

**GENERAL ASSEMBLY NEWS**

- 1 *RI first with model PPO bill*
- 16 *Saving the Office of Health Insurance Commissioner*

**PRACTICE NEWS**

- 1 *Be ready for "Red Flags"*

**FROM THE PRESIDENT**

- 3 *Guilty as Charged; Second Wind*

**RIMS NEWS**

- 4 *TarWars® 2009*
- 5 *Bike helmet distribution*
- 8 *Briefly Noted*
- 8 *Specialty societies news*
- 9 *New officers, Banquet*

**AMA NEWS**

- 6 *Delegate's report*
- 7 *Medical students ride for the uninsured*

## "Red Flag" regulations may be in force August 1

While the AMA continues to challenge the logic and appropriateness of the Federal Trade Commission's imposition of new "Red Flag" requirements on medical practices, the clock continues to tick down toward enforcement effective August 1. AMA previously succeeded in winning two postponements, first from November 1, 2008 to May 1, 2009, and then again until August 1, 2009. A third postponement may not be in the cards. Therefore, practices are advised to be ready, and the AMA is providing practical online resources that are available free of charge to all physicians through the AMA's Practice Management Center at [ama-assn.org/go/pmc](http://ama-assn.org/go/pmc).

The "red flag" rule is intended primarily to protect consumers from identity theft and minimize the impact when such theft occurs. Identity theft is a fast-growing and costly crime in the U.S.

Besides the more familiar forms of financial identity theft, patients and health care providers must be alert to the threat of medical identity theft, with or without the "Red Flag" rules. Medical identity theft involves the misappropriation of a patient's insurance information or other personal data to make false claims for medical services or goods. Besides wreaking financial havoc, medical identity theft has the potential to taint and falsify medical records in the victim's name and can lead to inappropriate medical treatment and consequently to medical professional liability exposure for the doctor. Medical offices do well to make a practice of checking photo identifications of unfamiliar patients.

Compliance with the "Red Flag" regulations will require more than checking patients' IDs, however. They call for medical practices and various other entities that serve the public to have "reasonable policies and procedures in place" to detect and respond to "Red Flags." Red Flags are signs or indications that identity theft has occurred or could occur. *continued page 2*

## Rhode Island doctors to get model protection against insurers' abuse of discounts

This year's chaotic General Assembly session may yet yield a good result or two for Rhode Island physicians in the form of the nation's first enactment of model legislation to address the threat of "silent PPOs." These proliferating entities are part of a lucrative, shadowy, secondary market that exploits technology to cheat American physicians on a massive and rising scale.

In most states, physicians have little awareness of the national network of parasitic companies that specialize in expropriating doctors' discounts without the doctors' knowledge. It takes a sharp eye to recognize illegitimate use of discounts that a practice may have agreed to contractually with one payer but are being silently claimed by other payers with whom the practice has no contractual relationship. And if spotting such piracy is hard, combating it can be even harder.

Enter the AMA, RIMS and the National Conference of Insurance Legislators (NCOIL). NCOIL just happens to have had two Rhode Island legislators in its leadership at a critical time: Representative Brian P. Kennedy, (D-Westerly and Hopkington) and Senator David E. Bates (R-Bristol and Barrington). RIMS has long relationships with both. RIMS was able to interest Messrs. Kennedy and Bates in the arcane issue of "rental networks" and "silent PPOs," and Kennedy, in particular, got NCOIL to focus on drafting model legislation that stands to benefit physicians across the country. Five other states (Colorado, Connecticut, Indiana, Ohio and Florida) have sought to address the general problem legislatively in recent years; NCOIL's model bill attempts to draw upon the experience and best features of those states' statutes. NCOIL unveiled its model bill in November 2008, and it was first introduced in Rhode Island. *continued page 2*



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The Rhode Island Medical Society was founded in 1812 to promote the art and science of medicine. RIMS is the eighth oldest state medical association in the country.

In cooperation with the Brown University School of Medicine, the Rhode Island Department of Health, and Quality Partners of Rhode Island, the Society also publishes a monthly magazine, *Medicine and Health Rhode Island*.

## FROM PAGE ONE

### Red Flag – continued

According to the Federal Trade Commission, “Red Flags” for identity theft include the following:

- Alerts, notifications or warnings from a consumer reporting agency indicating that an individual’s identity may have been stolen.
- Suspicious documents or suspicious personal identification information, such as inconsistent addresses or a nonexistent Social Security number.
- Unusual or suspicious activity relating to a person’s (patient’s) account. (E.g., your legitimate patient might receive an EOB for a service or product that he or she did not receive.)
- Notification from a client (patient) or from law enforcement indicating that identity theft may have occurred.

Medical practices are already familiar with the privacy and security rules associated with HIPAA, which protects “personal health information” (PHI). PHI is also protected by the Red Flags Rule, but the Rule extends further to protect credit card information, tax identification numbers of all kinds, insurance claim information, and background checks for employees and service providers.

As with HIPAA, practices need to have administrative, technical and physical safeguards in place to protect all such personal data. In addition, practices need to plan how they will detect, document, report and counteract instances of identity theft.

The AMA provides excellent, free guidance to medical practices on the Red Flags Rule, including suggested sample policies to help medical practices comply. These outstanding resources are available to all through the AMA’s rapidly expanding Practice Management Center at [ama-assn.org/go/pmc](http://ama-assn.org/go/pmc) under “Red Flags Rule resources.”

AMA members and their practice staff can also email the AMA Practice Management Center at [practicemanagementcenter@ama-assn.org](mailto:practicemanagementcenter@ama-assn.org) or call 800-262-3211 for help. ❖

### Silent PPOs – continued

Assuming the bill is enacted this year, a new chapter of Rhode Island law entitled “Rental network contract arrangements” will make it illegal for “silent PPOs” to remain silent. It will empower physicians to identify and deny illegitimate discounts. Entities that contract directly with physicians (e.g., UnitedHealthcare, Blue Cross, Tufts, etc.) will have to register with the RI Department of Business Regulation and then submit to oversight, strict limitations and reporting obligations on any arrangements to make their providers’ discounts available to other networks. (Blue Cross & Blue Shield of RI has long assured RIMS that it does not engage in such trafficking with physician

discounts to begin with.) The enforcement provisions are already spelled out in the “Unfair competition and practices” section of Rhode Island insurance law.

The national phenomenon of “rental networks” and “silent PPOs” was first exposed by the AMA through its Advocacy Resource Center (ARC) about four years ago. The ARC quickly began encouraging NCOIL to draft model legislation and raised the alarm to organized medicine in detail at a national conference on state legislation in January 2006.

The Rhode Island Medical Society’s Government Affairs Director, Steven R. DeToy, is a founding member of the Executive Committee of the AMA’s ARC. ❖