

MOA MEMBERS
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FTC: RED FLAGS RULE APPLIES TO PHYSICIAN PRACTICES

The Federal Trade Commission recently rejected requests from physician associations to not subject physician practices to the "Red Flags" rule, which requires creditors to establish programs to prevent and detect identity theft. The FTC continues to maintain that doctors are "creditors" subject to the rule because they received payment for services after the services are provided. The AOA will continue to object to this interpretation but for practical purposes will develop compliance guidance for members.

The rule took effect on November 1, 2008, but the FTC, aware that many affected businesses were unprepared to meet the requirements, decided to delay enforcement until May 1, 2009. The AOA Advocacy Group reported this delay last November: <http://www.aoanews.org/x8798.xml?AOAMember>

The FTC "Red Flags" rule, which is based on the Fair and Accurate Credit Transactions Act of 2003, states that any organization acting as a creditor or which maintains covered accounts "must have identity theft prevention programs in place... to identify, detect, and respond to patterns, practices, or specific activities that could indicate identity theft." A 2006 survey found that 4.5 percent of 8.3 million identity theft victims experienced some form of medical identity theft, including victims who had health insurance policies or health care treatment fraudulently obtained in their names. The FTC believes that when a physician submits an insurance claim and then bills the patient the remaining balance, the doctor is deferring the patient's share of the bill and thus acting as a "creditor."

According to recent correspondence from FTC to the physician community, the identity theft prevention programs are required but they should be a low burden for physician practices that do not have a high risk of identity theft. The FTC wrote that physicians should first assess the risk of identity theft in their practices, and then implement a written prevention program. For most physicians in a low risk environment, the FTC suggested that an appropriate program might consist primarily of checking patient's photo identification at the time services are sought.

The AOA Advocacy Group was disappointed with this response from the FTC and will seek other ways to relieve members of this burden, minor or not. Meanwhile, look for additional information in the very near future to assist optometrists with these requirements. Please contact Rodney Peele at rpeele@aoa.org for further questions.