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HEALTHCARE REFORM: ADMINISTRATIVE SIMPLIFICATION AND HEALTHCARE PAYMENTS

Congress and the Department of Health & Human Services (DHHS) are considering the benefits and implications of mandating the use of electronic funds transfer (EFT) for payments between Payers and Providers of healthcare services. As part of this review, DHHS asked NACHA – The Electronic Payments Association, in its capacity as the rulemaking body for the ACH Network, to respond to four key issues identified by Providers as potential hurdles to mandating EFT. NACHA is well positioned to address these issues and has communicated its assessment to DHHS.

NACHA has represented the ACH Network on healthcare payment issues through participation with several healthcare groups (see Appendix). This experience makes it clear that using EFT can result in considerable efficiencies and cost savings in processing healthcare payments and Electronic Remittance Advices (ERA) among Payers and Providers. Further, NACHA believes that the accessibility, automation, scalability and security of the ACH Network make it the EFT payments system best able to obtain these efficiencies and cost savings.

PROVIDER ISSUES

DHHS' Centers for Medicare & Medicaid Services (www.cms.hhs.gov) asked NACHA to address the following issues:

1. Whether the ACH Network is readily accessible to players of all sizes, including smaller financial institutions;
2. Whether EFTs will make payment reconcilement and posting more difficult;
3. Whether there is risk or other adverse impact to Providers from unscheduled debits to reverse, in whole or in part, a mandated EFT credit; and
4. Whether the ACH Network is secure enough for parties to comply with HIPAA's privacy and security requirements.

1. The ACH Network is Ubiquitous: The ACH Network is available to virtually every insured depository financial institution in the country,[1] and nearly all financial institutions process inbound ACH credits. In addition, all have access to Network services for processing and delivering ERA associated with an ACH credit to their customers, including Providers, Payers, and third-party healthcare processing vendors.

Because the ACH Network is readily accessible to virtually all players in the healthcare community, including the smallest physician practices that account for the largest percentage of healthcare payments, NACHA is confident that accessibility is not a hurdle to mandating EFT for healthcare payments between Payers and Providers.

[1] As of 1Q 2009, there were 16,151 financial institutions in the United States – 8,246 depository institutions insured by the FDIC (www.fdic.gov) and 7,905 credit unions (www.cuna.org). Nearly all financial institutions can receive all forms of ACH payments, with a few currently receiving only government payments.

While the ACH Network does indeed offer ubiquitous access, an important development does impact financial institutions serving healthcare customers (as virtually all do). New provisions within the *American Recovery and Reinvestment Act* (ARRA), passed in February 2009, expand HIPAA's Privacy and Security requirements and penalties to include Business Associates (which can include financial institutions). Previously, financial institutions that handled Protected Healthcare Information (PHI) in accordance with the terms of a Business Associates Agreement (BAA) were exempt from the penalties associated with HIPAA. Now, any financial institution that handles PHI is subject to the same penalties, both criminal and civil, as a Healthcare Covered Entity.

2. Automatic Reconciliation is Possible: Reassociation of the payment with the remittance advice is readily accomplished with EFT payments – a feature which is necessary to fully achieve the efficiencies that Providers seek in handling remittances from Payers – and two ACH Network formats[2] are compliant with the HIPAA Transaction and Code Sets. Both the CCD+ and the CTX formats are listed in the current implementation guide for the ANSI ASC X12 835 Transaction Set (version 4010) and its upcoming approved version (5010).

- NACHA's "CCD+" format permits X12 835 ERA data and the EFT payment to travel separately, with a "reassociation key" placed in the CCD+ addenda record to link the two for Provider reconcilement.[3] Unfortunately, business practices have developed for healthcare EFT payments where data and dollars may arrive a day or more apart from one another. This is often a by-product of Payers who adjudicate claims in one system (creating the ERA) and then use a different system for disbursement (creating the EFT). This bifurcation of processes results in "reassociation keys" that are not always as synchronized as they should be. This issue could be resolved if DHHS mandated consistent use of certain data fields, but the ultimate simplification of reassociation is to eliminate the need for it altogether by endorsing dollars and data traveling together through the ACH Network in a CTX format.

- The "CTX" format permits ERA data to travel with the EFT payment in the addenda record(s), and the financial institution delivers this data to the Provider. When Payers use the appropriate transfer formats, the Provider's financial institution can generate a deposit report (in a form with delivery means tailored between the financial institution and their customer) that lists the credited amounts and related remittance information. When dollars and data move together, there is no need for separate reassociation and/or reconciliation steps.

The two ACH Operators[4] through which all financial institutions route ACH transactions have tools available to help financial institutions "translate" payment and remittance information into secure human-readable reports or posting files. These inexpensive services are especially helpful for Providers as many financial institutions can offer these services – and competition for a service tends to drive costs down.

Given the opportunities available for automated reconciliation – whether the EFT travels with or separately from the ERA – the labor-intensive manual process of reconciling a payment with its associated remittance data can be eliminated. NACHA anticipates that, under any contemplated

[2] "CCD+" and "CTX" are identifiers of corporate transactions in the ACH Network.
[3] The American Association of Healthcare Administrative Management (AAHAM) advocated this approach to Congress in May 2009, requesting that Congress, "encourage, and that CMS/HHS take action on, promulgating a rule requiring all Payers who are required to use the HIPAA 835 transaction also be required to pay Providers using electronic funds transfers (EFT) with standard CCD+ upon request."
[4] The Federal Reserve Banks and the Electronic Payments Network (EPN).

EFT mandate, the Provider community would seek the ability for Providers to designate EFT with ERA (e.g., CTX) or EFT without ERA (e.g., CCD+) included with the transaction.

3. Unscheduled Debits Can Be Addressed by Contract or by Legislation: Some Providers are concerned about supplying banking information to Payers to enable payment by EFT credits because they do not wish to provide Payers with information that may enable debits as well – for example, debiting the Provider's account if there has been an overpayment.

Legislation or regulation can address this issue in a straightforward manner. First, EFT mandate provisions can specify that the mandate applies to credit transactions only. Limiting the mandate to credits would allow the parties to agree between themselves, as is the case today, whether debits for specified reasons (e.g., to recover an overpayment) are permissible. When the Provider has not authorized a debit, the NACHA Operating Rules allow for prompt return of the unauthorized debit (ACH Return Reason Code R29) and recrediting of the Provider.

Second, to address Provider concerns that Payers will use their market position to require debit provisions in contracts, the mandate could require that all debits that the Payer wishes to generate to the account to which the credit has been sent, including reversals, are to be preceded by notification to the Provider. The mandate could specify, for example, that the notification be sent by the Payer, or received by the Provider, no less than two business days before the debit is initiated by the Payer. The mandate could also require not only information about the anticipated debit (e.g., date, amount, reason for debit) but in addition provisions that the Payer provide reasonable and timely instructions to the Provider on how to inquire about, delay or prevent the debit, pending resolution.

Supporting any legislative or regulatory action are financial institution cash management services such as debit blocks and filters that a Provider can use to prevent or screen unscheduled debits. Experience shows that financial institutions can sufficiently educate the Provider community about appropriate services they offer.

4. The ACH Network is Secure: The ACH Network is not only secure but supports HIPAA compliance. Security and compliance are the long-standing result of many drivers: a tradition of network security and encryption practices, legal and regulatory requirements covering privacy of any personal information stored or processed by financial institutions, and the requirements of contractual relationships among parties to the ACH transaction.

The ACH Network is a secure, closed network with transaction flows encrypted from beginning to end. The only time an ACH Operator "opens" the transaction is to ensure that it is routed to the appropriate financial institution, and this is done systemically. The data is then re-encrypted and forwarded to the Payer's financial institution.

The Operators are not covered entities or Business Associates for purposes of HIPAA, but are considered service providers under guidelines that federal banking regulators have issued under Title V of the Gramm-Leach-Bliley Act. As such, their contracts with their customers include requirements to protect non-public personal information (NPI) in accordance with policies designed to (i) ensure the security and confidentiality of NPI, (ii) protect against any anticipated threats or hazards to the security or integrity of NPI, and (iii) prevent unauthorized access to or

use of NPI that would result in substantial harm or inconvenience to the disclosing party's customers.[5]

At the financial institution level, the Provider's financial institution develops protection procedures and policies covering PHI to satisfy internal privacy officers and customers and to remain in compliance with their contracts with their respective ACH Operator. Banks currently must comply with the stringent privacy regulations of the Gramm-Leach-Bliley Act, so they are sufficiently experienced in safeguarding private information. One option NACHA may consider is creating a new standard entry class (SEC) code for healthcare transactions. This would allow the financial institutions to easily identify and filter out healthcare transactions to ensure they are handled in a HIPAA-compliant manner.

* * *

NACHA and the Regional Payment Associations[6] are prepared to stress to financial institutions the importance of working with the Provider community and Providers' trade associations to extract the greatest possible administrative simplification benefits for healthcare payments through the ACH Network. Such a campaign would help eliminate many concerns associated with mandating EFT and facilitate smooth implementation.

To further discuss the capabilities of the ACH Network and the role the banking industry seeks to play in meeting the objectives of administrative simplification in healthcare, please contact Priscilla Holland, Senior Director, at (703) 561-3916 (e-mail: pholland@nacha.org), or Ian Macoy, Managing Director, at (703) 561-3929 (e-mail: imacoy@nacha.org).

[5] EPN has incorporated this into its participant agreement, and the Federal Reserve has incorporated these provisions into its operating circular.

[6] Regional Payments Associations are direct members of NACHA and provide ACH information and resources to financial institutions, corporations, e-commerce companies and payments technology Providers around the country. While each Regional Payments Association stands as a separate organization, all serve the common cause of providing essential benefits to their members. These benefits include ACH Rules guidance and operational support, ongoing education and training, audit services, marketing tools and guidance, publication sales, and more. Regional Payments Associations also act as advocates of the ACH Network to local and state governments.

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APPENDIX I

About NACHA – The Electronic Payments Association

NACHA is a not-for-profit association that oversees the Automated Clearing House (ACH) Network, a safe, efficient, green, and high-quality payment system. More than 15,000 depository financial institutions originated and received 18.2 billion ACH payments in 2008. NACHA is responsible for the administration, development, and enforcement of the *NACHA Operating Rules* and sound risk management practices for the ACH Network. NACHA represents nearly 11,000 financial institutions through direct membership and 18 regional payments associations. NACHA and its members provide education, tools, and resources to increase the adoption of ACH payments to benefit businesses, consumers, and government agencies. To learn more, visit www.nacha.org and www.electronicpayments.org.

About the ACH Network and Healthcare Payments

Thousands of financial institutions in the U.S. provide healthcare Providers and Payers access to the ACH Network, supporting the full spectrum of payment and electronic remittance advice needs. In 2002, NACHA and the American Bankers Association established the **HIPAA Banking Industry Task Force** to address specific healthcare payment issues arising from that Medicate Modernization Act. Most recently, NACHA provided rule making guidance to the Council for Affordable Quality Healthcare (CAQH) in its development of CORE rules (Committee on Operating Rules for Information Exchange). NACHA has also worked with the Electronic Healthcare Network Accreditation Commission (EHNAC) to present and clarify for the healthcare network community practices and requirements of bank healthcare payment processing services. This enabled EHNAC to ensure that its standards cover both healthcare and medical banking equitably and consistently.