

## **“Red Flag” Rule Deadline of May 1, 2009 Is Here**

It is critical to note that health center’s Board of Directors must have a signed Identify Theft Prevention Program signed by May 1, 2009. The components of the program must provide for the identification, detection, and response to patterns, practices, or specific activities – known as “red flags” – that could indicate identity theft.

In November 2007, the Federal Trade Commission (FTC) issued regulations (the Red Flag Rule) requiring financial institutions and creditors to develop and implement written Identity Theft Prevention Programs, as part of the Fair and Accurate Credit Transactions (FACT) Act of 2003. Full compliance is scheduled for May 1, 2009.

The rule applies to any institution, including a health care provider, which is a "creditor" and maintains "covered accounts." For purposes of the rule:

- "Credit" is "the right granted...to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefore."
- "Creditor" is any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who is involved in the decision to extend, renew, or continue credit.
- "Covered account" is any account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account.

Based on these definitions, health centers that regularly extend, renew, or continue credit to patients and that offer or maintain covered accounts (including billing accounts) must comply with the rule. Requiring payment in full at the time of service (including full payment of insurance co-pays or discounted fees under a "sliding fee" scale) either in cash, with a credit card, or via a third party such as Medicaid, Medicare, or other third party payor does not constitute the extending of credit. On the other hand, a health center that allows patients to pay on a periodic basis - to defer full payments (with or without the imposition of any interest or carrying charges) - would be extending credit under the regulation and would be subject to the regulation if it regularly follows this practice. Deferral includes situations under which a patient is billed after the service is rendered.

The Red Flag Rule is available on-line by browsing the November 9, 2007 issue of the Federal Register at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html). NACHC has posted on its website additional information regarding the details and implementation of the rule (See the Press Release of October 10, 2008 and the guidance entitled Complying With the "Red Flag" Rules)." Health Centers are urged to read this new Issue Brief (dated April, 2009) as well as the earlier one issued by NACHC in February, 2009. The new document, as well as the earlier Issue Brief, can be found at <http://www.nachc.com/regulatory-issues.cfm>.

Texas Association of Community Health Centers (TACHC) has put together a [template policy and procedures addressing the requirements of the red flag rules for community health centers](#), which is attached to this document. This document is meant to be an example for other states to use, keeping in mind state, local and site specific requirements that health centers may need to consider when adapting the language. This template is a slightly updated excerpt from the TACHC OC3 Manuals Updates which can be at [http://www.tachc.org/About/Membership/Member\\_Directory/manuals.asp](http://www.tachc.org/About/Membership/Member_Directory/manuals.asp).