

Emerging Issues in Health Care Information Technology

Part I: Red Flag Regulations

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Today's Presenters

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Scope of Coverage

- "Financial Institutions" and "Creditors" that offer or maintain "covered accounts"
- The key concepts for the scope of coverage are what is a:
 - Financial Institution;
 - Creditor; and
 - Covered account



Other Key Concepts

- The definition of identity theft is also important:
 - The term "identity theft" means a fraud committed or attempted using the "identifying information" of another person without authority

Other Key Concepts (cont'd)

- The term "identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any--(1) Name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number; (2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; (3) Unique electronic identification number, address, or routing code; or (4) Telecommunication identifying information or access device



Other Key Concepts (cont'd)

- “Red Flag” means a pattern, practice, or specific activity that indicates the possible existence of identity theft



Who is Covered?

- Financial Institution is defined in the same way as in 15 U.S.C. § 1681a(t)
- Creditor has the same meaning as in 15 U.S.C. § 1681a(r)(5), and includes lenders such as banks, finance companies, automobile dealers, mortgage brokers, and telecommunications companies

Who is Covered? (cont'd)

- “Creditor” means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit
- The term includes banks, finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies



What is “Credit”?

- “Credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment thereof






“Credit” – 2 views

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- Any delay in payment after services are rendered is “credit”
- “Credit” is extended where there is an agreement to defer payment after it is due

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What it Means to be a “Creditor”

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- A creditor could include a party which “regularly participates in a credit decision, including setting the terms of the credit”
- A “creditor” is subject to the requirements of, and liability under, other federal laws, including the Equal Credit Opportunity Act and the Fair Credit Reporting Act
- A “creditor” may require a license under state law

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What to do?

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- Analyze carefully, but adopt the Red Flag requirements as “best practice”
- Where “credit” is extended, understand additional compliance obligations
- Coordinate compliance procedures at an organizational level

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What is Covered?

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- Covered account means: (i) An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account; and (ii) Any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks
- Account means a continuing relationship established by a person with a financial institution or creditor to obtain a product or service for personal, family, household or business purposes. Account includes: (i) An extension of credit, such as the purchase of property or services involving a deferred payment; and (ii) A deposit account.

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What is Required?

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- Each Creditor must periodically determine whether it offers or maintains covered accounts

- This must include a risk assessment to determine whether it offers or maintains covered accounts taking into consideration:
 - The methods it provides to open its accounts;
 - The methods it provides to access its accounts; and
 - Its previous experiences with identity theft

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Written Program Requirement

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- Financial Institutions and Creditors that offer or maintain one or more covered accounts must develop and implement a written Identity Theft Prevention Program (Program) that is designed to detect, prevent, and mitigate identity theft

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What Factors can be Considered When the Program is Created?

- The Program must be appropriate to the size and complexity of the Financial Institution or Creditor and the nature and scope of its activities



What Must the Program Include?

- The Program must include reasonable policies and procedures to:
 - Identify relevant Red Flags for the covered accounts that the Financial Institution or Creditor offers or maintains, and incorporate those Red Flags into its Program;
 - Detect Red Flags that have been incorporated into the Program of the Financial Institution or Creditor;
 - Respond appropriately to any Red Flags that are detected to prevent and mitigate identity theft; and
 - Ensure the Program (including the Red Flags determined to be relevant) is updated periodically, to reflect changes in risks to customers and to the safety and soundness of the financial institution or creditor from identity theft

Continued Administration & Necessary Approvals

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- A Creditor must also provide for the continued administration of the Program and must:
 - Obtain approval of the initial written Program from either its board of directors or an appropriate committee of the board of directors;
 - Involve the board of directors, an appropriate committee thereof, or a designated employee at the level of senior management in the oversight, development, implementation and administration of the Program;
 - Train staff, as necessary, to effectively implement the Program; and
 - Exercise appropriate and effective oversight of service provider arrangements

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Other Key Elements of The Program

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- The Program must also assist the Creditor in:
 - Identifying Relevant Red Flags;
 - Detecting Red Flags;
 - Preventing and Mitigating Identity Theft;
 - Administering the Program;
 - Complying with Other Applicable Legal Requirements;
 - Addressing Alerts, Notifications or Warnings from a Consumer Reporting Agency;
 - Identifying Suspicious Documents and Suspicious Personal Identifying Information; and
 - Identifying the Unusual Use of, or Suspicious Activity Related to, the Covered Account

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Effective Date

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- The regulations become effective on November 1, 2008.



Questions & Answers

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