

RED FLAG RULES REDUX

By Steven I. Kern, Esq.*

Now that physicians have spent an estimated 50 to 100 million dollars to implement the “Red Flag Rules” to identify and prevent identity theft, the Federal Trade Commission has announced that is delaying the implementation deadline from May 31, until August 30, 2009. Worse, the FTC has announced that it may, yet again, alter the rules to allow low risk business such as medical offices to maintain less cumbersome policies.

So, after conscientious physicians throughout the country have spent money on lawyers, seminars and staff training, on the very day before implementation, the government tells us that they may alter the rules. It is one thing to issue a mandate to the medical community, and it is another to require that the mandate be followed, without funding its cost. It is, however, the height of arrogance and irresponsibility to delay, and possibly reverse the course of that mandate only a few hours before every medical office in the nation was required to be in compliance.

One can only imagine the repercussions if a physician suddenly announced to his patient the day before urgent surgery, after all of the pretesting was done and arrangements made for hospitalization, that he changed his mind, and would no longer accept her insurance. Yet, the government can engage in similarly irresponsible conduct without penalty.

To make matters worse, the greatest cost associated with the Red Flag Rules is in the initial setup. Once the policy is in place and the office staff appropriately trained, the ongoing costs will, generally, be minimal. So, every physician who diligently followed the law, spent the time and money, and did what should have been done, is effectively penalized. What will happen the next time the government issues a mandate? Will physicians act equally responsibly knowing that the government may change its mind at the last minute, and all of their time, efforts and money will be wasted? Or, will they delay implementation until after the effective date and risk sanctions, to avoid the risk of the government changing its mind?

The FTC should never have subjected medical practices to a law that was clearly intended for financial institutions and other entities involved in extending credit as their core business. Yet, despite the efforts of the AMA and others to reason with the FTC, the agency refused to yield. Now, only after the cow left the proverbial barn for most physicians, is the FTC rethinking its position.

The only solace physicians may take is that, even if the FTC changes its mandate, plans that have already been established to meet the Red Flag Rules should not need modification. At least we can hope.

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