* (RIN 09380-AQ11)

Dear Acting Administrator Tavenner:

<Name of Organization> is pleased to offer comments on the above-referenced interim final rule with comment period (IFC) concerning federal adoption of *Standards for Health Care Electronic Funds Transfers (EFTs) and Remittance Advice*.

We support these health care standards as an important means to promote further improvement in administrative simplification. Continuing the expedited IFC process is applauded so that benefits can be realized sooner rather than later. It is also appreciated that the IFC includes explanatory material on the overarching EFT process (IFC Section I.B.) and:

- Acknowledges the industry for which this *health care standard* for EFT and remittance advice is adopted.
- Recognizes that the standards being adopted are for Stage 1 Payment Initiation of the Health Care EFT (IFC Section II.B. and II.G.3.), while also acknowledging that the ultimate recipient of the transmission is a health care provider (IFC Section II.A.).
- Clarifies that the operating rules referenced in the health care standard EFT for financial services are those from the *NACHA Operating Rules & Guidelines* and are not the "operating rules" for the health care EFT as the term is used under HIPAA and ACA (IFC Section II.G.1), and which are anticipated to be adopted in future rulemaking (IFC Section I.A.2.). The CAQH CORE research on EFT and ERA operating rules helped identify and gain industry support for the re-association requirements outlined in this IFC.

As a strong supporter of the previously adopted CAQH CORE Operating Rules for Eligibility and Claim Status, we also appreciate that the National Committee on Vital and Health Statistics (NCVHS), on December 7, 2011, has recommended adoption of health care operating rules for the health care EFT and remittance advice from CAQH CORE in collaboration with NACHA. We look forward to the anticipated IFC to adopt these health care operating rules in the coming months.

While <Name of Organization> endorses the adoption of the Health Care Standard EFT and Remittance Advice, we urge consideration of the following four areas that could be revised or clarified in the final rule:

1. **Recognize that the TRN Reassociation Trace Number would need to be carried in *other* transmission vehicles or standards that are used for the health care EFT (IFC §162.1602(d)(2)).**

   We strongly support adoption of the NACHA CCD+ Addenda standard as outlined in the IFC. The outlined IFC requirements were identified during CAQH CORE operating rule writing as necessary requirements after significant research and discussions. We also recognize the importance of the Debt Collection and Improvement Act of 1996 definition of EFT (**IFC Section I.B.**). The referenced Act provides a broad spectrum of transmission vehicles to enable innovation and testing that could put new transmission forms into production without new regulation. We recognize that allowing for innovation is a key role of HHS.

   As noted in the IFC, the NACHA CCD+ standard adopted by the IFC applies only to health care EFTs over the ACH Network (**IFC Section I.B.**), understanding that the ACH Network supports both the CCD+ Addenda and the CTX. The IFC also recognizes the existing role of the Federal Reserve Wire Network (FedWire) transfers to carry remittance advice information in addenda records and Table 1 information including the TRN Reassociation Trace Number. Yet, there is no existing standard way for the industry to *automatically* re-associate a FedWire

payment to a specific electronic remittance advice (ASC X12 v5010 835 with Errata). Beyond the FedWire, should other vehicles or standards be used by health care, the same re-association challenge will exist and thus provider needs may not be addressed unless the industry finds solutions for such new methods.

Recommendation: Although the majority of EFTs will likely travel over the ACH network using the CCD+Addenda, CMS should commit to considering how to address this TRN Reassociation Trace Number challenge should the industry begin using other methods *in any significant way*. If this need arises, CMS could request the developer of operating rules to address reassociation with the transmission method(s).

2. Ensure that the references in the regulation to the version of the *NACHA Operating Rules & Guidelines* are updated so they align with the health care operating rules and standards (IFC §162.1602(d)(2)(1)(i)).

The IFC proposes adoption of specific sections of the *2011 NACHA Operating Rules & Guidelines*. The *NACHA Operating Rules & Guidelines* are published annually with interim supplements. While ACA contemplates more frequent updates of the HIPAA standards and operating rules, healthcare updates are not currently proposed to be this frequent.

Due to the CAQH CORE partnership with NACHA, we are aware that proposed adjustments to the current *NACHA Operating Rules* include consideration of requirements to better address healthcare use of the CCD+. These potential adjustments are still under review by the financial services industry; however, NACHA does anticipate moving forward with some level of adjustments, and thus a new version. CAQH CORE is working closely with NACHA to track this process as CAQH CORE intends to comment on the proposed *NACHA Operating Rules* adjustments, especially those adjustments identified by CAQH CORE for financial services to consider.

Recommendation: Given that the versioning of the CCD+Addenda is different than healthcare versioning it may be appropriate for CMS to instruct the developers of the health care EFT and ERA operating rules to undertake examination of how best to deal with such versioning. Otherwise, CMS should consider how else the CCD+Addenda versioning, which is an industry neutral standard, will be addressed in healthcare-specific regulations as evolution occurs in financial services. To promote ongoing coordination among the industries, we support that CAQH CORE work with NACHA to ensure the healthcare industry has open and meaningful access to and an understanding of the *NACHA Operating Rules*, including commenting on any future adjustments to the *NACHA Operating Rules.*

3. Maintain the current IFC statements that an appropriate role for operating rules is ensuring the TRN Segment be aligned through health care and financial services.

We understand that the ASC X12 v5010 835 with Errata TR3 Note in Section 1.10.2.3.1 specifically states that "When sending a separate ACH payment, the CCD+ ACH format is used. Using this method, the Re-association Key Segment in its entirety is contained in the ACH Addenda Record." This language has been interpreted by some as instructional (i.e., is contained) rather than required (i.e., must be contained). There is also a second reference in the Note associated with the BPR05-812 Payment Format Codes, which states that "The addenda must contain a copy of the TRN segment." With this second reference, the question of entirety has some level of interpretation. We also understand there is confusion on related requirements in the *NACHA Operating Rules*. The draft CAQH CORE EFT/ERA operating rules support the need that the TRN Segment is required by all in the chain of data exchange, including banks governed by financial service operating rules. Today there are both gaps and ambiguities in the healthcare requirements and in the requirements governing financial services. This critical data must be communicated among entities managing these transactions for both healthcare and financial services if healthcare providers want to experience administrative simplification.

Recommendation: We support CMS in observing that the inclusion of the TRN Segment in the Addenda Record of the CCD+ Addenda and in the remittance advice is "best addressed through operating rules" (IFC Section II.D., page 1565). The draft CAQH CORE operating rules for EFT/ERA support this approach.

4. **Clarify statements in the IFC with respect to banks' current HIPAA status. Address current exclusion of banks under HIPAA if alternative forms of transmission vehicles/standards – *which are allowed by this IFC* – carry detailed remittance advice information through the stages of EFT payment initiation, transfers of funds, and deposit notification (IFC II.H.2).**

   We support the findings of CMS that the Stage 1 Payment Initiation for the Health Care EFT using the CCD+Addenda format does not contain protected health information (PHI) and therefore banks processing such EFTs would not be subject to HIPAA. Stated more simply, this Health Care EFT does not transmit protected health information (PHI), thereby excluding originating depository financial institutions (ODFIs) from HIPAA compliance (**IFC II.H.2.**). However, the following statement on page 1568 of the *Federal Register*, January 10, 2012, appears to be subject to differing interpretations among stakeholders reviewing the IFC. The statement is: "Some financial institutions will continue to translate nonstandard payment/processing information received from health plans into the CCD format…[and] become de facto health care clearinghouses as defined by HIPAA. To the extent, however, those entities engage in activities of a financial institution, … they will be exempt from having to comply with these HIPAA standards with respect to these activities."

   Recommendation: The final rule should clarify that the specific activities being referenced are those of processing the Health Care EFT using the CCD+Addenda, and that they are not activities associated with converting non-standard remittance advice transactions, sending the CTX format of the Health Care EFT, and potentially other HIPAA transactions and should such activities occur, appropriate HIPAA safeguards must be applied to these activities.

The following are additional considerations for CMS not directly related to the scope of the IFC, but important for future consideration:

Recognize potential additional costs to providers as the ultimate recipient of the transmission of health care EFTs. Continue to outline cost to other impacted stakeholders in Stage 2 and 3 (Section V).

The IFC describes costs and benefits to health plans and benefits to providers. While we concur that there are no direct costs to providers associated with adopting the Health Care EFT Stage 1 Payment Initiation, the IFC acknowledges in the Background discussion that there may be costs associated with providers enrolling in a health plan in order for the provider to be the ultimate recipient of the EFTs. For completeness, we recommend that it be acknowledged that there may be provider costs associated with Stages 2 and 3 of the Payment process, either as a result of implementing this standard or operating rules forthcoming. These may include costs associated with upgrades to information systems and fees associated with viewing payments at the receiving depository financial institution (RDFI). Continuing in subsequent IFCs to outline costs to all covered entities will also be important as the industry as a whole is tracking financial impact and return on investment (ROI).

Seek ways that encourage more providers to adopt the health care EFTs and remittance advice standards.

Administrative simplification is best served when all parties use standard transactions. For a range of reasons, HIPAA does not require providers to conduct electronic transactions; it only requires providers to use the standard transactions when they chose to conduct electronic transactions. Under the Administrative Simplification Compliance Act (ASCA) of 2001, most providers are required to file electronic Medicare claims, and under ACA, Medicare providers will be required to receive EFTs. Consideration, however, should be given by the industry regarding how contracting or incentives could assist in having providers who accept patients served by "qualified health plans" offered through health insurance exchanges and other federal health programs such as the Federal Employees Health Benefits (FEHB) program adopt such transactions. Approaches such as these may stimulate broader and faster adoption of the health care EFTs and remittance advice.

We support the decision to adopt sections of the *NACHA Operating Rules & Guidelines* for the health care EFT, as this decision is consistent with the Secretary's discretion under HIPAA and as recommended by NCVHS. We applaud the CMS outreach not only to the organizations that by law it must consult with, but also in reaching out to a broader set of stakeholders (**IFC Section II.G.2.**) as the world of administrative simplification evolves. CMS and NCVHS should continue to move aggressively to support industry momentum towards administrative simplification by encouraging coordinated cross-industry efforts such as those occurring with EFT.

Thank you for considering our comments. Please let me know if I can provide further clarification.

Sincerely,

<Name>
<Title>