Statement of America's Health Insurance Plans
to the
National Committee on Vital and Health Statistics'
Subcommittee on Standards
Regarding the Upcoming Regulations on Operating Rules
Presented by Jeanette Thornton, Vice President, Health IT Strategies
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Overview and Introduction

I am Jeanette Thornton, Vice President Health IT Strategies for America's Health Insurance Plans.

AHIP is the national association representing approximately 1,300 health insurance plans that provide coverage to more than 200 million Americans. AHIP's member health insurance plans offer a broad range of health insurance products in the commercial marketplace and also have demonstrated a strong commitment to participation in public programs.

AHIP's members are strongly committed to the successful implementation of the Patient Protection and Affordable Care Act (PPACA) and support efforts to simplify electronic processes between providers and health insurance plans.

Importance of Operating Rules

Implementation of PPACA's operating rule provisions have the potential to increase standardization of the HIPAA transactions, achieve more uniformity in key business practices and help the healthcare industry move from costly manual processes to robust electronic communications.

AHIP supports the implementation of operating rules as a key component of the strategy to reduce administrative costs – for both health plans and providers. Healthcare providers have strongly advocated for more uniform implementation of the HIPAA transactions. The operating rules originated because the existing HIPAA standards allowed a high level of flexibility that led to wide variation in health plan responses contained in the standard electronic transactions. To simplify the flow of information between health plans and providers, AHIP and the BCBSA have implemented a pilot through which health plans in two states (Ohio and New Jersey) have come together to offer a single website for providers to connect with most of the health insurers in these states for administrative functions. When talking to providers

about this project, their number one request was greater consistency and standardization in the health plan's response to the HIPAA transactions.

To date, the implementation of the CAQH CORE Phase I and Phase II rules for insurance eligibility transactions has enabled health plans to provide physicians and hospitals with standardized and detailed information on a patient's financial status – resulting in more automated transactions and less time spent on the phone.

Overview of Operating Rules

The development of operating rules by an entity separate from the Standard Development Organization (SDO) has been recognized by a broad group of stakeholders as an effective model. The development of technical standards and operating rules require different levels of expertise. As a result, we recommend that the SDO focus on the technical aspects of the standards while the operating rule entity should consider how the standards will work in the business environment. However, a strong partnership is needed between the operating rule entity and the applicable SDO.

Given that PPACA only defined operating rules as "the necessary business rules and guidelines for the electronic exchange of information that are not defined by a standard or its implementation specifications," AHIP recommends that the Committee consider the following guiding principles:

- The role of standards and operating rules must be clearly defined to avoid conflicting requirements. The industry must understand the role and functions of the SDO and the operating rule entity; and a transparent process must used to create and modify standards and operating rules.

- HHS should update the HIPAA standards on a shorter timeframe, thus eliminating the long gaps that currently exist (e.g., 10 years). More frequent updates may negate the need for some operating rules in the future.

- The definition of operating rules should include rules that address both high level business practices and rules that provide constraints on how a standard is used.

- Operating rules can play an important role in filling "gaps" left undefined by the standards in the time before the requested changes can be incorporated into the standard. It is important that the timeline for the implementation of a standard and its associated operating rules is in sync to avoid duplicate implementations. In addition, operating rules can also address business needs that are not included in standards through an iterative process outside of the established normal standard setting timeline.

- The operating rule development process should ensure that a broad group of stakeholders have input and include a public comment period.

- PPACA requires that the operating rules be consistent and not in conflict with other existing standards. Given that health plans will face significant penalties if they are not in compliance with the standards **or** operating rules, the NCVHS should recommend an open and transparent process for the SDO to request modifications to the operating rules or the operating rule entity to request modifications to the underlying standards in the case of errors or technical conflicts. These modifications should be completed as needed and should not wait until the next regulatory cycle to require implementation. Later in our testimony we discuss steps that need to be taken to structure the compliance process, including requirements placed on all stakeholders within the system. Otherwise the existing compliance objectives will need to be reconsidered.

- Finally, operating rules can establish important business practices that will enable the move from batch processing to real-time transactions by specifying items such as response time, hours of operation, common security principles and user authentication. However, it is critical that these practices are established at a high-level and not interfere with daily business operations.

Selection of a Qualified Nonprofit Operating Rule Entity

It is critical that NCVHS select only one entity to develop specific operating rules. The selection of more than one entity would cause unnecessary confusion in the marketplace and increase the implementation burden given the detailed relationships between the transactions.

CAQH, through the CORE initiative, has brought together a broad array of stakeholders to draft operating rules that have been widely implemented. The value of the existing operating rules has already been demonstrated and as such, AHIP supports the selection of the CAQH as the designated entity to develop operating rules. CAQH meets the criteria established by PPACA and has established an effective process that includes broad stakeholder input. In addition, we support the adoption of the CORE Phase I and Phase II Operating Rules to meet PPACA operating rule requirements for eligibility and claim status.

Looking forward, we see additional opportunities for building upon this effort and further improving the operating rule process:

- We applaud CAQH for revising the CORE bylaws to establish a more inclusive governance process, including providers, IT experts, insurers and the appropriate SDOs.

- CAQH has demonstrated leadership in updating operating rules to ensure that they are consistent with ASC X12 Version 5010. Additional updates may be necessary in other areas.

- We believe there is an opportunity now to leverage existing state and regional efforts to define common rules, companion guides and implementation specifications.

- CAQH should continue to partner with the Office of the National Coordinator for Health IT to ensure that work on administrative transactions is not developed separately from work to advance clinical data exchange. For example, several of the forthcoming operating rules are closely linked to the delivery of clinical information including the health claims attachment, the authorization and referral transaction and transactions to request medical records from providers.

We understand that the mandated implementation of operating rules is a new concept and as such, some groups have expressed concern that operating rules may add unnecessary steps to the standards development process. We suggest that NCVHS consider the first phase of operating rules (eligibility and claims status) as a trial implementation period, with NCVHS review of the process following the adoption of the first set of rules.

For the selection of an entity to develop future phases of operating rules (electronic funds transfers, health care payment and remittance advice, health claims, enrollment/disenrollment in a health plan, health plan premium payments, health claims attachment, referral certification and authorization), we recommend strong consideration be given to CAQH, particularly in light of the fact that CAQH is examining partnerships that may be needed to address areas such as electronic funds transfers and health plan premium payments.

Ongoing Activities in the States

A key goal of operating rules should be to address the numerous state-specific projects around the area of administration simplification. While the high level of interest by state policy makers demonstrates the importance and the need for operating rules on a national level, the numerous state initiatives have the potential to lead to a proliferation of state-specific operating rules or state-specific companion guides. A snapshot of ongoing initiatives includes:

- **Oregon:** In Oregon within the State Department of Human Services, the Office for Oregon Health Policy and Research (OHPR) has been directed to develop recommendations for standardizing administrative transactions between health plans and healthcare providers. It is expected that these recommendations will serve as the basis of regulations that will mandate use of an Oregon-specific companion guide for the various HIPAA transactions.[1]

[1] http://www.oregon.gov/OHPPR/HEALTHREFORM/AdminSimplification/AdministativeSimplificationWorkgroup.shtml/

- **Washington:** OneHealthPort has been designated as the state's administrative simplification entity under SSB 5346. Several administrative simplification initiatives are ongoing in the areas of eligibility, coding, credentialing, etc. [2]

- **Utah:** The Utah Health Information Network (UHIN) has established a universal set of state-specific standards and specifications, which health plans in the state are required to implement.[3]

- **Minnesota:** Regulations require the use of Minnesota Uniform Companion Guides as companions to HIPAA Implementation Guides.[4]

- **California:** Earlier this month, the Integrated Healthcare Association announced the formation of two committees to address operating rules between providers and health plans. Work is about to get underway.

All of these initiatives share the same goal - they aim to address provider requests for more standardization in health plan implementation of the HIPAA transactions. While PPACA did not specifically address state initiatives, we recommend that the Committee consider making recommendations to create more uniformity across states and reduce provider confusion:

- NCHVS should recommend that one goal of operating rules should be to establish national standards and negate the need to have state-specific operating rules.

- Since the states have undertaken significant work to date, we recommend that HHS direct the operating rule entity to take into account state activites when making recommendations on operating rules.

- All states with ongoing initiatives should be brought together so NCVHS can learn more about their approaches and make recommendations on the best way to fold these initiatives into the development of operating rules.

AHIP and its member companies stand willing to help facilitate these discussions. Our mutual goal should be consistency with the operating rules for the HIPAA transactions standards and state-specific requirements. At present, conflicting requirements may lead to health plans being liable for penalties on the federal level because of contradictory state standards.

[2] See http://www.onehealthport.com/index.php
[3] See http://www.uhin.org/
[4] http://www.health.state.mn.us/auc/guides.htm.

Compliance, Penalties and Certification

While not part of this hearing's scope, we urge the Committee to hear future testimony on the new penalty structure created under PPACA. We recommend that NCVHS convene a stakeholder discussion on the various options to structure the compliance and certification provisions of §1104.

Given that health plans will face a significant penalty of $20 per member per day if a health plan is not certified as compliant with the standards and operating rules, we ask NCVHS to consider the following:

- It is critical that both vendors and providers are required to implement electronic transactions. Currently there are no requirements for providers to adopt and use electronic transactions. While two important electronic transactions were initially considered as part of the meaningful use requirements (claims submission and eligibility), this requirement received significant push back from the provider community. Without an implementation mandate on all parties, the healthcare system may not realize the benefits that the operating rules were designed to achieve.

- To demonstrate compliance, health plans are required to complete end-to-end testing with their partners; however there is no corresponding penalty for these partners (providers, vendors) to ensure full compliance. NCVHS should consider recommending that the certification requirements be expanded beyond health plans or a similar enforcement process be established.

- Alternatively, the NCVHS should discuss whether the current requirements are feasible if other stakeholders do not have similar responsibilities.

Since PPACA indicated the designation of an outside entity to certify compliance as optional, we recommend NCVHS hear additional testimony at a later date on deeming, certification and potential criteria to become a certifying entity. There are useful certification models elsewhere in healthcare that could serve as models (e.g., home health, hospital accreditation, electronic health records, etc.).

Over the next several years health plans will be required to make significant changes to their business operations to implement PPACA, in addition to the forthcoming implementation of ASC X12 Version 5010 and the ICD-10 code set, all while being constrained to strict requirements for their medical loss ratios. While we are very supportive of the operating rule provisions, it is critical that they are implemented in a way that ensures the simplification of healthcare administration and an overall reduction (not increase) in administrative costs.

Recommendations and Conclusion

AHIP supports the following recommendations:

1. NCVHS should recommend the designation of CAQH as the "qualified nonprofit entity" to develop operating rules under PPACA and that the CORE Phase I and Phase II operating rules should be the required operating rules for eligibility and claims status (provided the enhancements suggested in this testimony are made).

2. Implementation of the PPACA operating rule provisions must ensure a strong partnership between the selected entity and the applicable SDO. We recommend that HHS clearly delineate the respective roles and responsibilities of the SDO and the operating rule entity. This guidance should include the establishment of a transparent process to develop standards and their associated operating rules.

3. HHS should adopt a definition of operating rules that includes rules that address both high level business practices and rules that provide constraints on how a standard is used.

4. The HHS Office of the National Coordinator for Health IT should be directed to work closely with the operating rule entity on those operating rules that involve the exchange of clinical data such as the claims attachment and referral and authorization transactions.

5. NCVHS should emphasize the importance of uniform rules. At a minimum, the operating rule entity should be directed to take steps to consider, and as appropriate incorporate, ongoing state activity into the operating rules.

6. HHS should hold future hearings on:
   a. Options to determine compliance and the potential design of the certification program for health plans;
   b. Potential implementation requirements for providers and vendors to ensure a fully connected healthcare system and realize the potential administrative cost savings; and
   c. Implications of the penalty for noncompliance.

We thank you for the opportunity to provide input to the Committee's deliberations.