

**LEGISLATIVE UPDATE: RED FLAGS RULE NO LONGER CONSIDERS
HEALTHCARE PROVIDERS TO BE “CREDITORS”**

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Under the initial Red Flags Rule, certain businesses and organizations, including many physician offices, dentists, hospitals and other health care providers, were required to identify and address the red flags that often are the telltale signs of identity theft. Initially, according to the Federal Trade Commission, the rule was applicable to businesses that qualified as creditors. Health care providers were considered creditors if they billed patients after their services had been completed. The recently passed Red Flag Program Clarification Act of 2010 (S. 3987), signed into law December 2010 by President Obama, exempts healthcare providers by revising the definition of creditor. Following passage of the bill, Senator Christopher Dodd commented that this legislation, “makes clear that lawyers, doctors, dentists, orthodontists, pharmacists, veterinarians, accountants, nurse practitioners, social workers, other types of healthcare providers and other service providers will no longer be classified as ‘creditors’ for the purposes of the Red Flags Rule just because they do not receive payment in full from their clients at the time they provide their services, when they don’t offer or maintain accounts that pose a reasonably foreseeable risk of identity theft.”

Although healthcare providers are now exempt, physician practices should still take a proactive approach to possible breaches by putting policies and procedures in place to address the following: How does my practice control a breach? How do we mitigate the breach, including recovering lost data for internal purposes? What should be done to prevent a recurrence? Do we need to notify anyone? If so, who must we notify and how? If we are not required to notify, should we notify anyway?

With or without the Red Flags Rule, identity theft remains a pressing concern. Contact your business advisors for more information on the best ways to protect yourself and your business from identity theft.