December 7, 2018

Subcommittee on Standards
National Committee on Vital and Health Statistics
Via email

Re: Request for Comment on Predictability Roadmap Draft Recommendations

Dear NCVHS Members,

NACHA appreciates this opportunity to comment on the draft recommendations for the NCVHS Predictability Roadmap. We appreciate the work of HHS, NCVHS, and the entire industry in the movement toward electronic transactions and administrative simplification.

NACHA fully supports the Predictability Roadmap outcome goals of:

- Improved education, outreach and enforcement of HIPAA standards and operating rules
- Support of industry process improvement changes; and
- Timely adoption, testing and implementation of updated or new standards and operating rules.

With actionable recommendations and clearly defined calls to action, these goals can be attained.

While NACHA has strong interest in the overall success of this effort, we are only a small part of the effort, and will continue to work with the industry and provide input and resources where appropriate. Most of our specific comments below apply to the healthcare Electronic Funds Transfer (EFT) standard transaction, for which we are designated the Standard Development Organization; and to experiences and lessons from the financial services industry with electronic transactions that could be applicable to the healthcare industry.

NACHA, the ACH Network, and the NACHA Operating Rules[1]

NACHA is the financial services industry's governance and administrative organization for the Automated Clearing House (ACH) electronic payments system. NACHA is responsible for the development, adoption, and maintenance of the *NACHA Operating Rules* that govern the use of ACH payments. In addition to the healthcare EFT standard, the ACH Network is commonly used for the Direct Deposit of payroll and benefit payments and tax refunds;

[1] A comprehensive overview of NACHA, the ACH Network, and NACHA;s rulemaking process for the NAHCA Operating Rules was given in testimony to the NCVHS Subcommittee on Standards on July 20, 2010 - https://healthcare.nacha.org/sites/healthcare.nacha.org/files/files/20100709%20NACHA%20Testimony%20on%20Operating%20Rules%20NCVHS%20Hearing.pdf

recurring and online electronic bill payment; and business-to business payments. NACHA estimates that in 2018 there will be a total of 23 billion ACH payments, transferring $50 trillion.

Requests and proposals to amend the *NACHA Operating Rules* are evaluated through an inclusive and transparent rulemaking process that develops and assesses the business case and justification for the proposal. Each change that is approved has a defined effective date, at which time all covered parties are required to be compliant. NACHA takes a flexible approach to such effective dates. Relatively simple ones that do not involve significant technology or business process changes can become effective within 6 months of approval. Major changes may take as long as 18 months to become effective.

Requests for changes to the healthcare EFT standard transaction[2] may be made by any interested party, and would be evaluated through NACHA's existing rulemaking process. To date, we have not received any requests to modify the healthcare EFT standard.

The Healthcare EFT Standard

Since the designation of the NACHA "CCD+Addenda" as the healthcare EFT standard on January 10, 2012, the adoption of this standard transaction by the industry has been robust. Measured by the number of payments, its use has more than doubled since 2014 (the first full year of use after the effective date) to more than 300 million payments in 2018, and will transfer approximately $1.6 trillion in value in 2018. (See chart below.) According to the CAQH Index[3], 60 percent of medical claim payments in 2017 were made using the standard EFT.

Despite this success, some in the industry have experienced pain points in adopting or using the standard EFT, as described below. The same CAQH Index shows that only 9 percent of dental claim payments in 2017 were made using the standard EFT. NACHA commends the American Dental Association for recently launching an industry-wide effort to promote and increase adoption of standard transactions by dental practices, and we are committed to participating in and supporting that initiative.

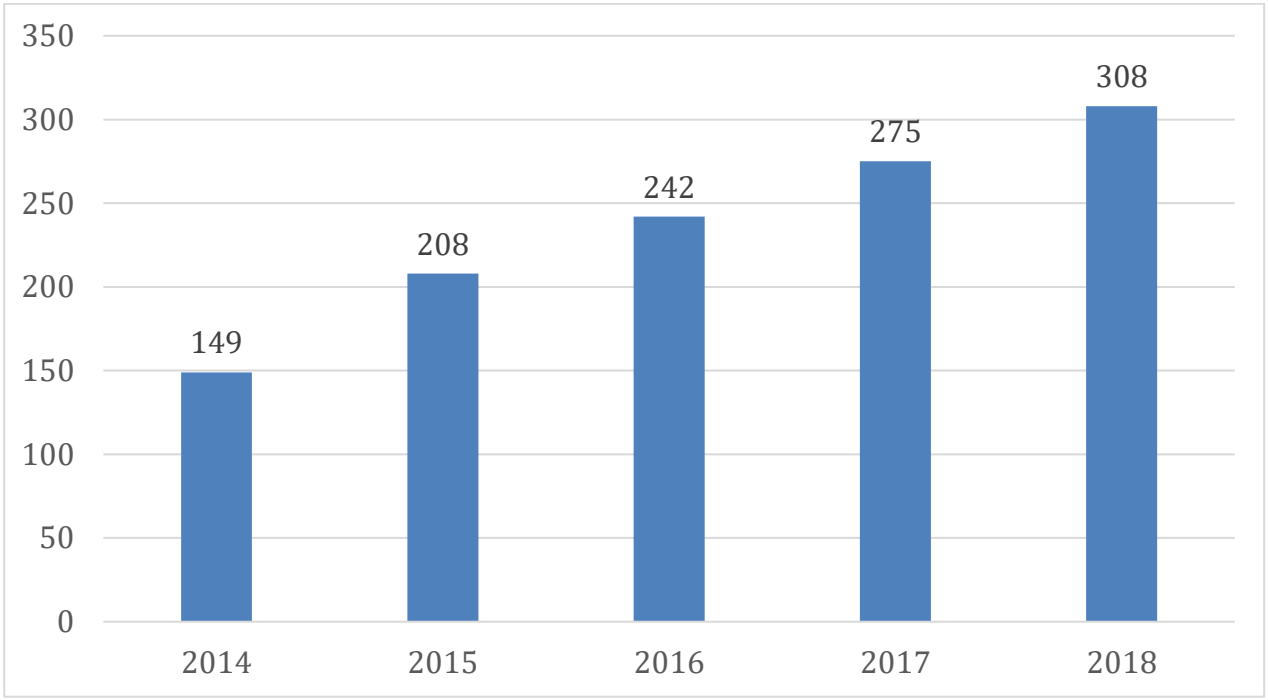
Another industry pain point is the effort required by providers to reassociate separate EFT and ERA transactions. This is a natural result of HHS' decision in 2012 that these two standard transactions would travel separate paths. Both the CAQH CORE operating rules (Phase III CORE 370 EFT & ERA Reassociation (CCD+/835) Rule) and the NACHA Operating Rules address reassociation requirements in order to ease its accomplishment by providers. Nevertheless, provider pain points generally result from: 1) a lack of automation in internal practice management or treasury management systems; 2) incorrect, non-standard, or missing data elements in one of the standard transactions; and 3) a lengthy gap in timing between the receipts of the two transactions.

[2] See https://healthcare.nacha.org/EFTStandardEnhancementSubmissionForm
[3] See https://www.caqh.org/sites/default/files/explorations/index/report/2017-caqh-index-report.pdf

A different type of pain point experienced by providers regards business practices by some payers or their vendors. In many instances, NACHA has heard that some providers have experienced difficulties in enrolling in EFT; that payers or their vendors are charging fees to use the standard transaction; or that they are paid involuntarily by virtual credit cards.

Addressing these existing pain points could go a long way toward increasing adoption of the standard EFT transaction, even absent any other actions pursuant to the Predictability Roadmap.

Chart - Healthcare EFT Standard Transactions (in millions)



Goal 1 - Education, Outreach and Enforcement

NACHA strongly supports draft recommendations 1 and 2 (as well as measurement step M1) regarding enforcement. In our experience with the governance of electronic payments, clear and consistent enforcement is inherent to compliance with standards, operating rules and other business practices. The knowledge and expectation of scrutiny provides an incentive for compliance. We have direct experience of this with the *NACHA Operating Rules*, in which compliance is achieved via adherence to contracts, a requirement to audit compliance with the Rules annually, and a NACHA-administered enforcement process.

NACHA also strongly supports draft recommendation 7 that "the HHS should regularly publish and make available guidance regarding the appropriate and correct use of the standards and operating rules." We would note, however, that specific to the standard EFT transaction, HHS' performance so far in this regard has not been successful. A substantial number of providers and industry organizations have been requesting that HHS issue

guidance on: 1) the involuntary payments by virtual credit cards; and 2) the practice of payers or their vendors charging providers fees to use the standard transaction. In several instances, FAQs published by CMS on these topics have been rescinded, most recently in February 2018.

As far back as September 2014, NCVHS recommended[4] that HHS should issue guidance that "defines whether, when, and how VCCs and CCs comply with national HIPAA-adopted standards for Electronic Funds Transfer (EFT) and Electronic Remittance Advice (ERA)," and "clarifies and emphasizes the current provisions that prohibit practices that discourage or prevent the use of a national HIPAA-adopted standard." As of the date of these comments, no such guidance is available from HHS.

NACHA is in full agreement with the Medical Group Management Association's (MGMA) most recent letter of April 2, 2018 to CMS Administrator Verma regarding Reinstatement of Electronic Payments Guidance on the CMS Website[5] calling for CMS "to expeditiously re-post these critical FAQs."

NACHA also is in full agreement with WEDI's industry best practices, entitled *Electronic Payments: Guiding Principles*.[6] As WEDI has an official advisory role to the Secretary, it would be straightforward for HHS to adopt WEDI's industry-consensus guidance as its "guidance on appropriate and correct use" of the standard EFT. In this regard, WEDI has already accomplished "Call to Action B" to publish white papers on agreed upon best practice regarding the use of the EFT standard.

Goal 2 - Process Improvement

NACHA strongly supports the goal of efficient and effective process improvements. We are skeptical, however, that the creation of a new industry governance entity, as outlined in recommendations 4 and 5, is necessary to achieve meaningful process improvements. In fact, it is possible that the resources and attention that would be required to be devoted to the establishment of a new governance entity could have the unintended consequence of diverting resources and attention from other process improvements and updates to standards. We would encourage NCVHS to explore process improvements that do not involve the establishment of a new industry governance entity.

Goal 3 - Timely adoption, testing and implementation of updated or new standards and operating rules

NACHA agrees that there should be reasonable timelines for updating or adopting standards and operating rules, but cautions against arbitrary timelines or one-size-fits-all approaches when not justified by a business case. With respect to the standards and operating rules other

[4] See https://www.ncvhs.hhs.gov/wp-content/uploads/2014/10/140923lt2.pdf
[5] See https://www.mgma.com/advocacy/advocacy-statements-letters/advocacy-letters/mgma-sends-letter-to-cms-urging-an-end-electronic
[6] See https://www.wedi.org/news/press-releases/2016/09/07/wedi-issues-electronic-payments-guidance-to-address-industry-concerns-with-ach-eft-transactions-virtual-credit-cards

than for the EFT, we defer to others in the industry. With respect to the standard EFT, NACHA thinks that it is premature to adopt recommendations about potential future updates when the industry should be focused on full adoption of the existing standard and compliance with the existing CORE operating rules.

Calls to Action

NACHA agrees with Call to Action A, that "health plans and vendors should identify and incorporate best practices for mitigating barriers to the effective use of the transactions, determining which issues are the most critical and prioritizing use cases." Identifying and mitigating barriers to the effective use of the EFT standard is critical to faster claim settlement and efficient payment processing. Fortunately, industry groups have conducted much work here already. WEDI's best practices white paper, *Electronic Payments: Guiding Principles*, should serve as a model for all plans and their vendors. Plans and vendors needing in-depth and customized advice can consult with NACHA's Elevation consulting group, which recently has assisted two large health plans in evaluating their ACH payments practices.

NACHA supports the work of WEDI on industry best practices (Call to Action B). WEDI's best practices white paper, *Electronic Payments: Guiding Principles*, should serve as a model for all plans and vendors, and should be adopted by HHS as official guidance.

NACHA supports Call to Action C regarding certification and validation to the extent that such new tools or programs are not duplicative of existing initiatives. Similarly, NACHA supports Call to Action D regarding cost-benefit analyses, including through collaboration or support of existing analyses.

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NACHA appreciates the opportunity to provide comments in response to the Request. If you have any questions regarding our comments, please do not hesitate to contact me at (703) 561-3924 or mherd@nacha.org.

Sincerely,

Michael Herd
Senior Vice President, ACH Network Administration