

Notes

PRACTICE

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Red Flag Rules

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The Federal Trade Commission (FTC), the National Credit Union Administration (NCUA) and various banking agencies issued the Fair and Accurate Credit Transactions Act (FACTA, a.k.a. Red Flag Rules), requiring financial institutions and creditors to establish and enforce written identity protection programs. The original compliance date was November 1, 2008, and extended to May 1, 2009. The current compliance date is now August 1, 2009. The main reason for delaying enforcement is that many of the institutions subject to these regulations were completely unaware of the rules or were unaware that they were required to comply.

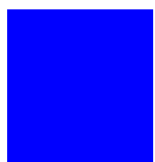
Although doctors' offices are not financial institutions, they may indeed meet the official definition of "creditor" because they do often allow patients to make payments over time rather than full payment at the time of service. A "creditor," according to FACTA, is "any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or continuation of credit..." According to at least one interpretation, accepting credit card payments does not in itself make an entity subject to the FACTA rules.

The American Medical Association appealed to the FTC for an exemption. Unfortunately, the FTC upheld the original interpretation, maintaining that most private practices meet the definition of "creditor" under the "Red Flag Rules."

Entities subject to the regulation must establish a written program that is managed by the board of directors or senior employees of the entity and includes staff training. The program should be designed to fit the size and complexity of the entity. No guidelines on training are provided. Therefore, we have concluded that reading the information and signing an acknowledgement statement should meet the training requirement.

As the wise and venerable Benjamin Franklin once said, "An ounce of prevention is worth a pound of cure." That oft-repeated statement applies in many, many situations, including current interpretations of the FACTA rules.

Therefore, we developed a basic FACTA compliance policy that will be incorporated into a future revision of DoctorsManagement's HIPAA Implementation Plan Notebook. It is available on the DoctorsManagement web site, www.drsmgmt.com.



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