



Health Law Alert

Legal and political developments affecting the health care industry

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FTC grants three-month delay of enforcement of Red Flag Rules for health-care providers

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Three-month compliance extension

On April 30, 2009, the Federal Trade Commission (FTC) agreed to delay enforcement of the new “Red Flag Rules” from May 1, 2009, to August 1, 2009, to give creditors, including health-care providers, more time to develop and implement written identity theft prevention programs.

There is no dispute: Red Flag Rules apply to health-care providers

The Fair and Accurate Credit Transactions Act of 2003 directed the FTC to promulgate rules requiring “creditors” with “covered accounts” to implement identity theft programs to identify, detect, and mitigate medical and personal identity theft. The FTC and the American Medical Association (AMA), joined with other related professional associations, have been in discussions regarding whether the Red Flag Rules apply to health-care providers. On February 4, 2009, the FTC, in a letter addressed to the AMA, declared that the Red Flag Rules apply to physicians and health-care providers. The FTC has postponed the compliance date of the Red Flag Rules as a result of the uncertainty surrounding whether health-care providers were covered under the Red Flag Rules, which caused some providers not to implement policies.

The Red Flag Rules require hospitals and physician practices to develop and implement a written program of policies and procedures to detect, prevent, and mitigate identity theft, including:

- identifying relevant Red Flags and incorporating those Red Flags into their program;
- detecting Red Flags that have been incorporated into the program;
- responding appropriately to any Red Flags that are detected, to prevent and mitigate identity theft; and
- ensuring the program is updated periodically.

A Red Flag Rules Program must be approved by the board of director or other governing body; should be overseen, implemented, and administered by a member of the board or senior level management; and employees should be trained with respect to applicable Red Flags and how to respond to them.

For assistance in developing a Red Flags Rules Program, please contact Linn Freedman at 401-454-1108 or lfreedman@nixonpeabody.com.

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