Ready for the Red Flags Rule?

By Joseph S. Eastern, M.D.

B y now, you are probably aware of the Fair and Accurate Credit Transactions (FACT) Act of 2003 and its “Identity Theft Red Flags Rule,” which require creditors to establish a program to prevent identity theft. The law will be enforced beginning this month, so if you haven’t taken any action yet you’d better get cracking.

The law was originally aimed only at financial institutions, but the Federal Trade Commission, which is charged with enforcing it, subsequently decided it could apply to any group that would be considered a creditor, which the law defines as any entity that regularly extends credit, renues, continues credit or arranges for the extension of credit.

The FTC has specifically said that it will include medical entities in this definition if “[the provider] does not regularly demand payment in full for services or supplies at the time of service.” In other words, designating a program and putting it on a shelf to collect dust will not satisfy the law’s requirements, nor adequately protect your patients.

If you employ a billing service and/or collection agency, or any other outside entity that has access to your covered accounts, you also must take steps to ensure that the practice is conducted using a reasonable identity theft program. This could be done through a written contract with the service provider, or by amending your existing HIPAA Business Associate Agreements.

Some states have their own additional rules that may need to be incorporated into your identity theft prevention program. Check with relevant agencies in your state regarding that possibility. Violations of the Red Flags Rule can subject your practice to significant penalties—particularly if a patient suffers an identity theft that could have been prevented by your program, had it been properly implemented.

The exercise is not as onerous or time consuming as many assume. The American Academy of Dermatology points out that the law permits great flexibility, so if you determine that your practice has a low risk of identity theft, developing a program should be simple and straightforward, with only a few red flags to identify and deal with.

Medical practices and other businesses can find help online for developing their own programs. One good example, with a template that should be modifiable to fit your own programs, is online at the California Society of Municipal Finance Officers’ Web site (www.camfo.org/index.cfm?Fuseaction=DetailGroup&CID=2478&NavID=181). The AAD also has more information at its site (www.aad.org/pm/_doc/FTRedFlagsRulesFactSheet.pdf).

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