

Congress of the United States

U.S. House of Representatives

Committee on Small Business

2561 Rayburn House Office Building

Washington, DC 20515-6515

November 19, 2008

Michael O. Leavitt
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Leavitt:

On August 22, 2008, the Department of Health and Human Services' (HHS) proposed a rule (73 Fed. Reg. 49796) that would require physician practices to use a new coding set for certain medical diagnoses. The proposed ICD-10-CM code set would replace the standard code set for diagnoses on all Health Insurance Portability & Accountability Act of 1996 (HIPAA) standard transactions. If implemented, this regulatory change will have a significant impact on the operation of small practices across this country.

The vast majority of physician practices are small businesses. In fact, 50 percent of physician practices have less than five physicians, and yet account for 80 percent of outpatient visits. The proposed rule would create a significant change to the manner in which diagnoses are recorded by these practices. For many providers, it will require a substantial upgrade of their electronic systems to ensure compliance. To shift to the ICD-10-CM code set, health care providers must first upgrade their electronic systems to version 5010 of the HIPAA standard transactions. In addition, providers will need to retool their practices to handle the increase in documentation brought about by ICD-10-CM's more than 65,000 new diagnosis codes.

The Committee is also concerned about the rapid timetable for implementation. The HHS has proposed a timeline that is substantially shorter than that recommended by the National Committee on Vital and Health Statistics (NCVHS), the official advisor to HHS on HIPAA transactions. The NCVHS has recommended sequencing implementation in two steps: (1) two years to upgrade to version 5010; and (2) three years to implement ICD-10-CM, with no overlap between the two. Under the NCVHS timeline, the ICD-10-CM conversion would be finished by October 2013. The proposed rule would essentially be two years shorter than this recommendation.

As Chairwoman of the U.S. House Small Business Committee, I am writing to urge you to delay HHS' implementation of the code set conversion and to perform an analysis of the regulation as required by the Regulatory Flexibility Act (RegFlex). Though supportive of the conversion, I am concerned about the impact the agency's proposed timetable for implementation will have on practices of solo and small group practitioners. Transitioning too quickly is likely to create enormous burdens for physicians and their patients, particularly practices serving Medicare beneficiaries. It is critical that HHS puts in place a timeline that avoids this problem and accounts for the concerns of the small health care setting.

The Committee wishes to ensure that HHS fully reviews any proposal to ensure it does not unnecessarily harm small businesses. The Regulatory Flexibility Act requires agencies to examine the economic impact of their regulations on small firms and assess less burdensome alternatives. HHS has initially determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. However, based on concerns brought to the Committee by health care providers, it is clear that the proposed rule will indeed have a significant economic impact on many small medical practices. In fact, a recent study¹ estimated this cost as being in excess of \$83,000 per provider. The Committee requests that HHS re-assess the economic impact of the regulation on small firms.

Under the proposed rule, physicians will find it difficult to comply with the regulation. As a result, claims improperly submitted for payment will be delayed, paid inaccurately or denied altogether. When coupled with the prospect of not being reimbursed due to transitional issues and expenditures associated with implementation, HHS' timeline may be too costly for most small practices to bear. These problems can be avoided with an orderly and rational timeline for conversion to ICD-10-CM. HHS ought to delay the implementation of ICD-10-CM until it has fully analyzed the economic impact of the proposed rule on small firms. It is my hope that HHS will properly consider the concerns of the provider community and identify less burdensome ways to carry out the intent of the rule.

The Committee respectfully requests that you delay the implementation and conversion to the ICD-10-CM code set, and perform a RegFlex analysis prior to issuance of a revised rule. Thank you for your consideration of this request. The Committee seeks a response by December 5, 2008 to these pending issues. If you have any questions, please contact Tom Dawson, Health Counsel with the Committee, at 202-225-4038.

Sincerely,



Nydia Velázquez

¹ The American Academy of Dermatology, American Academy of Professional Coders, American Association of Neurological Surgeons, American Association of Orthopaedic Surgeons, American Clinical Laboratory Association, American College of Physicians, American Medical Association, American Optometric Association, American Physical Therapy Association, American Society of Anesthesiology, and the Medical Group Management Association retained Nachimson Advisors to report on specific areas of impact to provider practices and assess the cost of the proposed ICD-10-CM rule on providers. "The Impact of Implementing ICD-10 on Physician Practices and Clinical Laboratories: A Report to the ICD-10 Coalition." October 8, 2008.