

HEALTHCARE PROVIDERS EXEMPT FROM RED FLAGS RULE

On November 30, 2010, the U.S. Senate passed the Red Flag Program Clarification Act of 2010. One of the clarifications in the act is the definition of a creditor. Professionals and businesses that provide services in advance of receiving payment are specifically excluded from the definition of a creditor. The act also appears to exempt physicians and other businesses who accept payment after providing services. While the language and clarifications of this bill appear to exempt healthcare providers from complying with the Red Flags rule, the bill does allow government agencies to designate certain classes as "creditors" thereby making them subject to the rule if the agency determines that those providers or businesses maintain accounts that could be subject to the risk of identity theft. The FTC has noted that medical identity theft poses a growing and especially dangerous risk. Given the FTC's concern regarding medical identity theft, it remains to be seen whether the agency will find that healthcare providers "maintain accounts . . . subject to a reasonably foreseeable risk of identity theft."

Enforcement of the Red Flags rule has been delayed several times since the House of Representatives passed the legislation in 2009. The most recent delay is set to expire in January 2011.

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