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## HEALTHCARE BULLETIN

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### **FTC AGAIN DELAYS ENFORCEMENT OF 'RED FLAGS' RULE**

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**The Federal Trade Commission (the "FTC") will suspend enforcement of the new "Red Flags" Rule (the "Rule") until August 1, 2009**, to give creditors additional time in which to develop and implement written identity theft prevention programs.

The FTC had already pushed back the original deadline for creditor compliance of November 1, 2008 until May 1, 2009 as reported in previous Balch & Bingham Healthcare Bulletins entitled *New Identity Theft 'Red Flag' Rules Apply to Healthcare Providers* and *FTC Delays Enforcement of 'Red Flags' Rule*, respectively.

In an April 30, 2009 press release, however, the FTC noted that some industries and entities within the FTC's jurisdiction needed more time to develop and implement written identity theft prevention programs. Further, for entities that have a low risk of identity theft, such as businesses that know their customers personally, the FTC said that it would soon release a template to help them comply with the law.

The Rule, developed pursuant to the Fair and Accurate Credit Transactions Act of 2003, requires creditors with covered accounts to have identity theft prevention programs to identify, detect, and respond to patterns, practices, or specific activities that could indicate identity theft.

Any person or entity that defers payment for goods or services, such as by billing in arrears for medical treatment, will be considered a creditor, according to the FTC. Consequently, most healthcare providers will fall within the Rule's broad definition of a creditor simply by billing patients after rendering services. Further, most healthcare providers offer or maintain covered accounts, defined as consumer accounts: (i) involving multiple payments or transactions; or (ii) for which there is a reasonably foreseeable risk of identity theft, including financial, operational, compliance, reputation, or litigation risk.



“Given the ongoing debate about whether Congress wrote this provision too broadly, delaying enforcement of the Red Flags Rule will allow industries and associations to share guidance with their members, provide low-risk entities an opportunity to use the template in developing their programs, and give Congress time to consider the issue further,” FTC Chairman Jon Leibowitz said.

More detailed guidance from the FTC on the Red Flags Rule is available at: <http://www.ftc.gov/bcp/edu/pubs/business/alerts/alt050.shtm>. Should you have any questions, please do not hesitate to contact one of our healthcare attorneys at the offices below.

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H E A L T H C A R E C O N T A C T S

**BIRMINGHAM, AL**

Matthew A. Aiken  
205.226.3425  
[maiken@balch.com](mailto:maiken@balch.com)

Colin H. Luke  
205.226.8729  
[cluke@balch.com](mailto:cluke@balch.com)

Jack B. Levy  
205.226.8750  
[jlevy@balch.com](mailto:jlevy@balch.com)

**MONTGOMERY, AL**

Dorman Walker  
334.269.3138  
[dwalker@balch.com](mailto:dwalker@balch.com)

**ATLANTA, GA**

Richard D. Sanders  
404.261.6020  
[rsanders@balch.com](mailto:rsanders@balch.com)

Philip M. Sprinkle, II  
404.261.6020  
[psprinkle@balch.com](mailto:psprinkle@balch.com)

**GULFPORT, MS**

H. Rodger Wilder  
228.214.0412  
[rwilder@balch.com](mailto:rwilder@balch.com)

**JACKSON, MS**

Dinetia Newman  
601.965.8169  
[dnewman@balch.com](mailto:dnewman@balch.com)

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