

Statement of

***Sandra J. Wolfskill, FHFMA***  
**Director, Healthcare Finance Policy, Revenue Cycle MAP**  
**Healthcare Financial Management Association**

before the

**Subcommittee on Privacy, Confidentiality & Security**  
**National Committee on Vital and Health Statistics**

*“Section 1179 of the Health Insurance Portability and Accountability Act”*

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Thank you, Chairman Kloss and the members of the Subcommittee on Privacy, Confidentiality, and Security for the opportunity to comment on how banking and other financial service business are using personal health data as their services evolve in support of the health industry. My name is Sandra Wolfskill, FHFMA, Director in the Healthcare Finance Practices, Revenue Cycle MAP, for the Healthcare Financial Management Association. HFMA is a professional organization of more than 40,000 individuals involved in various aspects of healthcare financial management. HFMA is committed to helping its members improve the management of healthcare delivery systems, comply with the numerous rules and regulations that govern the industry, and further the principles of administrative simplification.

Administrative simplification is of great interest and importance to our members. We recognize that in order to reduce revenue cycle processing costs, standardization and universal adoption of a standard, clearly defined sets of processes and transactions are essential. To that end, our members have embraced the electronic claims (837-I and 837-P) and remittance advice (835) standards.

It is in the area of payment processing that healthcare providers originally turned to financial institutions for the specific activity of accepting payments for healthcare bills, typically through a lockbox. The financial institutions would deposit those funds and send documentation related to the payments to the provider for manual posting into the patient accounting system. With the development of the 835 transaction set, providers turned to the financial institutions to not only accept the payments, but also to convert these non-standard transactions into an 835-compliant file which could then be electronically posted to the provider's patient accounting system.

A brief review of the products and services offered by various banking institution reveals the variety of services now being offered to hospitals and other healthcare providers. The list of services includes:

- Claims submission services
- Electronic remittance services
- Denial prevention services, patient responsibility estimation and denials management services
- Insurance eligibility services
- Patient payment plans
- Patient payment portals
- Patient billing services

Many of these services are typically also provided by the traditional clearinghouses which have managed the claims editing and submission activities as well as remittance and denials management services. To the extent that financial institutions provide these services, they appear to be functioning as a clearinghouse-that is, converting non-standard transactions into standard transactions and vice versa-which would appear to negate the exemption from HIPAA compliance provided under Section 1179.

HFMA recently conducted a brief poll of a group of our larger healthcare systems (organizations with gross patient service revenue in the >\$1 billion/year range). Specifically, we asked the following questions:

1. Over the past decade, which statement best describes the level and range of services performed on your behalf by financial institutions involving protected health information?
  - a. Significantly expanded
  - b. Somewhat expanded
  - c. Stayed about the same
  - d. Not sure

Over 90% of the responders indicated that the range of services provided had significantly or somewhat expanded.

2. The second question we asked was: as a covered entity, under what circumstances would you require a business associate or other formal agreement with a financial institution regarding the handling of protected health information?

Over 90% of the responders indicated that they would require business associate type agreements from the financial institutions when those institution served as a clearinghouse, handled HSA-type products and services or provide additional revenue cycle services.

Although we acknowledge that this poll included only a small number of very large providers, we see the responses as confirmation of the ever expanding role of financial institutions in the provision of revenue cycle related services, which include access to and processing of protected health information.

As organizations with a clear responsibility for the security and privacy of the protected health information of their patients, healthcare providers must be assured that the clearinghouses and business associates with whom they interact are in compliance with the relevant HIPAA regulations. The Section 1179 exemption may have been adequate when financial institutions were simply collecting payments on behalf of a healthcare provider. However, as their role has expanded to include not only converting paper remittance advices into electronic files to support electronic posting of payments into the patient accounting system but also into the handling of healthcare claims, these financial institutions appear to be moving into the services clearly identified in the definition of a clearinghouse. As defined in the HHS Privacy Rules, General Provisions: Definitions – Health Care Clearinghouse - § 160.103:

The definition in the final rule is:

Health care clearinghouse means a public or private entity, including billing services, repricing companies, community health management information systems or community health information systems, and “value-added” networks and switches, that does either of the following functions:

- (1) Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.
- (2) Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

HFMA encourages the Subcommittee to work with CMS to provide technical guidance to the industry better defining the scope of the Section 1179 exemptions in relation to the specific types of services being provided by financial institutions that involve protected health information. At the same time, HFMA strongly supports the continued development and implementation of the administrative simplification components of the HIPAA act so as to further aid providers in reducing processing costs and improving the overall efficiency of their revenue cycle operations.