How to Cope With Red Flags Rule on ID Theft

BY JOYCE FRIEDEN

WASHINGTON — The federal Red Flags Rule that requires creditors to check for identity theft may mean a few new procedures for office-based physicians, Patricia King said at the American Health Lawyers Association's annual meeting.

"Do health care providers have to comply with the Red Flags Rule? Yes, if they're [considered] creditors," said Ms. King, assistant general counsel at Swedish Covenant Hospital in Chicago.

The rule requires creditors to establish formal identify theft prevention programs to protect consumers. Aimed primarily at the financial industry, the regulation was originally scheduled to go into effect on Nov. 1, 2008. However, to give small businesses more time to prepare for compliance, the Federal Trade Commission (FTC) delayed enforcement until May 1, and then until Aug. 1, and most recently until Nov. 1.

Earlier this year, the AMA and physician specialty societies argued that physicians are not creditors because they bill insurance companies, not individual consumers, Ms. King said. "But the patient does get billed for copays, deductibles, and excluded services, so unless all those charges are collected up front, the health care provider is billing and possibly deferring payment for the cost of services."

To address health care providers' concerns, the FTC has published guidance and developed a template for identity theft prevention program for low-risk creditors. (The information is available at www.ftc.gov/bcp/edu/pubs/articles/art11.shtm.)

Low-risk providers who see the same patients regularly can adopt a simple identity theft program, she said, adding that personnel involved with front desk, medical records, and patient account functions should be involved in the program.

Physicians need to identify which patient accounts will be covered by the rule—such as those patients who need to make repeat payments—and develop appropriate policies and procedures, Ms. King said. "The final [Red Flags] rule had 26 examples of identity theft. Look through them and see which ones are most applicable to you."

Providers also need to look at what information they collect when patients register. "Many of us need to re-think our standard registration procedures and beef them up," said Ms. King.

Procedures for guarding against identity theft need to be approved by the organization's board of directors and overseen by senior management, according to the rule, "because this is intended to be a high-priority program, not something that's delegated to a lower-level manager."

Typical red flags that practices should watch for include:

- ► Insurance information that cannot be verified.
- ► No identification.
- ► A photo ID that doesn't match the patient.
- ► Documents that appear to be altered or forged.
- ► Information given that is different from information already on file.
- ► An invalid Social Security number.
- ► A patient who receives a bill or an explanation of benefits for services he or she didn't receive.
- ► A patient who finds inaccurate information on their credit report or on a medical record.
- ► A payer that says its patient information does not match that supplied by the provider.

When a particular patient raises one or more red flags, the practice has two options, according to Ms. King. It could refuse to provide service, although this might raise a problem under the Emergency Medical Treatment and Labor Act (EMTALA), a law that prohibits providers from not treating persons with questionable identification who require emergency care. Or the practice could provide the service, but ask the patient to bring in the correct information to his or her next visit. Ms. King cautioned providers about freely providing medical records to a patient suspected of identity theft, because it could lead to more identity theft.

Patients also will have to be educated about the new rule, Ms. King said. "Providers are going to run into problems with patient expectations. Patients have gotten used to coming to their doctor … with either no identifying documents or only their insurance card. They will need some education in advance by being informed when they call on the phone to schedule an appointment, or by signs in the waiting room, that you really need to have identifying documents with you."

She noted that under EMTALA, a hospital cannot delay performing the medical screening examination or stabilizing treatment, to inquire about insurance or payment, "but it can follow reasonable registration processes as long as the medical screening exam is not delayed by the process. So after the patient has been triaged and is sitting in the waiting room waiting to be seen for the medical screening exam, you can ask them for identifying information. But if they don't have identifying information, you can't turn them away. You have to provide the [screening exam] and necessary stabilizing treatment."

Providers also should note that compliance with the Health Insurance Portability and Accountability Act (HIPAA) does not shield them from complying with the Red Flags Rule. "The Red Flags Rule is really about fraud protection, and HIPAA is more about data security," said Naomi Lefkowitz of the division of privacy and identity protection at the Federal Trade Commission. ■

Mary Ellen Schneider contributed to this story.

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Bill Would Compromise on Abortion

Members of Congress are seeking a compromise on government efforts to reduce abortions. A new bill (H.R. 3312) aims to decrease the number of abortions by preventing unintended pregnancies and providing assistance to women who become pregnant. Specifically, the bill would provide increased access to contraception for low-income women and new mothers, and would expand health coverage for pregnant women and children. It also calls for a national adoption campaign and would support students who are pregnant or are already parents. "With this legislation, we have found common ground on one of the most divisive debates in America," Rep. Tim Ryan (D-Ohio), said in a statement. Rep. Ryan, one of the cosponsors of the bill, is a member of the Congressional Pro-Life Caucus. The other chief sponsor is Rep. Rosa DeLauro (D-Conn.), a member of the Congressional Pro-Choice Caucus. The bill also has support from nongovernment organizations on both sides of the abortion debate.

NARAL Supports Sotomayor

The Senate's confirmation of Judge Sonia Sotomayor as the newest associate justice on the Supreme Court was praised because of her anticipated support of abortion rights. In a statement, Nancy Keenan, president of NARAL Pro-Choice America, said the organization supported Judge Sotomayor's nomination because of her answers to questions on privacy rights as well as her backing from key abortion-rights supporters in the Senate. Nevertheless, in 2002 she sided with the Bush administration in a key reproductive rights case, *Center for Reproductive Law and Policy v. Bush*. She authored the decision to uphold the administration's prohibition of U.S. support for overseas family planning organizations that provided or advocated abortions. That policy, referred to as the "Mexico City policy" or the "global gag rule," has since been overturned by the Obama administration.

Senate Confirms New NIH Chief

The Senate also recently confirmed another one of President Obama's nominees. Dr. Francis Collins, known for his leadership of the Human Genome Project, is the new director of the National Institutes of Health. Dr. Collins' research has resulted in the discovery of genes responsible for cystic fibrosis, neurofibromatosis, Huntington's disease, a familial endocrine cancer syndrome, and type 2 diabetes. He also wrote a best-selling book on the relationship between faith and science.

Medical Liability Reform

With all the talk about health care reform this year, little has been said about changing the medical liability system. But Doctors for Medical Liability Reform, a group of about 230,000 specialists and several medical organizations, is urging physicians to contact members of Congress with the message that real health care reform can only be achieved if it addresses medical liability. The group's online petition asserts that defensive medicine is driving up the cost of health care by billions of dollars annually and that frivolous lawsuits are forcing physicians out of practice across the country. The petition, available at www.protectpatientsnow.org, doesn't prescribe any specific medical liability fix but says that several states have implemented successful medical liability reforms that could be models for federal action.

Family Insurance Tops $12K

Employer-sponsored insurance for a family of four in 2008 cost employers and workers an average of $12,298, according to the Agency for Healthcare Research and Quality. The employees' contribution averaged $3,394 for family-of-four plans and $882 for single workers, the agency reported. Employers paid the entire premium for 22% of workers with single-coverage plans, for 11% of workers with family-of-four plans, and for 9% of employees with one covered family member. About 31 million of the more than 62 million workers enrolled in employer-based insurance in 2008 had single plans, while 20 million had family-of-four coverage.

Information Tech Is Growing

The electronic exchange of health information among physicians, hospitals, health plans, and patients has increased substantially in the past year, the nonprofit group eHealth Initiative (eHI) found in its annual survey of 150 community-based "health information electronically" initiatives. Respondents reported a nearly 40% increase in the number of initiatives that were advanced enough to be exchanging information. According to eHI, these groups said that information technology is cutting redundant tests, avoiding some medication errors, and reducing staff time spent handling lab results and doing clerical tasks. The federal government is to spend at least $300 million on health information technology over the next 2 years as part of the economic stimulus of the American Recovery and Reinvestment Act of 2009. "We have a great opportunity to expand [health information technology] efforts with the new funding coming out in 2009 and 2010," eHI chief operating officer Jennifer Covich said in a statement.

—Mary Ellen Schneider