'Red Flags' Rule Delayed Through End of 2010

BY MARY ELLEN SCHNEIDER

The Federal Trade Commission has again postponed enforcement of the "Red Flags" rule, giving physicians until the end of 2010 before they must implement identity-theft prevention programs in their practices.

Enforcement of the rule had been scheduled to begin on June 1. In a statement issued on May 28, the FTC said it was delaying enforcement to give Congress time to consider pending legislation that would exclude some small physician practices and small businesses from the rule. Last year, the House passed a bill (H.R. 3763) that would have exempted physician practices with 20 or fewer employees from having to comply with the Red Flags rule, but that legislation has failed to gain traction in the Senate.

FTC officials urged lawmakers to act quickly to clarify what groups should be covered by the regulation. "As an agency we're charged with enforcing the law, and endless extensions delay enforcement," FTC chairman Jon Leibowitz said in a statement.

The Red Flags rule was written to implement provisions of the Fair and Accurate Credit Transactions Act, which calls on creditors and financial institutions to address the risk of identity theft. The rule requires creditors to develop formal identity-theft prevention programs that would allow an organization to identify, detect, and respond to any suspicious practices, or "red flags," that could indicate identity theft. The rule became effective on Jan. 1, 2008, with an original enforcement deadline of Nov. 1, 2008.

However, the FTC has delayed enforcement of the rule several times, first to give organizations more time to get familiar with the requirements and later at the request of members of Congress.

The rule has been controversial in the medical community because many physicians believe their practices don't fit into the definition of a "creditor." However, the FTC has continued to insist that physicians are in fact "creditors" because they allow their patients to defer payments over time.

The agency also has tried to assure physicians that the requirements should not be a burden and that small practices can come into compliance by implementing simple steps. For example, in low-risk settings, practice staff can ask patients for photo identification when they come in for an appointment.

The American Medical Association and other physician groups have been lobbying to get physicians excluded completely from the requirements.

On May 21, the AMA joined the American Osteopathic Association and the Medical Society of the District of Columbia in a federal lawsuit that seeks to prevent the FTC from applying the Red Flags rule to physicians. The groups contend that not only are physicians not creditors, but that the rules would be burdensome and duplicate requirements already in place under the Health Insurance Portability and Accountability Act. ■

AHRQ Awards $25M in Grants To Test Malpractice Reforms

BY MARY ELLEN SCHNEIDER

The Agency for Healthcare Research and Quality has awarded $25 million in grants to states and health systems to test various approaches to medical liability reform.

The grant awards follow through on a 2009 promise made by President Obama. In a speech to Congress last September, the president pledged to fund demonstration projects that would look at malpractice reforms that also improve patient safety.

The focus on patient safety is critical, said Dr. Carolyn Clancy, director of AHRQ, because when physicians fear being sued, they are less likely to be open about potential errors, near misses, and avoidable harms, and that's a major hurdle to improving patient safety in any organization.

"If you're fearful and you're worried about being sued, that has a very chilling effect on people's willingness to step forward and say 'we have a problem and we need to do something about it,' " Dr. Clancy said during a press briefing.

The awards, which were announced on June 11, include 3-year grants to states and health systems of as much as $3 million. The $25 million pool also includes 1-year planning grants of as much as $300,000, and a $2 million grant to JBA/RAND Corp. to evaluate the various projects.

Many of the demonstration grants will focus on early disclosure of errors and early offers of compensation, Dr. Clancy said. The aim with early offers is not to short-circuit the system, she added, but to give both physicians and patients relief from a process that often drags on. Another common theme among the grants is to promote better communication among providers, patients, and families.

The results of these tests could lay the groundwork for the additional medical malpractice studies called for under the Affordable Care Act, which authorizes an additional $50 million over 5 years to fund more studies, Dr. Clancy said. ■

A list of the projects is available at www.ahrq.gov/qual/liability/demogrants.htm and at www.ahrq.gov/qual/liability/planninggrants.htm.

POLICY & PRACTICE

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Call to Cover Contraception

Federal officials should make contraception one of the preventive services that private health plans will have to cover free of charge under health reform, says the Guttmacher Institute. The Affordable Care Act mandates that, starting in September, all new private health plans must provide preventive care and screening for women, without copayments or other cost sharing. The law states that the preventive services will be determined by the Health Resources and Services Administration. Adam Sonfield, senior public policy associate at the Guttmacher Institute, made the case that including contraceptive services will reduce unintended pregnancies, maternal illness, and the number of babies being born at low birth weights. He argues that every $1 invested in contraceptive services saves Medicaid $3.74. The mandate "must include coverage for the full range of contraceptive drugs and devices, related services such as insertion and removal of devices, and counseling and patient education," Mr. Sonfield said in a statement.

Report: Federal Funds Aid Abortions

Six organizations that support the right of women to have abortions got hundreds of millions in federal dollars between 2002 and 2009, according to a report from the Government Accountability Office. The funding was primarily for services in family planning, reproductive health, and HIV/AIDS. In total, the Department of Health and Human Services and the U.S. Agency for International Development distributed more than $500 million to Advocates for Youth, the Guttmacher Institute, the International Planned Parenthood Federation, the Planned Parenthood Federation of America, the Population Council, and the Sexuality Information and Education Council of the United States. With additional federal grants channeled through states, the six groups reported spending about $967 million in federal funds over the 8 years. The report was requested by Republicans in Congress. "By funding Planned Parenthood and their allies, we are unwittingly supporting an abortion organization and everything they do," Ken Blackwell, of the antiabortion Family Research Council, said in a statement.

Bill Pushes Risk Warnings

Proposed legislation aims to increase information on pregnancy-risk information. The "Birth Defects Prevention, Risk Reduction, and Awareness Act" (H.R. 5462/ S. 3479) has bipartisan support and endorsements from the American Academy of Pediatrics and the March of Dimes. The bill calls for a national media campaign to make physicians and patients aware of the information services. "Unfortunately, research shows that up to half of pregnant women are not counseled by their health care providers about the potential risks of medications they may be taking, and programs to provide this information have been closing due to state and local budget cuts," Rep. Rosa DeLauro (D.-Conn.), one of the bill's sponsors, said in a statement.

ART Called Heavily Regulated

When a California woman gave birth to octuplets last year, some people cried out for a clampdown on assisted reproductive medicine in the United States. But the American Society for Reproductive Medicine reports that assisted reproductive technology (ART) is already one of the most highly regulated practices in all of medicine. For example, ART falls under the purview of three federal agencies, the Centers for Disease Control and Prevention, the Food and Drug Administration, and the Centers for Medicare and Medicaid Services. These agencies are responsible for collecting data on ART, regulating drugs and devices and tests of eggs and sperm, and ensuring the quality of laboratories. Self-regulation includes a reproductive-laboratory accreditation program and ethics and practice guidelines. However, the report concedes that oversight could be improved if health plans would agree to cover ART services. Then health plans could require that physicians comply with the ethics and practice guidelines as a condition of payment.

Doctors Retract 'Nick' Policy

The American Academy of Pediatrics, under fire for its position on female genital cutting, has withdrawn the statement and reiterated its "strong opposition" to the practice. In April, the journal Pediatrics published an AAP statement suggesting that physicians in certain immigrant communities might substitute a pinprick of the clitoral skin for ritual genital cutting in order to satisfy cultural requirements. The statement warned that parents still might send their daughters out of the country to get the full procedure or have it done in the United States by someone not medically trained. But the AAP said in its new statement that it does not endorse the practice of offering a "clitoral nick," which is forbidden by federal law. Said AAP President Judith Palfrey, "We retracted that policy because it is important that the world health community understands the AAP is totally opposed to all forms of female genital cutting, both here in the U.S. and anywhere else in the world."

—Mary Ellen Schneider