

The Red Flag Rules: New Requirements May Affect Private Practice Collection Policies

By Paul J. Welk, PT, JD

With the increasing financial obligation placed upon patients, many physical therapy private practices find themselves working with patients to establish payment plans under which patients can satisfy their financial obligations to the practice over time. For example, practices may agree to allow an individual who requires frequent physical therapy visits for an acute condition to satisfy high-dollar copayments over a number of months. Although establishing such a payment plan will still be permissible, new changes in federal law may place additional requirements on practices that allow patients to pay over time.

The Federal Trade Commission (FTC), in implementing the Fair and Accurate Credit Transactions Act of 2003, issued final rules on November 9, 2007, that may impact the way private practices handle patient account information. The FTC has indicated that these rules, commonly known as the “red flag rules,” and the associated guidelines will be enforced as of May 1, 2009.¹

The FTC lists 26 possible “red flags” that should be monitored and may indicate attempted identity theft.² Examples of these red flags include the creditor—in this case, the physical therapy private practice—receiving documents that appear to be altered or forged, or receiving inconsistent personal information from an individual. In summary, the relevant red flag rules require that “creditors” that offer or maintain “covered accounts” develop and implement an identity theft program to detect, prevent, and mitigate identity theft when opening or maintaining covered accounts. The FTC defines “creditor” broadly to include health care providers that allow consumer patients to pay for services in installments, and defines a “covered account” as an account primarily for personal, family, or household purposes that involves or is designed to permit multiple payments or transactions, or any other account for which there is a reasonably foreseeable risk to customers of identity theft. Although certain professional associations, including the American Medical Association, have requested that health care providers be exempt from the red flag rules, as of the date this article was written it is the FTC’s position that these definitions encompass health care providers. In addition to the obligations placed on creditors themselves, creditors who use third-party providers such as a third-party billing company must require by contract that such providers have similar policies and procedures in place to prevent identity theft.

In physical therapy private practice settings, a number of payment scenarios could fall within the red flag rule requirements. For example, practices that permit copayments, deductibles, and any other payments to be made in installments, or that bill patients for physical therapy services after the time of service, could be viewed as “creditors” under these rules. To prepare for the FTC’s anticipated enforcement date of May 1, 2009, private practices should consider their current payment procedures to determine what, if any, risk factors exist in their procedures for handling patient information. Private practices should pay particular attention to the areas of billing and patient account servicing in light of the sample red flags noted above. The FTC’s guidelines suggest the following steps in performing such an analysis:

- ▶ Determine if the practice is a “creditor” and if it offers “covered accounts.”
- ▶ Identify relevant red flags.
- ▶ Provide methodology to detect red flags.
- ▶ Provide methodology to prevent and mitigate identity theft.
- ▶ Update the program and train employees.
- ▶ Oversee the program and service providers.

To prepare for May 1, 2009, private practices should consider the FTC’s guidelines, carefully review the red flag rules in light of their own procedures, and develop an appropriate compliance program. ■

Paul Welk, PT, JD, is a Private Practice Section member and a physical therapist attorney with Tucker Arensberg, P.C., where he frequently advises physical therapy private practices in the areas of corporate and health care law. Questions or comments can be directed to pwelk@tuckerlaw.com.

Notes

¹ Based on *Impact* magazine’s publication schedule and the compliance date for the red flag rules, this content has been included in the January edition. Please monitor the APTA website and other publications for any additional FTC guidance regarding the red flag rules.

² A copy of the red flag rules in their entirety, officially referred to as Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003; Final Rule, is available at <http://www.ftc.gov/os/fedreg/2007/november/071109redflags.pdf> (accessed November 23, 2008).