

FTC Extends Enforcement Deadline for Red Flags Rule

At the request of Members of Congress, the Federal Trade Commission is delaying enforcement of the "Red Flags" Rule until **June 1, 2010**, for financial institutions and creditors subject to enforcement by the FTC.

The Rule was promulgated under the Fair and Accurate Credit Transactions Act, in which Congress directed the Commission and other agencies to develop regulations requiring "creditors" and "financial institutions" to address the risk of identity theft. The resulting Red Flags Rule requires all such entities that have "covered accounts" to develop and implement written identity theft prevention programs to help identify, detect, and respond to patterns, practices, or specific activities - known as "red flags" - that could indicate identity theft.

The Commission previously delayed the enforcement of the Rule for entities under its jurisdiction until November 1, 2009.

Medicare Claims

- 1) AOA has seen reports that there were 300,000 warning edits issued the first day CMS began warning doctors and suppliers that their claims for ordered/referred items and services won't get paid in January if the ordering/referring doctor is not in PECOS. Paper claims apparently will not get a warning. They will just start rejecting in 2010. Meanwhile, if the electronic claim does not list the referring/ordering doctor in ALLCAPS, it might be rejected as well.
- 2) Members are receiving notices that the physician who refers/orders services or items in Medicare must be in the Medicare enrollment records. The claim must include the legal name of the ordering/referring physician (Item 17) and the type 1 NPI of the individual ordering/referring physician (Item 17b). For Part B claims, the referring/ordering physician must be found in PECOS (the database of physicians who have enrolled or reenrolled since 2003) or in contractor's other enrollment files. For DMEPOS claims, the referring/ordering physician must be in PECOS. Members will get notices about this now, and claims will not be paid as of January 4.

One of several major concerns was how the physician billing the claim (for DME or for professional services) would be able to learn whether the ordering/referring physician was in PECOS. CMS now says you can look up whether the ordering/referring physician is in PECOS by going to the following website: <http://www.medicare.gov/physician/search/chooseprovider.asp>

After clicking several screens, you can search for a physician by zip code, city, state, county, or last name. You have to know the physician specialty of the referring/ordering physician. (Hmmm. Is Dr. Jones enrolled as a family practitioner, or a general practitioner, or internal medicine, or something else?) Then you have to guess whether Dr. Jones is participating or not. Finally, you might end up with confirmation that the ordering/referring physician is in PECOS. So you'll have to do all this to just to figure out if your claim might be paid or not based on this new policy about referring/ordering physicians, and if you can't find the name you'll still be unsure. For doctors who receive your referrals, they will have to know that an optometrist is defined as a physician (not as a nonphysician practitioner) if they try to look you up.

Optometrists may wish to look themselves up to determine if they are in PECOS or not, so they will know whether the orders/referrals they make will be payable for the downstream physician or DME supplier.

Definitions: (1) A referring physician requests a covered item or service for a Medicare beneficiary. (2) An ordering physician orders "nonphysician" services such as DMEPOS, lab tests, and "incident to" services.