



“Red flags” threat recedes

A tenacious AMA wages and wins a multi-front battle

In the end, it took an act of Congress to vanquish the Red Menace. For two years federal regulators have been threatening to impose incongruous new bureaucratic requirements on medical offices with potential heavy penalties for non-compliance, all because of the perverse

idea that physicians are “creditors,” and as such are obligated to implement “Red Flag Rule Programs” in order to protect those to whom they extend credit (i.e., patients) from identity theft.

The “creditor” notion arises from the fact that physicians typically are not paid at the time they render services. In the blinkered view of the Federal Trade Commission (FTC), that means that doctors, like banks and institutional money lenders, need to be legally required to keep a systematic eye out for “red flags” that may indicate identity theft – and they need to be punished if they fail to comply.

Enter the AMA, which opened regulatory, legislative and judicial fronts in a years-long battle to protect doctors from the disproportionate burden of the FTC’s Red Flags Rule. Since the original November 1, 2008, compliance date, the AMA has won multiple reprieves for doctors, the last of which was due to expire effective January 1, 2011, giving AMA’s simultaneous legislative strategy in Congress just enough time to work.

Meanwhile, on May 21, 2010, the AMA and the American Osteopathic Society opened another front against Red Flags with a lawsuit against the FTC. (Perversely, the courts refused to recognize the fact that other professionals, such as lawyers and dentists, who were also deemed “creditors” by the FTC, all had the very same legitimate issue with Red Flags; as a result, each professional group had to fight its own separate legal battle.)

Finally, in December 2010, with President Obama’s signature on the Red Flag Program Clarification Act of 2010, the AMA’s victory on behalf of all physicians appeared to be complete.

As the Red Flag Affair properly fades into history, it remains a striking example of two things: bureaucratic overreach by government, and tireless advocacy by the AMA. ❖

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