

Red Flag Rules Synopsis – To Be Enforced August 1, 2009

New regulations were issued by the Federal Trade Commission in November 2007, and amend the Fair Credit Act. They are broadly referred to as the 'Red Flag' and the 'Address Discrepancy' regulations.

'Red Flags' are a key component of preventing identity theft, and in the development of an Identity Theft Prevention Program.

- As a provider, you are deemed subject to these regulations if you defer payment for services rendered, i.e. You create an account for a senior and bill him/her for services after the services have been provided.
- As a provider, if you accept insurance, you are deemed to be a 'creditor' if the senior covered by the insurance is ultimately responsible for any charges incurred.
- If the account is offered for the senior's personal, family, or household purposes, and is designed to permit multiple payments or transactions, you as the provider are considered to maintain a 'covered account'.
- Consideration should also be given to employee accounts as possible sources of identity theft, i.e. 401(k) or 403(b) plans.
- Service provider arrangements should be considered as a source of possible identity theft. If a provider contracts out any financial functions to a third party, or if health data is shared or available to third party service providers, it would be prudent to ensure the third party is functioning under similar identity theft prevention activities.

'Notice of Address Discrepancy' is a separate rule that applies to users of consumer reports (also known as credit reports). A Notice of Address Discrepancy is sent to the requestor by a consumer reporting agency when there is a substantial difference between the address provided by the senior and the address in the agency's file for the senior.

The provider should undertake a thorough review of a credit report in order to identify possible Red Flags. Policies and procedures should be developed to ensure a degree of thoroughness required to identify Red Flags and to adequately respond to the possible identity theft.

The Notice of Address Discrepancy applies to any user of a nationwide credit report. It may affect a broader class of providers than the Red Flag Rule. Landlords and employers who obtain credit reports of tenant or job applicants should apply this rule to their practices.

Steps to be taken:

- Conduct an initial risk assessment and continued periodic risk assessments in the areas of:
 - Methods used to open accounts;
 - Methods to access its accounts;
 - Previous experiences with identity theft.
- Establish a written identity theft program:
 - Primary duty is to mitigate identity theft;
 - The program should be appropriate to the size and complexity of the creditor and the nature and scope of its activities;
 - Identify red flags for the covered accounts and incorporate them into the program;
 - Detect the identified red flags;
 - Respond to any red flags that are detected to prevent and mitigate identity theft;
 - Update the program periodically to reflect changes in risks to seniors and the creditor.
- Each creditor required to have an identity theft program must administer the program with the following requirements:
 - Obtain approval of the initial written approval from the Board of Directors or an appropriate committee of the Board of Directors;
 - Involve the Board of Directors, an appropriate committee thereof, or a designated employee at the level of senior management in the oversight, development, implementation and administration of the program;
 - Train staff as necessary to effectively implement the program;
 - Exercise appropriate and effective oversight of service provider arrangements.
- The duty to mitigate identity theft imposes a separate and independent duty on providers subject to the regulation to help victims mitigate the consequences of medical identity theft. Providers need to go beyond the provisions in HIPAA to assist victims.