

One Less Regulation: Relief from 'Red Flag' Rules

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Since December 2008, both medical and dental practices have lived under the threat that they would be subject to rules from yet another regulatory agency. On December 7, 2010, this threat was effectively eliminated when the House joined the Senate in voting to adopt legislation to exempt physicians and dentists from the Federal Trade Commission's identity theft Red Flag Rules. President Obama is expected to sign this legislation into law before December 31, 2010.

The Red Flag Rules, originally drafted by the Federal Trade Commission in 2008, were intended to address the risk of "identity theft" by requiring certain financial institutions, and businesses extending credit to consumers, to adopt, implement and monitor an identity theft prevention program. Based on guidance from the FTC, it became clear that the new rules would be applied not only to large financial institutions and credit companies, but also to most medical and dental practices. According to the FTC, if a practice either billed insurance carriers for the services it provided, or permitted patients to pay their bills over time, these practices were in effect extending credit and therefore deemed covered by the Red Flag Rules.

Opposition from the AMA and ADA, and other professional associations, delayed implementation of the rules at least five times. During this delay, numerous medical and dental associations announced their opposition to the application of the rules to their practices as well as their intention to join then pending litigation, which challenged the rules.

The Red Flag Clarification Act of 2010 now resolves these issues. The act specifically exempts "any creditor that advances funds on behalf of a person for expenses incidental to a service the creditor provides to that person" from the application of the Red Flag Rules. This, in effect, will preclude most, if not all, medical and dental practices from the application of the Red Flag Rules since typically any credit extended by such practices is related to the services provided to their patients. Although the rules are still presently scheduled to take effect on December 31, 2010, the application of the rules to medical and dental practices will be nullified once the Red Flag Clarification Act of 2010 is signed into law.

It is expected that President Obama will sign this new legislation before the year-end date when the Red Flag Rules are presently scheduled to go into effect.

For more information or questions on these opinions, please contact any member of the Healthcare Practice Group at Flaster Greenberg PC.