

HIPAA Compliance ≠ Red Flags Compliance

Many doctors have been under the impression that just because they are HIPAA compliant they do not need to abide by the FTC's Red Flags Regulations. Even after a number of medical associations wrote to the FTC (including the AMA), the response maintained the same outcome: all professionals, including Doctors, if they extend credit, defer payments, or allow third-party billing to pay and then require the consumer to pay for the remaining balance, must abide by the FTC's Red Flags Rule by ~~May 4st~~ 2009. FTC updated change: Saturday, August 1st 2009.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule – Governed by the U.S. Department of Health and Human Services

The Office for Civil Rights enforces the HIPAA Privacy Rule, which protects the privacy of individually identifiable health information and the confidentiality provisions of the Patient Safety Rule, which protect identifiable information being used to analyze patient safety events and improve patient safety.

Red Flags Identity Theft Prevention – section 114 of the Fair and Accurate Credit Transaction Act (FACTA) of 2003 – Governed by the Federal Trade Commission –

The Red Flags Rule which holds businesses accountable for protecting the Personally Identifiable Information (PII) (medical, financial, legal, professional and personal, etc.) of consumers. The Rule is designed to prevent identity theft by ensuring that organizations and businesses are alert to the signs that an identity thief is using someone else's PII fraudulently to obtain products or services. If a service provider allows a consumer, client or patient to defer the payment of a bill, this deferral of a debt is considered credit for purposes of the regulation, even if there is no finance charge and no agreement for payment installments. Thus, the FTC believes that professionals, including physicians, who regularly bill their clients, customers, and patients for their services after those services are rendered are "creditors" under the Red Flags Rule. Furthermore, Congress would need to exclude physicians explicitly from FACTA's definition of creditor for them to be excluded from the Red Flags Rule.

For further information: you may refer to the Federal Trade Commission's formal reply to the Director of Federal Affairs for the American Medical Association dated **February 4, 2009**.