

Red Flags Rule Delay Extended

Identity Theft Protection Sought By FTC

The Federal Trade Commission (FTC) has once again delayed enforcement of its Red Flags Rule. The rule, which was most recently scheduled to take effect on June 1, 2010, was delayed to Dec. 31, 2010, according to a May 28 statement from the commission.

The reason for this latest delay, the statement said, was so that Congress could consider “legislation that would affect the scope of entities covered by the rule.”

FTC Chairman Jon Leibowitz noted that “Congress needs to fix the unintended consequences of the legislation establishing the Red Flags Rule—and to fix this problem quickly.”

The rule was developed under the Fair and Accurate Credit Transactions Act, in which Congress directed FTC and other agencies to develop regulations requiring creditors, which

includes nursing facilities, and financial institutions to address the risk of identity theft.

The Red Flag regulations have three parts—only the first two of which pertain to the health care industry. The first part, the address discrepancy portion of the regulations, applies to anyone who uses “consumer reports,” defined to include credit reports, and requires users of consumer reports to develop and implement reasonable policies and procedures to deal with an address mismatch.

The second part pertains to the detection, prevention, and mitigation of identity theft in relation to covered accounts by creditors or financial institutions. This second rule, referred to commonly as the Red Flags Rule, is an anti-fraud regulation, requiring creditors and financial institutions with covered accounts to implement programs

to identify, detect, and respond to the warning signs, or “red flags,” that could indicate identity theft.

This enforcement delay is limited to the “Red Flags Rule” and does not extend to the first part of the rule regarding address discrepancies applicable to users of consumer reports.

If Congress passes legislation limiting the scope of the Red Flags Rule with an effective date earlier than Dec. 31, 2010, FTC will begin enforcement as of that effective date.

In the interim, FTC staff have continued to provide guidance through materials posted on www.ftc.gov/red-flagsrule.

Also on the site is a compliance guide and a template to create an identity theft program with an online form: www.ftc.gov/bcp/edu/microsites/redflagsrule/get-started.shtm.

—Meg LaPorte

Occupancy Down Slightly For Assisted Living

Recently released first-quarter 2010 data show that the average occupancy rate for assisted living properties was 88.1 percent, down slightly from fourth-quarter 2009 (88.4 percent), according to the National Investment Center for the Seniors Housing & Care Industry, (NIC) Annapolis, Md.

Data for the top 31 metropolitan markets showed that there was a significant reduction in the number of seniors housing projects under construction because completed projects were opened and the number of

new construction projects declined, according to NIC’s statement.

The total availability of assisted living units in the 31 largest metropolitan markets equaled 174,010, with 153,330 occupied.

Combined with independent living availability in the same markets, the seniors housing inventory has grown 11,826 units during the previous four quarters, while the number of occupied units during that time has been 6,108 units.

“We’ve seen a general theme develop over the past few years,” says Michael

Hargrave, NIC MAP vice president. “There’s been erratic absorption over the last four quarters, and inventory growth has outpaced demand, but overall absorption has developed a marginally positive trend.”

During first quarter 2010, rent growth was positive, but the pace was slow. The average monthly rent per unit for assisted living was \$3,528, up 1.4 percent on a year-over-year basis.

“Although rent growth has slowed, it has continued to remain positive,” says Hargrave. “This is in sharp contrast to what we have seen in other forms of commercial real estate, and it indicates that seniors housing continues to grow and perform as a real estate asset class.”

—Lisa Gelhaus

