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HEALTHCARE BULLETIN

October 23, 2008

FTC DELAYS ENFORCEMENT OF 'RED FLAGS' RULE

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

The original deadline for creditor compliance had been November 1, 2008 as reported in a previous Balch & Bingham Healthcare Bulletin entitled *New Identity Theft 'Red Flag' Rules Apply to Healthcare Providers*.

However, in an October 22, 2008 press release, the FTC noted that some industries and entities within the FTC's jurisdiction were uncertain about their coverage under the Red Flag Rules. These entities indicated that, because they generally are not required to comply with FTC rules in other contexts, they had not followed or even been aware of the Rule as it was being created and therefore learned of the Rule's requirements too late to be able to come into compliance by November 1, 2008.

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.



The FTC says its enforcement delay will enable entities sufficient time to establish and implement appropriate identity theft prevention programs in compliance with the Rule.

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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