of enrollment in Medicare, Medicaid or the State Children’s Health Insurance Program. The compliance program must contain core elements established by HHS working with the OIG, and the statute leaves the time frame to the secretary’s discretion. In a 2010 proposed rule on enrollment, the Centers for Medicare & Medicaid Services (CMS) solicited comments on several aspects of compliance programs, including the extent to which providers and suppliers use the seven elements from the Federal Sentencing Guidelines in their compliance programs. In February 2011, CMS indicated that it was reviewing comments and was developing a proposed rule on compliance programs, but it has not been released.

CMS has the discretion under the ACA to phase in mandatory compliance program requirements for different sectors of the healthcare industry. Although most observers expect group practices to be required to have compliance programs, the timing of any such requirement is uncertain. The Association will continue to monitor developments closely and keep you informed as HHS proceeds with its rulemaking on compliance programs.

Resources:

Learn more about federal quality reporting programs
We’ve made our resources and tools for the following four quality reporting programs easier to navigate: e-prescribing, PQRS, EHR Meaningful Use and the value-based payment modifier. Learn more about these programs by clicking the “Federal Quality Reporting Programs” tab on the mgma.com/policy page

Association creates sample HIPAA documents for members

The new HIPAA privacy and security rule modifications released earlier this year require physician practices and other “covered entities” to revise their business associate agreements and update their notices of privacy practices to reflect these changes. Practice professionals must take this opportunity to work with their business associates on these new agreements and alert patients to their new rights under the law. The Association has developed a number of resources to assist members with the new HIPAA requirements and to help minimize the workload associated with these changes, including two new sample documents for members.

Changes to the HIPAA privacy and security rules included in the Health Information Technology for Economic and Clinical Health (HITECH) Act were implemented through the omnibus rule that took effect March 26. The omnibus rule makes a number of changes pertaining to business associates, including modifying part of the definition to encompass a person who “creates, receives, maintains, or transmits protected health information.” Under the new rule, business associates are required to comply with the security rule and are held directly liable for a number of HIPAA privacy provisions, including impermissible uses and disclosures of protected health information (PHI) and failure to do the following:

• Provide breach notification to a physician practice or other covered entity
• Provide access to the practice or the patient (depending on the agreement) to an electronic copy of PHI
• Comply with a government investigation
• Provide an accounting to the practice or the patient (depending on the agreement) of certain PHI disclosures

New provisions in the omnibus rule also make practices liable for business associates’ actions when an associate is acting as an “agent” of the practice. Whether your business associate is acting as your agent depends on
the definition of agency under federal common law. It is a fact-specific inquiry into the relationship between the practice and the business associate that takes into consideration factors such as whether the practice directly controls the business associate’s conduct in the course of its performance of its duties on behalf of the practice and whether the practice has authority to provide “interim” instructions or directions.

As a result of these changes, business associate agreements need to be modified. Recognizing the administrative burden and cost of updating existing agreements, the Department of Health and Human Services Office for Civil Rights (OCR), which enforces the HIPAA privacy and security rules, implemented a transition period to give practices and their business associates extra time to comply with this requirement.

If a practice had a compliant agreement with a business associate on or before Jan. 25 that is not modified before Sept. 23, the practice has until Sept. 22, 2014, to comply with the new rules. If the agreement is renewed or modified before Sept. 22, 2014, it must reflect the required changes. The OCR has indicated that contracts that renew automatically (through evergreen clauses) without any change in terms or other actions by the parties would not be considered renewed and would still be eligible for the extended compliance deadline.

As practice professionals develop their business associate agreements, they should consider reviewing the resources OCR offers at hhs.gov/ocr/privacy, including business associate agreement guidance. Building on these OCR provisions, the Association’s outside counsel at the law firm of Powers Pyles Sutter & Verville, PC, Washington, D.C., crafted a sample agreement outline that will help practices comply with the new regulations. This member resource provides a guide to provisions that are required under the regulations and suggests other provisions you might wish to consider as you develop or negotiate business associate agreements. It does not constitute legal advice on the HIPAA privacy and security requirements. As always, we recommend that our members rely on the advice of competent legal counsel when crafting legal documents.

Practice professionals will also need to update their notices of privacy practices to make patients aware of changes made in the omnibus rule. (See article by Robert Tennant in the Information Management special section for more information about this topic.) Patients now have more rights, including:

- The right to opt out of receiving fundraising communications
- The right to restrict disclosure of PHI to a health plan for payment or healthcare operations when the patient pays the practice out-of-pocket and in full for the service

In addition, there are more restrictions and duties for practices, including new prohibitions on the sale of PHI and the duty to notify patients of breaches of their PHI. After Sept. 23, practice professionals must include these provisions in their notice of privacy practices. All new patients to a practice must be provided the revised notice, and existing patients who request a copy should be provided one as well. This notice must also be posted in a clear and prominent location where a patient would be able to read it. If the practice has a website, the notice must be posted there as well.

The Association’s outside legal counsel at Powers Pyles Sutter & Verville has also drafted a sample notice of privacy practices to help you with these changes. Both this document and the business associate agreement outline are available at mgma.com/may-june-hipaa.