

II. Provisions of the Interim Final Rule With Comment Period

Section 3 of ASCA established the requirements and exceptions under the Medicare Program for the mandatory submission of claims submitted in electronic form. 45 CFR 162.1101(a) defines a health care claim as the transmission of "A request to obtain payment, and the necessary accompanying information from a health care provider to a health plan, for health care." 45 CFR 160.103 defines electronic media as—

(1) Electronic storage media including memory devices in computers (hard drives) and any such removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
(2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

In this interim final Rule with comment period, we integrate the definitions of "electronic media" and "claims submitted in electronic form" into the newly defined term, "electronic claim." Furthermore, for brevity, and to reflect common use, the term "electronic claim(s)" is considered to be synonymous with and is being used in lieu of the term "claims submitted in electronic form" in this Rule.

A. Definitions Used for Electronic Claim Submission

In § 424.32(d)(1), we are adding a definition section to define terms used in paragraph (d). We define the following terms: claim; electronic claim; direct data entry; electronic media; initial Medicare claim; physician, practitioner, facility or supplier; provider of services; and small provider or small supplier. We define "claim" to mean the transaction defined at 45 CFR 162.1101(a), which is the regulatory definition of "health care claim" in the Transactions Rule. We specify the definition of "electronic claim" to mean a claim that is submitted via electronic media. We specify that the definitions of "direct data entry" and "electronic media" are defined as those terms are defined in 45 CFR 162.103, and 160.103, respectively.

In § 424.32(d)(1)(iv), we define an "initial Medicare claim" as a claim submitted to Medicare for payment under Part A or Part B of the Medicare Program for the first time for processing, including claims sent to Medicare for the first time for secondary payment purposes. *Initial Medicare claim* excludes any adjustment or appeal of a previously submitted claim.

We specify in § 424.32(d)(1)(vi) that a "Physician, practitioner, facility, or supplier" is a Medicare provider other than a *provider of services*. In § 424.32(d)(1)(vii), we define a "Provider of services" as a provider of services as defined in section 1861(u) of the Act. We define in § 424.32(d)(1)(viii), a "Small provider or small supplier" as a provider of services with fewer than 25 full-time equivalent employees; or a physician, practitioner, facility, or supplier (other than provider of services) with fewer than 10 full-time equivalent employees.

B. Submission of Electronic Claims Required

Electronic submission of Medicare claims is required for *initial* Medicare claims, including initial claims with paper attachments, submitted for processing by the Medicare fiscal intermediary (FI) or carrier that serves the physician, practitioner, facility, supplier, or other health care provider. No other transactions, including changes, adjustments, or appeals to the initial claim, are required to be submitted electronically.

In § 424.32(d)(2), we specify that except for claims to which § 424.32(d)(3) applies, an initial Medicare claim under Part A and/or Part B may be paid only if submitted as an electronic claim for processing by the Medicare FI or carrier that serves the physician, practitioner, facility, supplier, or provider of services. This requirement does not apply to any other transactions, including adjustment or appeal of the initial Medicare claim.

C. Exceptions to Requirement To Submit Electronic Claims

The regulation set forth at 45 CFR 162.923 states that "Except as otherwise provided in this part, if a covered entity conducts with another covered entity (or within the same covered entity), using electronic media, a transaction for which the Secretary has adopted a standard under this part, the covered entity must conduct the transaction as a standard transaction." HIPAA does not require that a health care plan be able to accept claims via every type of electronic media, only that claims received via such media comply with

the standard format and content requirements of HIPAA (www.wpc-edi.com/HIPAA). Only electronic media accepted by Medicare, and as defined in the Medicare Carrier and Intermediary Manuals and Program Memoranda issued by CMS, are affected by this requirement of ASCA. At present, Medicare does not accept claims via the internet, an extranet or, in many cases, via removable/transportable storage media. This rule does not change this Medicare policy. Advance notice of any future plans for expansion or contraction in the electronic media accepted for submission of Medicare claims would be published in Medicare program instructions and via routine contractor notification and instructional media.

Claims submitted via a direct data entry screen maintained for Medicare, and as permitted by 45 CFR 162.923, are considered to be electronic claims for purposes of this requirement. Claims transmitted to a Medicare contractor using the free or low cost claims software issued by Medicare fee-for-service plans are also electronic claims for purposes of this requirement.

The ASCA provides for exceptions to the mandatory electronic submission of Medicare claims. Under the ASCA, the Secretary of Health and Human Services will waive the application of the electronic claim requirement for specific cases. This interim final rule with comment period provides more explicit requirements to implement the statutory mandate that we specify in the regulations at § 424.32(d). Specifically, in § 424.32(d)(3), we specify the exceptions when electronic submission of initial Medicare claims can be waived. In § 424.32(d)(3)(i), we specify that electronic submission will be waived when: (a) there is no method available for the submission of an electronic claim. We cannot reasonably expect Medicare beneficiaries to submit electronic claims. (Even though, the statute requires, with very few exceptions, that providers of health care bill Medicare on behalf of a beneficiary (sections 1814(a) and 1848(g)(4) of the Act) some beneficiaries will still submit claims to Medicare. However, those relatively few beneficiaries who submit claims are not likely to possess the capability to submit a HIPAA compliant claim). Further, there is no method available in those situations in which the standard adopted by the Secretary at 45 CFR 162.1102 does not support all of the information necessary for payment of the claim. At this time, we have identified three situations which fall into this category, in addition to beneficiary claims: (1) Roster billing of