

Raise the ‘Red Flags’

From: [The Hospitalist, August 2010](#)

Congressional inaction puts medical practices at risk

To no one’s surprise, federal legislation doesn’t always do what its architects originally intended. A bill designed to protect consumers from identify theft can instead leave small hospitalist practices and other healthcare businesses in the lurch over whether they must meet stringent antitheft requirements intended for credit-card companies and banks. A bill designed to add millions of patients to the ranks of the insured could instead subtract millions of dollars from the reimbursements hospitals and doctors receive from private insurers.

Congress needs to fix the unintended consequences of the legislation establishing the Red Flags Rule.

—Jon Leibowitz, chairman, Federal Trade Commission

So What’s to Be Done?

An effort to correct one of these lingering headaches—known as the “Red Flags Rule”—is again on the table, though not everyone’s convinced it might finally be fixed seven years after it was first enacted. The rule, folded into the Fair and Accurate Credit Transactions Act of 2003, required the Federal Trade Commission (FTC) and other government agencies to come up with specific measures that “creditors” and “financial institutions” would have to design and implement to counter the growing risk of identity theft.

As intended, these measures would help businesses “identify, detect, and respond” to anything that might suggest identity theft. In other words, they could throw up red flags to warn of illegal activity.

But five years later, as the act’s Nov. 1, 2008, enforcement date was approaching, no one seemed to know exactly which businesses should be considered “creditors.” The act’s vague wording, in fact, created widespread fear that a measure designed principally for banks and credit-card companies would also apply to small accounting, legal, and healthcare practices, saddling them with cumbersome and expensive vetting protocols.

Thus began a series of requests by federal legislators that the FTC delay enforcement until the confusion could be sorted out. After three delays, including the latest pushback from June 1 through the end of this year, the commission’s patience is wearing thin. FTC Chairman Jon Leibowitz has been clear about the agency’s frustration over the extensions in lieu of a permanent resolution.

“Congress needs to fix the unintended consequences of the legislation establishing the Red Flags Rule—and to fix this problem quickly,” he said in a May 28 release. “As an agency, we’re charged with enforcing the law, and endless extensions delay enforcement.”

The not-so-subtle jab at Congressional inaction was aimed at one chamber in particular. Bill HR3763, which adds clarifying language to the rule and specifically excludes accounting, legal, and medical practices with 20 or fewer employees, sailed through the House of Representatives last October by a vote of 400-0. And then it promptly hit a giant sandbar in the form of the Senate. On May 25, Sen. John Thune (R-S.D.) and Sen. Mark Begich (D-Alaska) attempted a relaunch with

their introduction of S3416, a near carbon copy of the House bill.

The measure is hardly a *fait accompli*, given the Senate's recent track record, but a spokesman for Sen. Thune said the senator's office is expecting a resolution before the FTC's latest extension expires. Citing the commission's decision to delay enforcement soon after the Senate bill's introduction, he said, "We interpret that as an indication that they want to give Congress time to act, so we're very optimistic that something will happen this year."

Of course, the enforcement delay also might have something to do with the joint lawsuit filed May 21 by the American Medical Association, American Osteopathic Association, and the Medical Society of the District of Columbia. In their complaint, the three medical associations charged that the FTC's application of the rule to physicians is "arbitrary, capricious, and contrary to the law."

It's now up to the Senate to decide whether that suit will become moot. **TH**

Bryn Nelson is a freelance medical writer based in Seattle.

A Gloomy Assessment of Reimbursement Rates

This year's healthcare reform legislation has generated plenty of uncertainty. One claim heard repeatedly during the debate over the legislation was that a more universal system would result in a fairer distribution of costs. That sense of fairness, however, doesn't seem to extend to the expected reimbursement rates doled out to hospitals and doctors by private insurers. At least that's the pessimistic opinion of healthcare executives surveyed as part of this year's annual National Payor Survey, released by Santa Barbara, Calif.-based Revive Public Relations.

The intent of the survey seems to be a public airing of hospital executives' grievances over the way in which reimbursement rates and claims are handled by the nation's largest insurers, notably UnitedHealthcare (65% of 225 responding executives viewed the insurer unfavorably, actually a significant improvement over last year's 82% unfavorable rating; the full report is available at www.revivepublicrelations.com/reports.html).

Another set of survey questions, however, provides a glimpse of the gloomy expectations tied to reform. Only 35% of respondents said health reform would create more negotiating leverage for private payors over the next two to three years, while 47% said the legislation would yield less leverage. Two-thirds of respondents said private payor reimbursement rates would decrease over the same time period. Even more—68%—said that a reduction in care to uninsured patients (millions are expected to be added to federal and private insurance plans) wouldn't make up for that shortfall in rates.

When asked by *The Hospitalist*, insurance representatives were more oblique in their assessments. UnitedHealthcare spokeswoman Cheryl Randolph took aim at her company's unfavorable rating.

"We believe this selective, nonscientific, Web-based survey misrepresents the positive relationships that UnitedHealthcare has with most hospitals," she said. But she didn't directly address the matter of hospital reimbursements, instead citing "fair and reasonable reimbursement rates based on the market."

Paul Marchetti, head of Aetna National Networks and Contracting Services (Aetna was the

highest-rated insurer among hospital executives), says the reform legislation's effect on rates isn't clear, and invoked the challenge of how to effectively deal with healthcare affordability.

"We believe that the key to addressing the affordability issue is to reform our payment system to one that pays for quality, not quantity," Marchetti said.

Most hospitalists would agree, but in the meantime, the quality-not-quantity principle does nothing to resolve the uncertainty over reimbursement rates.

Doctors might have to wait a few more years to see any positive movement, according to Jon Gabel, a senior fellow in the Washington, D.C., office of the National Opinion Research Center. Gabel points out that hospitals are still getting a better deal from private insurers than from Medicare (on average, reimbursement is about 20% to 25% higher). That means even poorly ranked insurers are likely to remain in the driver's seat for now.

"As long as hospitals are well below capacity, and as long as private pay is the best paying form of hospital reimbursement—better than Medicare, better than Medicaid—it seems to me that it really won't hurt the insurers' business that much," Gabel says.

Everything could change, Gabel notes, with fuller hospitals and less disparity between public and private reimbursements. "At that point, having a bad reputation is much more likely to impair insurers' business," he says.—*BN*

This copy is for your personal, noncommercial use only. No part of this article can be reproduced without the written permission of the publisher. Order presentation-ready copies for distribution to your colleagues, clients, or customers by contacting our reprints department at reprints@wiley.com. Copyright © 2009 Society of Hospital Medicine, administered by John Wiley & Sons Inc.
