

**Testimony of Sajid Imam
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**National Committee on Vital and Health Statistics (NCVHS)
Subcommittee on Privacy, Confidentiality & Security**

**Open Meeting: Section 1179 of the Health Insurance
Portability and Accountability Act**

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I. Introduction

Members of the Subcommittee, thank you for inviting me to speak with you today. My name is Sajid Imam, and I am the Senior Director for Global Vertical Solutions (Commercial and Prepaid) – Healthcare & Insurance, at Visa Inc.

Visa is a global payments technology company. It has been a pioneer in electronic payments since 1958. As a premier payments technology company, Visa's global network connects thousands of financial institutions with millions of merchants and cardholders every day. Visa does not itself issue payment cards to consumers or businesses, but rather Visa's network supports the Visa-branded credit, debit, and prepaid products designed by issuing banks to enable cardholders to make purchases at merchants and retailers globally and receive funds in a convenient, secure and reliable manner. The transactions carried over Visa's network include consumer transactions, as well as business to business (B2B) and government to business (G2B) transactions. Each of these transaction use cases can be supported by payment card solutions.

Visa supports multiple types of electronic payment or electronic funds transfer (EFT) transactions types through its network. Its innovation in EFT enables new channels and/or form factors, such as mobile payments, near field communications (NFC) and virtual cards (described further below), among others, that utilize the card platform in the background.¹ As payments increasingly move to the digital environment, Visa is investing in mobile platforms, technologies and capabilities to enable consumers and businesses to continue to pay and get paid, with the same convenience, security, reliability, and global acceptance that Visa has achieved in the physical world.

II. Use of Payment Cards for Consumer Health Care Transactions

As consumers, we are an increasingly electronic society, with transactions by payment card – credit or debit (which includes prepaid) – often replacing cash or check as the preferred means of payment. Payment by debit and credit card has become a nearly universal means by which consumers, including consumers of health care, pay merchants (including health care providers and health insurance issuers) for goods and services, with such payments constituting approximately 46% of the dollar volume of all U.S. consumer spending in

¹ The U.S. Department of Health and Human Services (HHS) and the National Committee on Vital and Health Statistics has recognized that EFT transactions can encompass transactions conducted by ACH, FedWire, or payment card network. *See* Adoption of Standards for Health Care Electronic Funds Transfers (EFTs) and Remittance Advice, 77 Fed. Reg. 1556, 1567 (Jan. 20, 2012); NCVHS Letter to Secretary of HHS at 3 and App. A at 3 (February 17, 2011).

2010 and projected to constitute approximately 56% of such total dollar volume in 2015.² This is especially true with respect to younger consumers. An overwhelming number of individuals under the age of 30 cite debit cards as their preferred method of payment.³ But this is the case not only for young or affluent consumers, but also for the unbanked and underbanked population that disproportionately relies on general use prepaid cards for purchase transactions because the absence of a bank account renders them unable to write traditional checks or to use direct electronic transfers.⁴

This trend also encompasses payment for health care and health insurance. Payment cards are ubiquitous as a form of payment. Accordingly, most health care providers accept payment cards as a means of payment.⁵ The trend can also be seen in the insurance purchase market where:

- Consumer use of credit or debit cards to pay for insurance has more than doubled since 2003;⁶
- Fees associated with prepaid cards are typically less than fees associated with traditional checking accounts;⁷
- Cards complement other payment options, with increased card acceptance not expected to result in fewer Automated Clearing House (ACH) payments;⁸ and

² Nilson Report No. 985 (Dec. 2011), p. 1. Specifically, debit payments constituted 21% of such dollar volume in 2010 and are projected to constitute 25% of such dollar volume in 2015, while credit card payments constituted approximately 25% of such dollar volume in 2010 and are projected to constitute 31% of such dollar volume in 2015. *Id.* In terms of number of transactions, debit cards are now the most prevalent card payment option, constituting roughly 60% of card payment transactions. J. Miller, "Paying with Plastic," *Public Utilities Fortnightly* (Dec. 2009), available at <http://www.fortnightly.com/fortnightly/2009/12/paying-plastic> (full article accessible to subscribers).

³ Visa US Consumer Issues Monitor (January 2010); Younger Insurance Consumers Expect Online Insurance Options, *Insurance Journal* (January 2011); *see also* Visa US Payments Tracker (2011) (showing that consumers in the 18-24 age group prefer debit cards to any other payment options and consumers in the 25-34 age group prefer debit nearly as much as online banking payments).

⁴ This segment of the population is substantial: the Federal Deposit Insurance Corporation estimates that 7.7% of U.S. households (roughly 9 million) are "unbanked," while an estimated 17.9% of U.S. households (roughly 21 million) are "underbanked." FDIC National Survey of Unbanked and Underbanked Households (Dec. 2009), http://www.fdic.gov/householdsurvey/full_report.pdf. Together, at least 25.6% of U.S. households (nearly 30 million households, in which approximately 60 million U.S. adults reside) are either "unbanked" or "underbanked." *Id.*

⁵ According to a 2009 study conducted by Medical Group Management Association of its members, 98% of survey respondents accept payment cards. 2009 Visa/MGMA Practice Perspectives on Patient Payments. This reflects general consumer preference for card-based payments, as well as the recent migration of payments tied to health and welfare benefit accounts (e.g., HSA, FSA) away from paper checks to cards and card-based solutions. *See* IRS Revenue Ruling 2003-43 and IRS Notice 2006-69.

⁶ Visa Payment Panel (2011).

⁷ *See* Checking vs. Prepaid: Threat or Opportunity, <https://www.javelinstrategy.com/brochure/286>.

⁸ How Americans Pay Their Bills: Sizing and Forecasting Bill Pay Channels and Methods, 2010-2013 (October 2010).

- 79% of all insurance purchasers want multiple online payment options.⁹

HHS has recognized this trend in a number of ways, including by requiring the issuers of qualified health plans at a minimum to accept, for all payments in the individual market, paper checks, cashier's checks, money orders, EFT, and all general-purpose prepaid debit cards as methods of payment and to present all payment method options equally for a consumer to select their preferred payment method.¹⁰

On the consumer side, payment card technology is used to enable the payment of provider bills, insurance premiums, and certain select IRS-approved health transactions for health and dependent care flexible spending arrangements¹¹ safely and securely. Card technology is also used to allow access to health savings account (HSA) funds even though IRS limitations on withdrawals do not apply.

In a typical consumer transaction, the following types of information may flow through the payment card system/network: cardholder name, card number, card verification code (CVV2), card expiration date, transaction date, transaction amount, merchant name, merchant id, terminal id, and merchant category code (MCC). However, the payment transaction contains no information that identifies the specific product(s) and/or service(s) being purchased by the cardholder. Even in the processing of transactions related to health-care specific payment cards associated with health flexible spending arrangements (FSAs), health reimbursement arrangements (HRAs) and HSAs, individual item level detail and/or details of goods and services being paid for by the cardholder do not form part of the transaction flow, and are not visible or captured by the card networks.

III. Use of Payment Card for Health Care B2B and G2B Transactions

On the commercial side, one type of EFT transaction increasingly being used in the health care industry today is "virtual card payment" whereby providers can be paid by payors, such as health plans, using a credit or prepaid card, that is virtual in nature (i.e., without the plastic), over the payment card networks through the use of an electronic authorization. Reasons for growth in the use of virtual card payments include: ease of acceptance, elimination of need to reconfigure systems or enroll with separate health plans to accept EFT payments, no need to provide banking information to health plans, and facilitation of payment re-association and reconciliation for EFT transactions.¹² When coupled with

⁹ Visa US Consumer Issues Monitor (January 2010); Younger Insurance Consumers Expect Online Insurance Options, *Insurance Journal* (January 2011).

¹⁰ 45 C.F.R. § 156.1240(a)(2).

¹¹ See IRS Rev. Rul. 2003-43.

¹² The Accredited Standards Committee X12 is currently engaged in efforts – which we support – to include, in the HIPAA ERA transaction standard, an identifier for payment cards in the BPR (financial information) and TRN (re-association trace number) segments to facilitate the use and re-association of payment card EFTs with the ERA. Although X12 has made significant progress, and has voted to adopt a

additional information separately maintained in an accounts payable automation system, virtual card EFT payment solutions can meet all of the core requirements under HIPAA for administrative simplification: (1) automated reconciliation; (2) addressing acknowledgments; (3) reducing manual effort; and (4) describing data elements in unambiguous terms.¹³

The typical commercial health care payment transaction contains many of the same categories of information as noted above for consumer transactions. Additionally, a commercial health care payment transaction may also include: health plan/payor name, health plan/payor identification number, health care provider/payee/merchant name and number, and trace re-association number. However, no information related to the actual health care claim, for which the payor is paying the provider, flows through and/or is captured by the payment network in a payment card EFT transaction. Thus, for example, the payment card EFT transaction would not include the name of, or any identifiable information about, any individual patient(s) for whose health care payment is being made, or any information on the products or services for which payment is made.

IV. Health Care Payment Card Transactions Are Exempt from HIPAA under Social Security Act § 1179

When processing consumer or commercial health care payment card transactions, financial institutions (including card issuers and their agents) are exempt from meeting HIPAA requirements, including the business associate provisions, under an exemption provided in Social Security Act § 1179. This exemption provides, in part, that

To the extent that an entity is engaged in *activities of a financial institution* (as defined in section 3401 of title 12),¹⁴ or is engaged in authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments, for a financial institution, *this part, and any standard adopted under this part, shall not apply to the entity with respect to such activities*, including the following:

- (1) The use or disclosure of information by the entity for authorizing, *processing, clearing, settling, billing, transferring, reconciling or collecting, a payment for, or related to, health plan premiums or health care, where such payment is made by any means*, including a

completed Business Requirements Technical Solution document (BRTS #1265) for introducing a code for Card Payment Type in the 835 transaction standard, the process is lengthy and far from conclusion.

¹³ HIPAA Title II, Subtitle F. Pub. L. 103-191.

¹⁴ As defined there, “financial institution” means “any office of a bank, savings bank, *card issuer* as defined in section 1602(n) [now 1602(o)] of title 15, industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.” 12 U.S.C. § 3401(1) (emphasis added).

*credit, debit, or other payment card, an account, check, or electronic funds transfer.*¹⁵

There is nothing in the language of this provision that would limit the exemption for financial institutions to consumer-conducted transactions.¹⁶

V. Health Care Payment Card Transaction Generally Do Not Include PHI Other Than as Necessary to Effectuate the Transaction and As Permitted by HHS

Consistent with the exemption in Social Security Act § 1179, health care payment card transactions do not include protected health information (PHI) – other than as may be necessary to effectuate the transaction. This is true for both consumer payment cards and business payment cards. As noted above, although a consumer payment card transaction may include the name of a consumer and the name of a health care provider (or health insurance issuer), it does not contain any medical/health care information, such as medical diagnosis, condition, or treatment. Similarly, a transaction involving a business payment card aligns with the CCD+ format to provide a similar flow of payment and transaction information, as is associated with an ACH payment today, with no PHI being transmitted in the transaction.¹⁷

HHS has previously recognized that, consistent with Section 1179, a limited amount of PHI may be included in a health care payment transaction involving a financial institution, without triggering HIPAA coverage:

We seek to achieve a balance between protecting patient privacy and facilitating the efficient operation of the health care system. While we agree that financial institutions should not have access to extensive information about individuals' health, we recognize that even the minimal information required for processing of payments may effectively reveal a patient's health condition; for example, the fact that a person has written a check to a provider suggests that services were rendered to the person or a family member. Requiring authorization for disclosure of protected health information to a financial institution in order to process every payment transaction would make it difficult, if not impossible for the health care system to operate effectively.¹⁸

¹⁵ SSA § 1179, 42 U.S.C. § 1320d-8 (emphasis added).

¹⁶ See, e.g., 77 Fed. Reg. at 1567 (recognizing that financial institutions conducting health care EFT transactions would be exempt, under section 1179, from compliance with the adopted HIPAA standard).

¹⁷ HHS has recognized that the ACH CCD+ EFT transaction does not include individually identifiable health information, although it may contain health information. 77 Fed. Reg. at 1567. Because the payment card EFT transaction aligns with the CCD+ format, it too would not contain individually identifiable health information and, thus, not contain PHI.

¹⁸ 65 Fed. Reg. at 82616.

Similarly, financial institutions may submit payment transactions and disclose PHI (or otherwise individually identifiable health information) to intermediary payment processors under Section 1179 without an authorization (or business associate agreement with health plan or provider clients) for health care payment transactions.¹⁹

Any identifiable information transmitted in the processing of health care payment card EFT transactions – whether on the consumer or commercial side – is consistent with these limitations.

VI. Health Care Payment Card Transaction Information Is Secure

Payment card networks and the payment card system employ a number of features that protect any identifiable information contained in payment card transactions. Any merchant – including health care providers and health insurance issuers – that accepts card payments must comply with the PCI Security Council information security standards with respect to such payment transactions. Visa and the other payment card brands enforce these standards with respect to merchants (including health care providers and health insurance issuers) accepting their branded payment cards to safeguard consumers’ information. And, if consumer payment card information is nevertheless compromised, and fraudulent or unauthorized transactions occur, the consumer is not liable to pay such charges under the payment card brands’ respective Zero Liability policies.

With respect to B2B transactions, payment card EFT transactions provide a safe method of electronic payment. First, if the payment card EFT is a Straight Through Processing (STP) payment, the funds are directly deposited into the provider’s merchant banking account, and there is no possibility of diversion.²⁰ Second, in most cases, the information necessary to process the card transaction (e.g., card number, expiration date, etc.) are generally transmitted to providers by secure email. Third, payment card numbers can be restricted to specific MCCs, which means that such payment cards can only be used by a specific type of merchant (e.g., doctors, hospitals, etc.). Finally, in most cases, the payment card can only be negotiated for the exact payment amount that the payor authorizes, another protection against diversion of payment.

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Visa looks forward to working with NCVHS and other stakeholders on issues relating to the involvement of financial institutions in health care transactions and to the section

¹⁹ See 65 Fed. Reg. at 82495; see also 65 Fed. Reg. at 82535, 82617 (recognizing that, under the minimum necessary rule, certain information is generally necessary for certain payment processing activities of financial institutions, including name and address of the individual; name and address of the payor or provider; amount of charge for health services; date on which health services were rendered; the expiration date for the payment mechanism (i.e., credit card expiration date); individual’s signature; and relevant identification and account numbers).

²⁰ With “Straight Through Processing” (STP), the automated payment card transaction processing service available to providers, a health plan/payor can submit a payment directly to the provider’s acquiring institution for disbursement to the provider’s bank account, without the need for a provider to manually key enter the card number into a Point of Sale terminal to process the payment card EFT transaction.

1179 exemption applicable to financial institutions engaged in payment processing activities.

If you have any questions or would like to discuss these issues further, I would be happy to do so.

Thank you.

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