

SNFs May Avert Red Flags Rule

Creditor Definition Narrowed, SNFs Likely Excluded

The recently passed Red Flag Program Clarification Act of 2010 may relieve health care providers from classification as creditors under the Red Flags Program, freeing providers from the red tape connected with such classification under the identity theft protection law, according to the American Health Care Association (AHCA).

Whether this expectation bears out will likely require further clarification from the Federal Trade Commission (FTC). In meetings with FTC, AHCA strongly opposed the classification of skilled nursing facilities as creditors due to the predominance of Medicare, Medicaid, and insurance as the payers for the services.

The law narrows the scope of those creditors required to comply with the Identity Theft Red Flags Rule.

The overall regulations in question

have three parts, only the first two of which apply to the health care industry.

The first part addresses the discrepancy portion of the regulations and applies to anyone who uses “consumer reports,” defined to include credit

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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.”

These rules became effective Nov. 1, 2008, but enforcement of the second rule—the Red Flags Rule—was delayed until Dec. 31, 2010, at the request of Congress, while it considered legislation that would affect the scope of the entities covered.

The first part of the rule—the Address Discrepancy Rule—appears to remain intact and is still applicable to skilled nursing facilities (SNFs). The critical issue, according to AHCA, is whether under the new amendment to the law SNFs are no longer governed by the second part of the regulation, the Red Flags Rule.

The rule currently defines the term “creditor” as follows: “Any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.”

The new law now defines “creditor” as anyone who falls under the definition above and regularly “obtains or uses consumer reports in connection with a credit transaction; furnishes information to consumer reporting agencies in connection with a credit transaction; or advances funds to a person, based on an obligation of the person to repay the funds or repayable from specific property pledged by or on behalf of the person.”

Most notably exempted from the definition are those creditors that “advance funds on behalf of a person for expenses incidental to a service provided by the creditor to that person,” AHCA said.

—Patrick Connoles

By The Numbers

Most nursing home employees clearly understand facility’s direction



Based on responses to the statement, “I have a clear understanding of the facility’s mission, vision and goals.”

Source: Skilled Nursing Employee Commitment Surveys collected in 2009 by My InnerView.