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MEMORANDUM

TO: American Health Care Association

FROM: Carol C. Loepere
Debra L. Hutchings
Paul Bond

RE: FTC Address Discrepancy Regulations: Requirement to Verify Address Only Upon Receipt of a Notice of Address Discrepancy from a Consumer Reporting Agency¹

DATE: January 31, 2009

The Address Discrepancy portion of the Red Flag Regulations (16 C.F.R. §681.1) requires users of consumer reports to develop and implement reasonable policies and procedures to deal with an address mismatch. In discussions with FTC staff, they have clarified two aspects of this rule. First, the FTC is interpreting this requirement as only applying to notices of address discrepancies on consumer reports, also known as credit reports, issued by nationwide consumer reporting agencies (“CRAs”), as defined in Section 603(p) of the Fair Credit Reporting act (“FCRA”). Today, the FTC staff has stated there are only three such nationwide CRAs: Experian, TransUnion and Equifax. Therefore, as a practical matter, notices of address discrepancy on consumer reports issued by the “big three” entities (directly or through intermediaries) are the reports that the FTC staff believes are currently subject to this rule.

Second, the FTC staff stressed that the obligation to conduct address verification only applies to a user of the consumer report that has received a “notice of address discrepancy” from one of the three nationwide CRAs. In other words, in the FTC staff’s view, users of consumer reports, such as nursing homes, assisted living facilities or other health care entities, that may use consumer reports for employment or admissions purposes, are only technically required to perform the address verification upon receiving such an express “notice of address discrepancy.” Organizations using consumer reports must have policies and procedures to

¹ This Memorandum is offered for informational purposes only, and does not constitute legal advice.

allow them to form a “reasonable belief” as to whether the report pertains to the person about whom they requested the report. Additionally, users of consumer reports who enter into or have a continuing relationship with the applicant and who “regularly and in the ordinary course of business” furnish information to the CRA from which they received the notice, must report a reasonably confirmed address to that agency when there is an address discrepancy.

In practice, because the CRA’s “notice of address discrepancy” might not be explicitly denominated as such – in fact, could simply be an asterisk by an individual’s name or some type of code to indicate an address discrepancy – we believe it is still good practice for providers using consumer reports to exercise reasonable diligence in reviewing applicants/patient information against the individual’s address on any consumer report.

Finally, as a reminder this aspect of the Red Flag Regulations became effective November 1, 2008 and is not subject to the FTC’s delay in enforcement applicable to Red Flag Rules (to May 1, 2009). See <http://www.ftc.gov/opa/2008/10/redflags.shtm>.

For your reference, we are attaching another copy of the sample form that facilities may wish to utilize for purposes of adopting policies and procedures to meet the Address Discrepancy requirements. Should you have any questions concerning the Address Discrepancy rule or any aspect of the FTC’s Red Flag Regulations, please contact us.

SAMPLE FORM

Consumer Report Address Verification: Make Sure the Address Any Applicant Gives You Matches the Address on His or Her Credit Report

WHEN TO USE THIS FORM.

Use this form whenever you receive a Notice of Address Discrepancy from a Credit Reporting Agency. It is recommended that this form also be followed when using any credit report for the purpose of making an employment decision.

WHAT TO CHECK.

When you receive a credit report, check to see if there is a Notice of Address Discrepancy. If there is no Notice, proceed to compare the address on the report to the address the individual gave you on his or her application. If the addresses match, you can rely on the credit report and no further action is needed by you.

STEPS TO TAKE IF YOU RECEIVE A NOTICE OF ADDRESS DISCREPANCY OR IF THE ADDRESSES DO NOT MATCH.

If you have received a Notice of Address Discrepancy or if the addresses do not match, you should take additional steps to ensure this person is who he or she claims to be. Answer the questions below and follow any related instructions.

1. Ask to see the individual's government-issued photo identification, such as a driver's license or a passport. Write here what identification the individual showed you:

2. Photocopy all identification presented and place a copy in the individual's file.

3. To you, does the identification look genuine?

Circle one: Yes/ No.

4. Does the photograph and physical description on the identification match the individual?

Circle one: Yes/ No.

5. Does the address on the photo identification match *any* of the addresses on the credit report?

Circle one: Yes/ No.

6. If you confirm that an address discrepancy exists, ask the individual to explain. Write down his or her answer here or on attached pages.

7. If the individual is an existing employee, check the records in his or her file. Is there any explanation in the file explaining the difference in addresses? If so, please explain here.

8. After taking these steps, do you believe that this individual is the same person that the credit report is about?

Circle one: Yes/ No.

9. If the answer is yes, you can proceed with the employment process as usual. However, please follow the steps in "How To Document", below.

10. However, if the answer is no, please:

- A. stop the employment process; and
- B. contact [*name*] in [*Human Resources; the Administrator*] at [*number*].

Do not confront the individual and do not inform them of your determination. Further communications will take place through the [_____].

HOW TO DOCUMENT:

When you have finished this process, give a completed copy of this form and all attachments to [*name*] in the [*Human Resources Department*], who will review, finalize, and place a copy in the applicant's file.

If the applicant is successful, *i.e.*, hired or retained as an employee, notify [*the Administrator*] [*Human Resources*]. The facility should ensure that every file the

company keeps pertaining to the applicant includes the applicant's correct address, as determined by the process above.

WHO TO CALL WITH QUESTIONS:

If you have any questions about this form, call [*name*] at [*number*].

NOTE: The purpose of this process is to detect attempted identity theft. If an applicant's address cannot be verified by these steps, employment should not be given or continued.

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