



Health Law Alert

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affecting the health care industry

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Federal Trade Commission delays enforcement of Red Flags Rule until November 1, 2009

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The Federal Trade Commission (FTC) today agreed to delay enforcement of the new “Red Flags Rule” from August 1, 2009, to November 1, 2009, to give “small business[es] and other entities more time to develop and implement written identity theft prevention programs.”

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 professional associations, including the American Medical Association (AMA) and American Bar Association (ABA), have been in discussions regarding whether the Red Flags Rule applies to these entities. The FTC postponed the compliance of the Red Flags Rule once before (April 30, 2009) as a result of the uncertainty surrounding whether certain entities were covered, which caused some entities not to implement policies.

The Red Flags Rule requires entities 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 at least annually.

A Red Flags Rule Program must be approved by the board of directors 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.

The FTC today announced that it will “redouble its efforts” to educate small businesses and other entities about compliance with the Red Flags Rule. The FTC anticipates creating a special link on the FTC website for small and low-risk entities, with guidance and direction regarding compliance with the Red Flags Rule. See www.FTC.gov/redflagsrule. This response from the FTC is a result of the House Appropriation Committee’s request that the FTC defer enforcement for health care providers and small businesses that have a low risk of identity theft problems.

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