

HEALTH CARE PROVIDERS AND THE RED FLAG RULES: TIME IS RUNNING OUT

Federal Trade Commission's Red Flag rules are intended to combat widespread identity theft in many sectors of the economy, including health care. Many health care providers are just starting to address the "Red Flag" rules. Many more have never heard of the Red Flag rules, first adopted in November 2007. With the deadline for compliance looming, health care providers should consider the following:

Who: Health care providers are subject to the Red Flag rules because they are "creditors" as defined in the rules and they are subject to the terms of the Fair Credit Reporting Act. "Creditors" include any person who regularly arranges or extends, renews or continues credit.

What: A Red Flag is defined as a pattern or practice that indicates the possible existence of identity theft. Red Flag rules require creditors to adopt and implement a systematic and organized Program to detect, prevent and mitigate identity theft.

When: The compliance date for the red flag rules is November 1, 2008.

Why: Health care providers routinely extend credit to patients to allow them to pay deductibles, copays, or charges for non-covered/insured services. The services involved are of a personal nature and are reasonably subject to the risk of identity theft. This type of account is a "covered account" to which the Red Flag rules specifically apply.

How: Red Flag rule compliance will require direct involvement by a provider's governing board, senior management, and financial (e.g. patient accounting) compliance and information technology team leaders. Health care providers must develop a Program to prevent, detect, and mitigate identity theft. The Program may be appropriate for the size of the provider and it may incorporate existing policies that are relevant (e.g., workforce background checks or system access audits under HIPAA security). The Program must provide for:

- Policies and procedures for identifying, detecting and responding to Red Flags.
- Board level approval and senior management oversight.
- Training of staff to manage the Program.
- Oversight of service provider arrangements (e.g., business associates).

The Federal Trade Commission also requires that each health care provider's Program must be formulated with consideration of detailed Guidelines that add details to the above requirements.

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