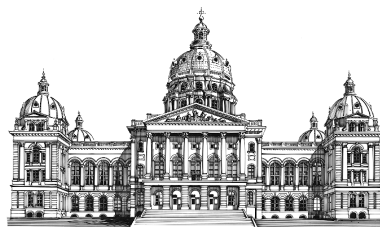


Iowa Legislative Fiscal Bureau

Dennis Prouty
(515) 281-5279
FAX 281-8451



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Health Insurance Portability and Accountability Act

ISSUE

This **Issue Review** provides information on the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the impact of the Act's provisions on Iowa's Medicaid Program.

AFFECTED AGENCIES

Iowa Department of Human Services (DHS)
Information Technology Department (ITD)
Federal Department of Health and Human Services

CODE AUTHORITY

Chapter 249A, Code of Iowa
Public Law 104-191

BACKGROUND

What Is The Health Insurance Portability and Accountability Act?

The Health Insurance Portability and Accountability Act was enacted by the Federal Government in 1996. Some portions of the law took place immediately, providing access to health care coverage and guaranteeing patient rights under employer plans. Other regulations, pertaining to "administrative simplification," privacy, and security of patient and health information have recently been finalized or are still undergoing the process of finalization through rule adoption by the federal Department of Health and Human Services.

Who Is Affected?

The law affects most health care-related organizations. The regulations impact all health plans, health care providers, health care business associates, clearinghouses (entities that perform billing functions for providers and health plans), government medical assistance programs (such as the Iowa Medicaid Program), and other local and state government organizations that relate to health care information.

The Department of Human Services (DHS), both as a provider and payer of health care services, is required to comply with the administrative simplification provisions of the Act. The

Department is currently engaged in the processes required to assess, develop, and implement compliance plans by the federally mandated compliance dates.

What Are The Regulations?

Electronic Transactions: The first provision of the law for administrative simplification, issued in October 2000, requires the adoption and use of specific standards for electronic transactions and code sets used in the electronic transmittal of health care information. The original deadline for compliance with this rule was October 2002. The recent passage of US House Resolution 3323 extended the compliance date to October 2003.

Privacy: The second provision deals with the privacy, handling, disclosure, and protection of health care information. The provision is designed to protect health care information that identifies an individual and is maintained or exchanged electronically, orally or in paper format. The regulation also specifies basic rights for individuals with respect to their individually identifiable health care information. The final privacy regulation was published on August 14, 2002, and the deadline for implementation is April 2003 except for business associate agreements that have an April 2004 deadline.

Security: The third provision addresses physical and administrative security requirements for protected health information and has not yet been finalized. Finalization is expected sometime in 2002, with compliance dates expected in 2004.

Identifiers: This provision establishes standards for unique identifiers for providers, plans, employers and individuals. The standardization of the employer identifier was published on May 31, 2002, and became effective July 30, 2002. The rules for providers, plans and (potentially) individuals have not been finalized and compliance dates have not yet been set.

CURRENT SITUATION

Implementation Plans:

A Project Office within the DHS has been formed to aid the Department in complying with the Act.

Key activities of the Project Office include:

- Engaging all affected areas of the Department and providing information regarding the impact the Act will have on business operations.
- Implementing a communication plan to provide information to internal and external partners (such as contractors and vendors) concerning decisions, key activities, and education for the Act. The communication plan includes development of a web site. Plans for the web site include answers to Frequently Asked Questions and background documents.
- Making recommendations to the DHS administration concerning the related policy decisions that impact multiple areas within the Department.
- Establishing and supporting workgroups called Technical Assistance Groups that develop implementation policies and strategies. Examples are the internal Medicaid group and the institutions group.
- Providing ongoing technical assistance to the DHS staff.
- Completing the Department's request for an extension of the implementation date for the electronic billing and payment rules to October 2003.

ALTERNATIVES

By federal rule, the DHS is required to determine which of its operations this law covers and how it is going to be implemented in its business environment. The Department had the choice of including the entire Department in the implementation, defining each covered health plan or provider separately, or a combination of these two models, called a hybrid entity. The hybrid entity allows certain areas without protected health information to avoid requirements of the Act.

After reviewing the potential impacts on a wide range of DHS operations, the DHS decided to lessen the impact on the entire Department by choosing the hybrid entity model. This decision ensures that the Department's programs containing protected health information are included in the implementation as required while "carving out" as many program areas as possible from these extensive federal rules.

The criteria used to determine the excluded programs included:

- A program whose *primary* purpose is not providing health care.
- A program whose business operations do not include electronically billing or paying for health care.
- A program without the Act-defined protected health information.
- A program that does not have a business relationship with a covered entity or does not perform functions on behalf of medical programs.
- A provider of health care who does not bill electronically for services.

The federal rules that dictate which entities must be included are specific. For example, Medicaid is named in the federal rules as a health plan, which is called a health care component in the hybrid model. Therefore, programs in the DHS that have a business relationship with Medicaid are also covered by the Act.

BUDGET IMPACT

Costs associated with the implementation of the Act include:

- Information Technology (IT) system changes.
- Policy changes (manual, rules, etc.).
- Business practice changes (not sharing health information as may have been done in the past).
- Changes to billing and payment procedures.
- Adding additional physical safeguards to health information.
- Notification to clients of their rights under the Act.
- Development of a tracking system to record disclosures of protected health information.
- Training.

Iowa has not compiled a cost estimate yet, but similar states have submitted funding requests to the federal Centers for Medicare and Medicaid Services ranging from \$25.0 - \$49.0 million, for Medicaid-related changes.

FY 2002 Budget

In FY 2002, \$100,000 of State funds was allocated to the DHS for the implementation of the Act through the Information Technology Department Pooled Technology Fund with a provision to carry forward unspent funds to FY 2003.

FY 2003 Budget

House File 2615 (FY 2003 Healthy Iowans Tobacco Trust and Tobacco Settlement Fund Appropriations Act) appropriated \$2.1 million from tobacco settlement funds, "...for the implementation of the provisions of the federal Health Insurance Portability and Accountability Act (Public Law No. 104-191) relating to the Medical Assistance Program." State funds are matched with federal funding at enhanced rates (90.0% or 75.0%) or at the regular administrative rate (50.0%) depending on the expenditure of the funds. Approximately \$675,000 from FY 2003 has been encumbered for Medicaid-related work that has been approved and contracted.

FY 2004 Budget

The Department has submitted the FY 2004 funding request through the Return on Investment process sponsored by the Information Technology Department (ITD). The amounts being requested for implementation for the DHS in FY 2004 are approximately \$13.2 million; (\$2.5 million for Institutions, \$1.4 million for Medicaid, and \$9.3 million non-Medicaid related). The Return on Investment process was also used to secure FY 2003 funds. These requests are available on the Information Technology Department's web site.

POTENTIAL SANCTIONS

As originally enacted, the general penalty for a violation of non-compliance of the requirements in this Act was a monetary fine of \$100 per violation and total fines for the same violation could not exceed \$25,000 per calendar year. For the DHS, the \$25,000 fine relates to each person in the Program, which could cost the State of Iowa several million dollars, if imposed. For individuals, there are criminal penalties up to \$250,000 and imprisonment of up to ten years. The fines would not be imposed if failure to comply was due to reasonable cause and the failure was corrected within 30 days. With federal changes, noncompliance can also result in exclusion from the federal Medicare Program.

NEXT STEPS

The DHS Project Office is working with entities in the DHS regarding the protected health care information that each area uses or discloses to develop an inventory of this information. This analysis may result in redetermining the health care components within the DHS that are covered under the Act.

Technical Advisory Groups, established to manage major transitioning projects in the DHS, meet regularly to track the progress being made toward implementation of the requirements, with the coordination of the DHS Project Office staff, the DHS management, and the State's Enterprise

Project Office. These groups include the DHS staff as well as contractors' staff and affected provider group representatives.

To learn more about the Act and the work being done in Iowa, the following web sites may prove helpful:

1. <http://www.state.ia.us/government/hipaa/projOfficeDocs.htm>
2. <http://www.cms.hhs.gov/medicaid/ipaa/adminsim/mcdhipp2.pdf>
3. <http://snip.wedi.org/>
4. <http://www.mhccm.org/>

MORE INFORMATION

There are eight State agencies, including the DHS, that are affected by the Act's requirements. To assist the DHS, the State Enterprise Project Office, within the Information Technology Department, is developing an extensive web site to facilitate internal and external communications, maintain a large document data base, and provide control and coordination services for the DHS Project Office. Further information relating to the State Enterprise Project Office is located in the web site listed in Number 1 above. A report, written by the Information Technology Department and released on September 13, 2002, entitled "HIPAA Compliance Project Status Report," provides information about the Statewide implementation process and is available upon request.

For further information, please contact the Legislative Fiscal Bureau.

STAFF CONTACT: Sam Leto (Ext. 16764)

Health Insurance Portability and Accountability Act
<http://staffweb.legis.state.ia.us/lfb/IREVIEW/irview.htm>
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