



First Professionals Insurance Company



Anesthesiologists Professional Assurance Company

FTC Red Flags Rule & Identity Theft Protection Program Compliance Measures

The Federal Trade Commission (FTC) issued rules that require “financial institutions” and “creditors” holding consumer or other “covered” accounts to develop and implement an identity theft prevention program. Enforcement of these rules is referred to as the “Red Flags” Rule (Rule). The effective compliance date is currently December 31, 2010.

The Rule affects individual physicians, physician groups, hospitals and other health care organizations that qualify as a “creditor”, which is defined as “any person who regularly extends, renews, or continues credit” or “defers payment of a debt.” Healthcare practitioners routinely extend “credit” by performing services and “billing” the patient at a later date either through sending a claim to the patient’s insurance company and/or accepting partial payment or co-pays and thus have been interpreted to be a “creditor” by the FTC under the Rule.

The Rule requires implementation of a written Identity Theft Prevention Program (Program). The Program must be appropriate to the size and complexity of the practice and designed to detect, prevent, and mitigate identity theft in connection with the opening of a “covered account” or any existing covered account. A covered account is defined to include an account “... designed to permit multiple payments or transactions...”.

Most physicians and group practices fall under the FTC’s definition of a creditor because they generally do not collect payment at the time a service is rendered and often hold off billing patients in full.

The Program must include reasonable policies and procedures to identify and incorporate red flags, detect red flags, respond appropriately to any red flags that are detected, and periodically update the Program.

The initial written Program must be approved by a board of directors, appropriate committee of the board, or a designated employee at the level of senior management in the oversight, development, implementation, and administration of the Program. Training of staff must be included in order to effectively implement the Program and provide oversight.

Failure to comply with the new Rule subjects a physician's practice to monetary penalties and civil litigation, including:

- *Federal Enforcement* – up to \$2,500 per violation;
- *State Enforcement* – up to \$1,000 per violation, in addition to recovery of attorney's fees; and
- *Civil Liability* – Each patient may be entitled to recover actual damages sustained from a violation.

Additional Information

To file a complaint visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357);
TTY: 1-866-653-4261

FTC; Red Flags Rule. Title 16 CFR §681.1 and §681.2
RedFlags@ftc.gov.

www.ama-assn.org/go/pmc