



CMS guidance on VCCs, EFT/ERA, and business associates – what you need to know

Background

In March 2022, the Centers for Medicare & Medicaid Services (CMS) released guidance on virtual credit cards (VCCs) and electronic funds transfer/electronic remittance advice (EFT/ERA) [payment transactions](#), as well as [business associate compliance](#) with the Health Insurance Portability and Accountability Act (HIPAA) Administrative Simplification requirements. The enforcement policies outlined in these guidance documents are generally positive for physicians and are well-aligned with [AMA’s advocacy](#) on physician payment via VCC and EFT/ERA. This document offers an overview of CMS’s position on key issues as relayed by the agency’s guidance documents and provides recommendations for physicians navigating these policies. See [AMA resources on VCCs and EFT](#) for more context.

Issue: Physician payment with VCCs

CMS guidance: While health plans are permitted to use VCCs for physician payments, health plans may not *force* practices to accept VCCs. **If a physician requests to receive payment via the HIPAA-mandated standard EFT/ERA transaction, then the health plan must comply.**

Takeaway for physicians:

- ✓ VCCs may create administrative burdens for practices and involve fees that reduce physicians’ contracted payment rates.
- ✓ Any payment with VCCs must be a result of mutual agreement between health plans and physicians—a health plan may not force a physician to receive payment using VCCs.
- ✓ Physicians receiving unwanted VCC payments should request that the health plan use the EFT/ERA transaction for payment instead.
- ✓ Although HIPAA requires health plans to make ACH EFT available upon request, plans may seek to require VCC payment in their contracts with physicians. Physicians should be cognizant of any restrictions in payment methods when contracting with health plans and avoid signing contracts with inflexible payment terms.

Issue: Physician use of health plan business associates for EFT/ERA

CMS guidance: While it may be necessary for physicians to use health plan business associates for some services, health plans may not require a physician to work with a specific business associate for EFT processes other than “stage 1” EFT payment initiation. **In particular, plans may not force a provider to do business with any specific vendor for deposit notifications, receiving ERAs, or other services related to payment and reassociation.**

Takeaway for physicians:

- ✓ Health plans must send payment and transactions to an endpoint designated by the physician.
- ✓ Physicians have the right to receive deposit notifications, ERAs, and other payment and reassociation services through a business associate of their choosing.
- ✓ Physicians should evaluate their contracts to determine whether they are engaging with a business associate that provides favorable terms for EFT payments. This business associate can be the physician’s or the health plan’s—the physician can choose.
- ✓ To learn more about the stages of EFT/ERA transactions, see this [illustration by CMS](#) (page 6).



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Issue: Physician acceptance of EFT/ERA “value-add” services

CMS guidance: A health plan may not require a provider to accept unwanted payment or reassociation services. Under 45 C.F.R. 162.925(a)(2), “a health plan may not adversely affect, or attempt to adversely affect, the physician or the transaction because the transaction is a standard transaction.” **An attempt by a health plan to require a physician to agree to receive unwanted payment or reassociation services from a specific vendor as a condition of receiving EFT/ERA may be construed as the health plan adversely affecting the transaction.**

Takeaway for physicians:

- ✓ EFT payment processors sometimes assess fees for services beyond the basic EFT payment. These services—referred to as “value-add” services—may be extraneous to the EFT transaction or unnecessary for physicians.
- ✓ Requiring a physician to accept EFT “value-add” services may adversely affect the HIPAA-mandated standard transaction, particularly if fees are assessed; for example, if a physician can be paid via a paper check without additional fees, the standard transaction should also be available without fees. Health plans may not force physicians to accept unwanted payment and reassociation (“value-add”) services from a vendor as a condition of receiving electronic payments.
- ✓ Physicians should check their contracts with health plans and any agreements with health plan business associates to determine if they are receiving EFT “value-add” services; if desired, physicians should request basic EFT service.
- ✓ As explained above, physicians are not required to use a health plan’s business associate to facilitate electronic payment, so physicians should evaluate which vendor’s terms (i.e., the health plan’s business associate or the physician’s own business associate) are most favorable to their practice.
- ✓ Physicians should distinguish between fees their own business associates may charge and fees that are required or assessed by the health plan or the health plan’s business associate.

Issue: Physician and health plan liability for business associate HIPAA compliance

CMS guidance: If a covered entity uses a business associate in conducting a HIPAA transaction, the covered entity must ensure that its business associate complies with all HIPAA requirements. **If a health plan’s business associate violates a HIPAA Administrative Simplification requirement, the health plan is responsible, and if a physician’s business associate violates a HIPAA Administrative Simplification requirement, the physician is responsible.**

Takeaway for physicians:

- ✓ Physicians may be liable for HIPAA violations made by their business associates, including clearinghouses.
- ✓ Should a physician need to file an [ASETT complaint](#) for HIPAA violations involving a health plan’s business associate, **the physician should name the health plan in the complaint**, as the health plan is responsible for the violation.