AVMA®

American Veterinary Medical Association

Governmental
Relations Division
1910 Sunderland Place, NW
Washington, DC
20036-1642
phone 202.789.0007
800.321.1473
fax 202.842.4360

AVMA Headquarters
1931 N. Meacham Rd.
Suite 100
Schaumburg, IL
60173-4360
phone 847.925.8070
800.248.2862
fax 847.925.1329
www.avma.org

Identify Theft and the Red Flags Rule

Request

- Before the Red Flags Rule goes into effect on 6/1/2010, AVMA urges Congress to find a solution that relieves the regulatory burden of the Red Flags rule on small businesses, particularly veterinary practices, and allows the Federal Trade Commission (FTC) to move forward and finalize the requirements.

AVMA Position

- Active pursuit of passage

Status

- The House passed HR 3763 on 10/20/2009. It exempts healthcare, legal and accounting practices that employ fewer than 20 people from Red Flags and allows for exemption if a business knows all of its customers or clients individually, if a business only performs services in or around the residences of its customers, or if a business has not experienced incidents of identity theft and identity theft is rare for businesses of that type.
- HR 3763 was sent to the Senate Committee on Banking, Housing, and Urban Affairs which is now working on alternative language.

Justification

- No where in the Red Flags Rule does the term “creditor” include veterinarians. Inclusion of veterinarians within the definition of “creditor” under the Rule is contrary to the legislation which the Rule purports to implement, and constitutes a substantive rule that was not adopted in accordance with the requirements of the Administrative Procedure Act.
- Identity theft is not a problem for veterinary practices. Compliance with the rule will cost veterinary practices across the country millions of dollars to implement.

Background

- FTC says “health care providers are creditors if they bill consumers after their services are completed.” FTC states that “health care providers that accept insurance are considered creditors if the consumer ultimately is responsible for the medical fees.” FTC’s basis for this interpretation is whenever “payment is made after [a] product was sold or [a] service performed,” the seller or service provider has extended the recipient credit.
- Health care providers are deemed to have “covered accounts” because their “continuing relationships with consumers for the provision of medical services” qualifies as an account “for personal, family, or household services that involves multiple payments or transactions.”
- The Red Flags Rule, 16 C.F.R § 681.2 requires each financial institution and creditor with certain covered accounts to have identity theft prevention programs which must provide for the identification, detection, and response to patterns, practices, or specific activities that could indicate identity theft. Sect. 114 of the Fair and Accurate Credit Transactions Act of 2003, 15 U.S.C. § 1681m(e)(1)(A), requires the FTC to establish and maintain guidelines for use by each financial institution and creditor regarding identity theft with respect to account holders at, or customers of, such entities.
- FTC issued final regulations implementing Sect. 114 (Red Flags Rule), on Nov. 9, 2007. See 72 Fed. Reg. 63718 et seq. The Rule, 16 C.F.R § 681.2, was set to become effective on Nov. 1, 2008, but the FTC has suspended enforcement.

AVMA Contact: Gina Luke, Assistant Director GRD, 202-289-3204, gluke@avma.org