

Health Reform Will Require Standards and Protocols for Electronic Enrollment and Eligibility

New standards and protocols for enrolling in government health programs could affect how health plan eligibility is verified under HIPAA, and how electronic health record technology is certified

5/3/2010 By Bernadette M. Broccolo, Daniel F. Gottlieb and Jean Marie R. Pechette, McDermott Will & Emery LLP

The Patient Protection and Affordable Care Act, signed into law in March 2010, requires the U.S. Department of Health & Human Services (HHS) to develop interoperable and secure standards and protocols for enrolling individuals in federal and state health and human services programs. In addition, the legislation authorizes grants to state and local governments to promote the implementation of health information technology (HIT) to facilitate enrollment in the programs.

The standards and protocols might affect how health care providers conduct health plan eligibility verification transactions under the Health Insurance Portability & Accountability Act (HIPAA) as well as how providers comply with the Medicare and Medicaid electronic health record (EHR) incentive programs' "meaningful use" objectives and measures pertaining to use of an EHR for electronic insurance eligibility verification. In addition, the standards and protocols might affect how vendors' EHR technology is certified as capable of enabling meaningful use.

HIT Enrollment Standards and Protocols

No later than 180 days after the law's enactment, HHS, in consultation with the HIT policy and HIT standards committees created by the Health Information Technology for Economic and Clinical Health Act (HITECH Act), is required to develop interoperable and secure standards and protocols that facilitate the electronic enrollment of individuals in federal and state health and human services programs. The standards and protocols must facilitate enrollment in such programs by providing individuals and their authorized representatives notification and verification of eligibility. The standards and protocols must allow for the following:

- **Electronic matching against federal and state data**, including vital records, employment history, enrollment systems, tax records and other data determined appropriate by HHS to serve as evidence of eligibility in lieu of paper-based documentation.
- **Simplification and submission of electronic documentation**, digitization of documents and systems verification of eligibility.
- **Reuse of stored eligibility information** (including documentation) to assist with retention of eligible individuals.
- **Capability for individuals to apply, recertify and manage their eligibility information online**, including at home, points of service and other locations.
- **Ability to expand enrollment systems** to integrate new programs, rules and functionalities; to operate at increased volume; and to apply streamlined verification

and eligibility processes to other federal and state programs.

- **Notification of eligibility, recertification and other needed communication** regarding eligibility, which might include communication via e-mail and cell phones.
- **Other functionalities** necessary to provide eligible individuals with a streamlined enrollment process.

HHS must notify states of the standards or protocols that have been approved by the HIT policy and HIT standards committees. HHS may require, as a condition of receiving federal funds for enrollment HIT investments, that states and other entities incorporate the standards and protocols into the investments.

Grants for Implementation of Appropriate Enrollment HIT Development

The reform act authorizes HHS to award grants (in amounts not specified) to state and local governments to develop new and adapt existing technology systems to implement HIT enrollment standards and protocols, reduce enrollment HIT maintenance costs, and eliminate or update legacy enrollment systems. HHS must ensure that enrollment HIT developed through such grants is made available to state and local governments and other entities meeting qualification standards determined by HHS.

Effect on HIPAA Standardized Transactions and Meaningful Use Requirements

Whether and to what extent the enrollment standards, protocols and HIT will affect the HIPAA-standardized health plan eligibility verification transaction, the requirements for EHR technology to be certified as capable of supporting “meaningful use” under the HITECH act’s Medicare and Medicaid EHR incentive programs, and the meaningful use requirements for eligible providers remains to be seen. It would be prudent for HHS to make enrollment standards and protocols consistent or aligned with the incentive programs’ EHR technology certification criteria and meaningful use requirements in the functional areas covered by both (e.g., eligibility, interoperability and security) to maximize the significant investment the federal government is making to facilitate the adoption of a nationwide health information network. It will enhance HIT vendors’ ability to develop efficiently and expeditiously products that will enable providers and governmental payors to make prudent use of grant funds and other incentives provided under the reform law and the HITECH Act. All stakeholders affected by the federal government’s interrelated development of standards and protocols under HIPAA, the HITECH Act and the reform act should monitor closely and, where possible, provide input on their development.

*The authors are partners in the law firm of **McDermott Will & Emery LLP** and are based in the firm's Chicago office. **Bernadette M. Broccolo** has been counseling health industry organizations for 29 years. **Daniel Gottlieb** represents a wide range of health industry clients. **Jean Marie R. Pechette** focuses her practice on information technology and intellectual property matters, with a concentration on the health care industry.*

© 2010 McDermott will & Emery LLP. All Rights Reserved.

This article should not be construed as legal advice.

Coordinate Compliance Among Health Care Reform and Other Laws, *SHRM Online*
Legal Issues, April 2010

Quick Links:

SHRM Online **Benefits Discipline**

SHRM Online **Health Care Reform web page**

• Sign up for SHRM's free **Compensation & Benefits e-newsletter**

Society for Human Resource Management

1800 Duke Street
Alexandria, Virginia
22314 USA

Phone US Only: (800) 283-
SHRM
Phone International: +1 (703)
548-3440

TTY/TDD (703) 548-
6999
Fax (703) 535-6490

Questions? [Contact SHRM](#)
Careers [Careers @ SHRM](#)

©2010 SHRM. All rights reserved.