HBMA
Healthcare
BILLING & MANAGEMENT
Association

FTC Delays Enforcement of "Red Flag" Rules Until May 1, 2009

On October 22, 2008 the Federal Trade Commission ("FTC") announced that it will "suspend enforcement" of the "Red Flag" rules until May 1, 2009. The "Red Flag" rules, as discussed in previous HBMA communications and the recent HBMA Town Hall Meeting, require "financial institutions" and "creditors" with "covered accounts" to develop and implement a written program to detect and deal with identity theft.

The FTC's decision to delay enforcement appears to have been the result of pressure from, among others, the American Medical Association and a consortium of other healthcare organizations. These organizations complained, quite reasonably, that they and their members had no prior reason to familiarize themselves with FTC rules to which they have historically not been subject. The FTC is not presently changing its position on the broad reach of the rule. "Creditors" are defined to include any service provider (such as the physician and other clients of HBMA members) that does not get paid at the time of service. A "covered account" includes any relationship which involves information, such as social security numbers, that is vulnerable to identity theft.

The Red Flag rules are important to HBMA members because billing companies will likely be "service providers" to their clients. (Of course, third party billing companies may be directly covered by the Red Flag rules, given the breadth of the key definitions). "Service providers" are entities who provide services to a creditor in connection with one or more covered accounts. As part of a Red Flag program, the Rule requires creditors to exercise "appropriate and effective oversight" of service provider relationships. This will almost certainly follow the general HIPAA "business associate" paradigm that third party billing companies are already familiar with, and will likely require some new internal processes for third party billing companies.

Technically, this suspension of enforcement is not the same as a delay in implementation. However, the suspension was provided, according to the FTC announcement, specifically to give financial institutions and creditors "additional time in which to develop and implement written identity theft programs." On its face, it appears that the suspension of enforcement will have, as a practical matter, the same effect as a formal delay in implementation.

This important delay will allow third party billing companies, as well as their clients, more time to respond the Red Flag rules and, perhaps, to obtain more detailed guidance as to how to do so from the FTC.

You may review the FTC press release here: http://www.ftc.gov/opa/2008/10/redflags.shtm.