



**SUBMITTED TO:**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**NATIONAL COMMITTEE ON VITAL AND HEALTH STATISTICS**

**SUBCOMMITTEE ON STANDARDS**

**February 16, 2016**

**Presented By: Sherry Wilson, EVP and Chief Compliance Officer, Jopari Solutions**

**President, Cooperative Exchange: *The National Clearinghouse Association***

Members of the Subcommittee, I am Sherry Wilson, President of the Cooperative Exchange (CE), representing the National Clearinghouse Association and Executive Vice President and Chief Compliance Officer, Jopari Solutions. I would like to thank you for the opportunity to present testimony today on behalf of the Cooperative Exchange membership concerning the proposed Operating Rules. We also suggest that you refer back to our testimony last February when we testified on the Operating Rules.

### **Cooperative Exchange Background**

Cooperative Exchange is the nationally recognized resource and representative of the clearinghouse industry for the media, governmental bodies and other interested parties. Cooperative Exchange 25 clearinghouse member companies<sup>1</sup>, represent over 80% of the clearinghouse industry and process annually over 4 billion plus claims representing \$1.1 trillion, from over 750,000 provider organizations, through more than 7,000 payer connections and 1,000 HIT vendors. Combined with our non-profit members (AMA, ASC X12N and UHIN) and Supporting Organizations (Axiom, BancTec and MEA) the Cooperative Exchange ***truly represents the healthcare industry EDI highway infrastructure*** and maintains hundreds of thousands of highways and the majority of the on and off ramp connections across all lines of healthcare business in this country.

---

<sup>1</sup> American Medical Association (AMA), Apex EDI, ASC X12N, Availity, LLC, AXIOM Systems, Inc., BancTec, Change Healthcare, ClaimRemedi, eProvider Solutions, Dorado Systems, GE Healthcare, Greenway Health, Health-e-Web, Inc., HDM Corp., InstaMed, Jopari Solutions, Inc., Medical Electronic Attachments (MEA), NextGen Healthcare, OfficeAlly, OptumInsight, PassportHealth, Practice Insight, Relay Health, Secure EDI, Siemens HDX, The SSI Group, Trizetto Provider Solutions, Utah Health Information Exchange (UHIN), WEX, Inc., WorkCompEDI, Xerox EDI Direct, ZirMed ([CLICK HERE](#) for Cooperative Exchange industry resource information)

Cooperative Exchange member clearinghouses support both administrative and clinical industry interoperability by:

- Managing tens of thousands of connection points
- Securely manage and move complex data content including administrative and clinical information
- Receive and submit both real time and batch transactions
- Provide interoperability by normalizing disparate data to industry standards
- Provide flexible solutions to accommodate the different levels of stakeholder EDI readiness (low tech to high tech)
- Actively participates and provides strong representations across all the national standard organization with many of our members holding leadership positions.

Therefore, we strongly advocate for EDI standardization and compliance within the healthcare industry. We are committed to promote and advance electronic data exchange for the healthcare industry by improving efficiency, advocacy, and education to industry stakeholders and government entities.

### **Summary Recommendation**

Cooperative Exchange has extensive experience in the exchange of administrative transactions. Given this experience the Cooperative Exchange would like to make the following recommendations to NCVHS for bringing forward to Health and Human Services:

- Adopt the Companion Guide Rules
- Adopt the Infrastructure Rules (Processing Mode, System Availability, Response Times, Transaction Logging and Auditing, and Reporting Requirements)
- Not adopt the Connectivity Rules
- Adopt the Acknowledgment Rules
- Review the applicability of defining another set of industry privacy, security and confidentiality specifications
- Consider sanctioning other industry entities that have established guidelines for certification that meet the HIPAA/NIST requirements

## **Response to Subcommittee on Operating Rules' Questions**

The following are the Cooperative Exchange responses to the NCVHS questions regarding the proposed Phase IV Operating Rules for claims. **Please note that these answers also apply to enrollment/disenrollment, premium payments and prior authorization transactions except where noted.**

### **Do the proposed operating rules comply/support with the existing standards?**

**1. *Does the standard require modification before implementing the proposed operating rules?***

The transaction standards do not require modification before implementing these proposed operating rules as the operating rules address only infrastructure and not content.

**2. *Will system changes be required by the industry to implement the proposed operating rules?***

Yes. The industry will need to make significant changes that will be costly to implement in order to comply with the proposed requirements of the operating rules (e.g., X.509 certificates, acknowledgment transactions).

**3. *Have the proposed operating rules demonstrated ease in adoption and use?***

Many of the proposed operating rules are common practice within the clearinghouse industry and have already been adopted. Due to the short development time and release of the CORE Phase IV Operating Rules there has not been enough time for the overall industry to demonstrate the ease or difficulty of adoption or show any proven ROI. Specific to the current Phase I, II, & III CORE Safe Harbor version 2.2 communications rule, adoption and use has very been low. Any adoption realized to date has been primarily driven as an outcome of its introduction as an operating rule rather than a true business need/demand. The majority of EDI communications continue to occur within established and proven methods.

**4. *What amount of time is needed for the industry to implement the proposed Operating Rules?***

The Cooperative Exchange believes that 18-24 months are needed for our members to adopt, as shown by previous operating rules experience. Vendor updates are necessary, followed by installation and testing with their stakeholders.

**5. *What lessons learned from previously adopted operating rules have been applied/addressed in the proposed operating rules?***

As recommended in our previous testimony there needs to be established evaluation criteria to determine if there is a business need. There has been limited adoption of the prior operating rules. Payers and clearinghouses have implemented the requirements but providers have not. Because of this, we believe that it is premature to adopt any more operating rules until we have a better picture of the cost, benefits and actual ROI of the prior operating rules.

**6. Do the proposed operating rules incorporate the concerns raised by the industry at the June 2015 Review Committee hearing? Which concerns? How?**

The Cooperative Exchange strongly supports the adoption of the ASCX12 Acknowledgement Reference Model (ARM), which is required in the proposed operating rules, but not yet in the HIPAA standards. In fact, we believe that acknowledgments should be required for all of the HIPAA transaction exchanges.

The ASCX12 ARM implementation has validated that improved workflow efficiency is achieved as well as ROI. This is based on a clearinghouse 5 Year Study on electronic billing<sup>2</sup>. Stakeholders reported the following experiences and ROI:

- Providers averaged 50% reduction in claim status calls
- Providers averaged 45-55% administrative cost savings
- Payers averaged 64% reduction in claim status calls
- Payers averaged 70% reduction in duplicate billing (electronic audit trail)

**7. Has the industry developed strategies to measure the impact of adopting the proposed operating rules on the industry?**

We are not aware of any. There have been voluntary surveys by the Cooperative Exchange and WEDI, among others, however, these are not industry strategies. We support an industry effort to develop strategies to measure the impact of adopting any proposed operating rules or transaction standards.

**8. Has the industry developed metrics to measure the effectiveness and value of adopting the proposed operating rules? What are they?**

We are not aware of industry developed metrics, although there have been limited studies conducted by CAQH CORE and others to measure the perceived effectiveness and value. We strongly recommend that industry wide evaluation criteria be established to determine if there is a business need. Prior to the adoption of any future operating rules, it should be determined if the proposed rules address industry needs and demonstrate ROI across all stakeholders. We also encourage the industry to perform a post implementation analysis to determine if the projected ROI was met.

**9. How do the proposed operating rules facilitate potential emerging or evolving clinical, technical and/or business advances?**

Cooperative Exchange is concerned that these proposed rules do not facilitate emerging or evolving technologies. As industry experts on connectivity we believe the Phase IV Connectivity Rule 470 should **leverage existing security guidelines and best practices**.

Cooperative Exchange recommends NCVHS review the applicability of defining another set of industry connectivity methodology specifications, when there already exists a federal agency, the National Institute of Standards and Technology (NIST). NIST is referenced in the HIPAA regulations as an industry guideline reference source. At a minimum industry collaboration across organizations would facilitate administrative simplification by mitigating redundancy and excessive cost.

---

<sup>2</sup> Jopari Solutions 5 Year Electronic Medical Billing Case Study White Paper: August 6, 2013  
<http://www.jopari.com/category/whitepapers>

Cooperative Exchange also recommends the need for additional review of existing multilayer authentication methodologies that are being used today and how they align with the NIST SP800-63-2 Electronic Authentication Guideline criteria, as applicable.

1. HIPAA Security and HITECH Rules cite the National Institute of Standards and Technology (NIST), a federal agency that is recognized as the healthcare information technology resource for security best practice standards.
2. NIST published in August of 2013 the “Electronic Authentication Guidelines” for multilayer authentication<sup>3</sup> which provides different methodologies including Digital Certification as one method (NIST SP800-63-2 Electronic Authentication Guidelines)<sup>4</sup>.
3. HHS, OCR and NIST in their publications recognize that security solutions require standard guidelines as well as flexible framework, as “one blue print” does not fit for everyone.
4. Phase IV Connectivity Rule 470 only allows stakeholders one option for authentication, X.509 Digital Certification, and if adopted, will require stakeholders to build this option and make available.
5. Cooperative Exchange finds limiting authentication to only one solution does not provide flexibility to meet different stakeholder business needs and may result in additional change costs that will impede EDI adoption.

The Cooperative Exchange disagrees with the proposed Phase IV Connectivity Rule 470. It is a different communication standard than defined within Phase I, II, and III. Phase IV requires Safe Harbor version 4, while in previous phases the standard referenced is Safe Harbor version 2.2. Having different communication standards defined for specific transactions/phases will be confusing or even worse unknown until entities step through from Phase I to Phase IV.

In the spirit of administrative simplification, the operating rules should allow communication standards that are a flexible framework that leverages existing security guidelines and best practices and resolves the issue of two different sets of connectivity requirements as currently proposed.

**10. Do the proposed operating rules provide potential impact and/or improvement to health care related data and/or data infrastructure?**

Since the proposed operating rules focus on exchange infrastructure standardization and connectivity, there is no impact to data content and/or data infrastructure.

---

<sup>3</sup> . The HIPAA Security Rule preamble cites the National Institute of Standards and Technology (NIST) security control guideline documents (An Introductory Resource Guide for Implementing the HIPAA Security Rule and Risk Management Guide for Information Technology Systems), as an industry technology reference source and further expands their scope under the HITECH ACT. The NIST Guidelines are not mandated; however, the NIST Security Control Guidelines are recognized as industry security benchmarks and are used in industry certification criteria evaluation processes.

<sup>4</sup> NIST SP800-63-2 Electronic Authentication Guidelines, August 2013;  
<http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63-2.pdf>

**11. *If applicable, do the proposed operating rules incorporate privacy, security and confidentiality?***

Cooperative Exchange believes that defining another set of industry privacy, security and confidentiality specifications would be redundant as they are already addressed in the HIPAA regulations. There already exist numerous entities (i.e., HITRUST, EHNAC, SOC, and Shared Assessment) that address certification rules for industry guidelines in implementing the regulations.

Cooperative Exchange recommends that NCVHS sanction or acknowledge other industry entities that have established guidelines for certification that meet the HIPAA/NIST requirements. At a minimum industry collaboration across organizations would facilitate administrative simplification by mitigating redundancy and excessive cost.

Recent legislation (Cyber Information Security Act) requires the development of a voluntary industry HIT Security Framework. We believe that the security requirements should not be adopted now but that we wait until the Framework is completed.<sup>5</sup>

**12. *Do the proposed operating rules sufficiently align with the HITECH Stage 3 Final Rules on interoperability/Health Information Exchange so as to be reasonable for effectiveness and efficiency of the industry?***

Cooperative Exchange recommends that NCVHS call for an evaluation of the proposed operating rules vs. HITECH Stage 3 Final Rules, as well as HIPAA Privacy and Security Rules. This comparison should be completed to determine gaps and overlaps prior to the adoption of future operating rules on connectivity. This should be completed for current Phase I, II, III rules as well as the proposed Phase IV rules.

**13. *Can the proposed operating rules be enforced? How?***

There is no way to enforce these rules on non-covered entities (e.g., practice management system vendors and employers). Enforcement of current transaction/operating rules has been very difficult for CMS. For example, the enrollment/disenrollment transactions are often used by employers who are not required to use the standard. We remain concerned that these rules will be ignored by employers, however may place a burden on health plans. Providers are at the mercy of the software vendors to provide solutions to meet the regulations. Software vendors are not covered entities and not required to comply with the regulations.

**14. *Should NCVHS recommend the adoption of the proposed Operating Rules? Please explain.***

Prior to the adoption of any these and or any future operating rules, the Cooperative Exchange strongly recommends that evaluation criteria be established to determine if there is a business need. The evaluation should include demonstrated ROI across all stakeholders.

The Cooperative Exchange experience is that claims transactions are in wide use and connectivity is not a problem. The other transactions are not widely adopted and the industry does not have enough experience to know what operating rules would be meaningful.

---

## **Conclusion**

The Cooperative Exchange generally supports the efforts for operating rules and standards. Our recommendations address the need for administrative consistency; mitigation of regulatory redundancy; and the resource burden to comply with regulations. We also stress the importance of continued stakeholder inclusion in the development of necessary additional standards and rules.

Thank you for the opportunity to testify of behalf of the Clearinghouse industry. We look forward to continuing to work collaboratively with NCHVS and respective stakeholders to bring about administrative simplification in the industry.

Respectfully Submitted,  
Sherry Wilson, President  
Cooperative Exchange