

# Health Information Compliance Alert

## Compliance Alert: Escape HIPAA Compliance Fines With ICD-10 Readiness

**Part of your 2012 plan should be prepping for ICD-10 -- Let these six questions guide your efforts.**

Denials aren't the only thing you have to fear if your practice doesn't implement ICD-10 by the Oct. 1, 2013 deadline. You could face fines, too, according to CMS.

Based on comments from CMS representatives in recent CMS ICD-10 teleconferences, we've broken down six FAQs that promise to help you ramp up ICD-10 coding for your practice.

### Prepare for Medicare and Other Payers

CMS has no intention of delaying the implementation of ICD-10 beyond the Oct. 1, 2013 date, according to CMS's **Kyle Miller**. However, not all entities are prepared for the conversion, he noted.

Question 1: Only entities covered by HIPAA must make the transition to ICD-10 -- does that mean workers' compensation insurers will still use ICD-9, even after the rest of the industry transitions to ICD-10 on Oct. 1, 2013?

Answer: The response to that is unclear, but CMS has heard murmurs that workers' comp. insurers will switch over to ICD-10.

"We've heard anecdotally that even though they're not required to transition to ICD-10, that many of them are planning to, just because it's more practical to do so and they see that it's the way the rest of the industry is going," said CMS's **Denise Buening, MsM**.

Question 2: What about Medicaid?

Answer: CMS provided rankings for state Medicaid preparedness:

As of July, 11 state Medicaid programs are at high risk for not meeting the ICD-10 implementation date, while 21 states are at moderate risk. Fifteen states are at low risk, and four states have not let CMS know where they are in the process. "It's important to note there are still two years to go," Miller added, and CMS is working with the high-risk states to ensure that they get ready on time.

Question 3: What are the penalties for entities that are covered under HIPAA who choose not to use ICD-10 codes as of Oct. 1, 2013?

Answer: Your claims will be denied -- and you technically could face fines since use of the ICD-10 codes falls under the HIPAA transaction code set regulations, CMS reps noted.

Denials: "From a practical standpoint, as of service dates of Oct. 1, 2013, if you don't use ICD-10 codes, most likely your claims will be returned and will be asked to transition to ICD-10," Buening said.

Fines: "The penalties are the same penalties that any HIPAA entity would be subject to," Buening noted. "I think most of you are familiar with the ongoing HIPAA transaction codeset penalty that calls for a maximum of \$25,000 per covered entity per year, but the HITECH legislation of last year actually upped those transaction and codeset penalties, and they can be as much as \$1.5 million per entity per year. So obviously it behooves everybody -- Medicare and Medicaid inclusive -- to make sure we are compliant with these ICD-10 codes by the Oct. 1, 2013 date," she added.

## Keep Up With Codesets and Coverage

Your practice can't get ready for ICD-10 all alone. Study the following questions to see how others' preparations can help or hinder you.

Question 4: The Medicare local coverage decisions (LCDs) currently list the payable ICD-9 codes that correspond to all Medicare-payable procedures. Will contractors issue updated LCDs to the public prior to the Oct. 1, 2013 implementation date to show the payable ICD-10 codes for the procedures?

Answer: The answer to that isn't yet crystal clear. "The LCDs will be translated because they will need to be translated, [but] as it relates to having them available to the public prior to the implementation date, that I'm not sure of, because we are working fast and furious on all of our ICD-10 implementation efforts," said CMS's **Lisa Eggleston, RN, MS**.

Question 5: When can we expect a final ICD-10 code set?

Answer: As of this October, you'll see an ICD-10 code set that's pretty close to how the final will look.

"We will have the last major update in FY 2012, but we're warning you that we could add some more codes because of new technology and new procedures," said CMS's **Pat Brooks, RHIA**.

Question 6: What can our practice do to get ready for the ICD-10 conversion?

Answer: One thing you won't need to do is remember a bunch of new codes -- "in fact, most practitioners probably don't know many ICD-9 codes by heart, so they won't be expected to memorize ICD-10 codes either," said **Daniel Duvall, MD**, medical officer with CMS's Hospital and Ambulatory Policy Group.

Do this: "You may need to look at those codes that you see most commonly in your practice," Duvall said. He advises physicians to pick the top 30 diagnoses that they see and concentrate on knowing how to code those appropriately. Then you should create new job aids or superbills for those procedures.

Strategy: Use your list of the top diagnoses that your practice sees to find the corresponding ICD-10 codes, and "you've got your cheat sheet," Duvall said. Then, ensure that your coders are trained, that your claims are form 5010 compliant, and that your claim submission system supplier is ICD-10-ready. In addition, if you have an electronic medical record or you plan to get one, make sure it can handle ICD-10. "If you're starting to bring in an EMR, you want to convert to ICD-10 first, not bring one in under ICD-9 and then convert," Duvall added.