

Centers for Medicare & Medicaid Services

Questions and Answers

Open Door Forum: Physicians, Nurses and Allied Health Professionals

Wednesday, April 27, 2022

1. Question: I had submitted a question to the HIPAA EFT-ERA committee, based on this guidance letter and I've yet to receive a response. What is the permissible fee that a payor can charge a provider for EFT transactions?
 - a. Answer: What we discussed in this guidance letter is the HIPAA prohibition on health plans adversely affecting a transaction because it's a standard transaction. We've identified that if the health plan conditions sending the EFT and ERA transaction using the adopted standards on provider's acceptance of, which may include payment for, unwanted payment or reassociation services, that may be construed as adversely affecting the transaction because it's a standard transaction. So, while there may be circumstances in which fees adversely affect the transaction because it's a standard transaction, the guidance letter does not speak to whether charging fees to conduct transaction is in and of itself a violation of the HIPAA requirement. So, we're not releasing any kind of fee amount that's acceptable or not. That issue is still pending additional investigation as of when we issued the guidance letter.
 - i. Question: So, let me give you an example. So, for instance, we are trying to enroll for ERA with UMR, which is a plan that's under the UnitedHealthcare umbrella. UMR requires enrollment with Zelis. Zelis has no free ACH - EFT or ERA enrollment. In order to get ERA, you have to have EFT. EFT costs through Zelis 2-1/2%. So now my question is we've already reached out to the payor, UMR. They're telling us that there's another option that we have to do on our own. We can't do it apparently through our own clearinghouse, which is, I guess is that a violation itself of the HIPAA standard? I mean, you should be able to obtain your ERA and EFT via the normal channels, correct? Or do you have to go through leaps and bounds and go to portals and things of that nature that the payor directs you to in order to get your ERA?
 1. Comment from the speaker: I heard two questions there and I think one is about whether or not the health plan and/or their

This Q and A document was current at the time it was published or uploaded onto the web. CMS policy changes frequently so links to the source documents have been provided within the document for your reference. This Q and A document was prepared as a service to the public and is not intended to grant rights or impose obligations. This Q and A document may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations, and other interpretive materials for a full and accurate statement of their contents.

business associate can charge fees related to EFT and ERA transactions. I think the answer that we can give based on the guidance letter today is, it depends. That said, we can't necessarily discuss, and come to a conclusion on, the facts of a particular situation on this call. So, if it is something you're interested in pursuing further, I encourage you to file a complaint with our office through that ASETT system that's indicated in the guidance letter. And then the second question I heard you ask is about sending to your clearinghouse - sending that ERA directly to your clearinghouse versus to a Web portal. And you're asking is it compliant to send the ERA to the Web portal or must the health plan send it to your clearinghouse?

a. Confirmation from the participant: Correct. Yes.

a. Answer: What we say in this guidance letter is that if a provider requests that a health plan transmit remittance advice information using the adopted standard, the HIPAA regulations do require the health plan to comply with that request, which includes transmitting the data in the standard format to the requesting healthcare provider or the business associate that is acting on behalf of the healthcare provider, which might include a clearinghouse. So, there's nothing that prevents a health plan or the business associate that's acting on behalf of the health plan from offering to process that standard transaction into the nonstandard format by posting it into a Web portal for viewing. But, the provider may choose to reject that service and request delivery in the standard

This Q and A document was current at the time it was published or uploaded onto the web. CMS policy changes frequently so links to the source documents have been provided within the document for your reference. This Q and A document was prepared as a service to the public and is not intended to grant rights or impose obligations. This Q and A document may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations, and other interpretive materials for a full and accurate statement of their contents.

format to a business associate of the provider's choice.

- i. Comment from the Participant: Okay. So, if I'm hearing you correctly, if a payor does not provide you with the option to receive it via the standard, then we have the right to submit a complaint against the payor with regard to not complying.
- ii. Comment from Speaker: Anyone has the right to submit a complaint at any time. We look at all complaints that come in. But what I am saying is compliance with the standards includes sending that ERA in the standard format directly to the provider or to the business associate of the provider's choice.
- iii. Question: Now does CMS looking for us to do due diligence with the payor like trying to do a reach-out? So, in other words, when we submit a complaint, are we required or CMS requiring that we provide proof that we've reached out and we've, you know, attempted to obtain a response from

This Q and A document was current at the time it was published or uploaded onto the web. CMS policy changes frequently so links to the source documents have been provided within the document for your reference. This Q and A document was prepared as a service to the public and is not intended to grant rights or impose obligations. This Q and A document may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations, and other interpretive materials for a full and accurate statement of their contents.

the payor with regard to, you know, the standards that they have not complied? Do we need to give that to you when we submit a complaint?

iv. Answer: It is information that we ask for when someone submits a complaint but it is not a requirement. It's often effective and can go a long way but not a requirement.

2. Question: I'm calling on behalf of MGMA. I'm wondering, you did mention that the issue of these and what was permissible is still pending. Do you plan on issuing any further guidance on this in the future?

a. Answer: I think the best way to talk about that is to say even though fees is usually at the forefront of everybody's discussion, it's still not clear to us what our authority actually is under the law. So, we're hesitant to really make any pronouncements at this time. I think we may have more to say in the future but I really can't commit to that at this time.

This Q and A document was current at the time it was published or uploaded onto the web. CMS policy changes frequently so links to the source documents have been provided within the document for your reference. This Q and A document was prepared as a service to the public and is not intended to grant rights or impose obligations. This Q and A document may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations, and other interpretive materials for a full and accurate statement of their contents.