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Legal Advice for Health Plans

E-Alert

FTC Delays Enforcement of Red Flags Rule

Postponed to August 1

The Federal Trade Commission announced yesterday that, for the second time, it would delay enforcement of the “Red Flags” Rule that applies to financial institutions and creditors under its jurisdiction, including health plans that qualify as financial institutions or creditors. The FTC’s Red Flags Rule was originally to go into effect on November 1, 2008. Due to confusion about application of the Rule, the FTC first delayed enforcement until today—May 1. The FTC’s second delay is designed, in part, to “give Congress time to consider [the broad scope of the Red Flag requirements] further.” The FTC’s announcement is available on the [FTC’s website](#).

Although health plans are not likely to qualify as “financial institutions” under the Red Flags Rule, entities that administer self-funded group health plans (ASO or ASC—administrative services only/contract—business) often permit these accounts to defer payment, potentially subjecting the entities to the Red Flags Rule as “creditors.” The Red Flags Rule requires each creditor to periodically conduct a risk assessment to determine whether it “offers or maintains accounts for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the . . . creditor from identity theft.” Creditors with such accounts must establish an identity theft prevention program.

The delayed enforcement gives health plans an additional 3 months to determine their status under the Red Flags Rule including, if necessary, performing the risk assessment and implementing an identity theft prevention program. The FTC plans to post on its website a “template” designed to help “entities that have a low risk of identity theft . . . comply with the law.”

For more information on the Red Flags Rule, please contact Tom Bixby at (608) 661-4310 or TBixby@tbixbylaw.com.

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