Get Ready to Follow the ID Theft Red Flags Rule

BY JOYCE FRIEDEN

WASHINGTON — The federal Red Flags Rule that requires creditors to check for identity theft may mean a few new procedures for office-based physicians, Patricia King said at the American Health Lawyers Association's annual meeting.

"Do health care providers have to comply with the Red Flags Rule? Yes, if they're [considered] creditors," said Ms. King, assistant general counsel at Swedish Covenant Hospital in Chicago.

The rule requires creditors to establish formal identify theft prevention programs to protect consumers. Aimed primarily at the financial industry, the regulation was originally scheduled to go into effect on Nov. 1, 2008. However, to give small businesses more time to prepare for compliance, the Federal Trade Commission (FTC) delayed enforcement until May 1, and then until Aug. 1, and most recently until Nov. 1.

Earlier this year, the AMA and physician specialty societies argued that physicians are not creditors because they bill insurance companies, not individual consumers, Ms. King said. "But the patient does get billed for copays, deductibles, and excluded services, so unless all those charges are collected up front, the health care provider is billing and possibly deferring payment for the cost of services."

The FTC has published guidance and developed a template for an identity theft prevention program for low-risk creditors (www.ftc.gov/bcp/edu/pubs/articles/art11.shtm.)

Low-risk providers who see the same patients regularly can adopt a simple identity theft program, and personnel involved with front desk, medical records, and patient account functions should be involved in the program, Ms King said.

Physicians need to identify which patient accounts will be covered by the rule—such as those patients who need to make repeat payments—and develop appropriate policies and procedures. "The final [Red Flags] rule had 26 examples of identity theft. Look through them and see which ones are most applicable to you," she advised

Physicians also need to look at what information they collect when patients register. "Many of us need to re-think our standard registration procedures and beef them up," said Ms. King. One example might be to ask for a photo ID.

Procedures for guarding against identity theft must be approved by the organization's board of directors and overseen by senior management, according to the rule.

Typical "red flags" that practices should watch for include:

► Insurance information that cannot be verified;

► No identification;

► A photo ID that does not match the patient;

► Documents that appear to be altered or forged;

► Information given that is different from information already on file;

► An invalid Social Security number;

► A patient who receives a bill or an explanation of benefits for services that he or she didn't receive;

► A patient who finds inaccurate information on a credit report or medical record; or

► A payer that says its patient information does not match that supplied by the provider.

In responding to a red flag, Ms. King said, a practice may refuse to provide service, but this might raise a problem under the Emergency Medical Treatment and Labor Act (EMTALA), which prohibits providers from not treating persons with questionable identification who require emergency care. The other option is to provide the service, but ask the patient to bring in the correct information at the next visit. Ms. King cautioned about freely providing medical records to a patient suspected of identity theft, because that could lead to more identity theft.

Patients also will have to be educated about the new rule, she said. "Providers are going to run into problems with patient expectations. Patients have gotten used to coming to their doctor … with either no identifying documents or only their insurance card. They will need some education in advance."

Under EMTALA, a hospital cannot delay a medical screening examination or stabilizing treatment to inquire about insurance or payment, "but it can follow reasonable registration processes as long as the medical screening exam is not delayed by the process. So after the patient has been triaged and is sitting in the waiting room waiting to be seen for the medical screening exam, you can ask them for identifying information. But if they don't have identifying information, you can't turn them away."

Providers also should note that compliance with the Health Insurance Portability and Accountability Act (HIPAA) does not shield them from complying with the Red Flags Rule.

"One of the questions we get is, 'I already comply with HIPAA; aren't I done?' The answer is, 'Probably not,' " said Naomi Lefkowitz of the division of privacy and identity protection at the Federal Trade Commission.

"The Red Flags Rule is really about fraud protection, and HIPAA is more about data security. There is certainly some overlap, and to the extent that, for example, someone is checking photo IDs … to make sure that the person only has access to their [own] medical record, that's a policy that might do double duty under the client's identity theft program as far as verifying ID," Ms. Lefkowitz said. But merely having the HIPAA program is probably not going to make [providers] compliant with Red Flags." ■

Mary Ellen Schneider contributed to this report.

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HHS Issues Privacy-Breach Rules

The federal government is requiring physicians and other HIPAA-covered entities to notify individuals when their protected health information has been breached. The interim final rule, issued in August, goes into effect this month. Under the rule, physicians have up to 60 calendar days from when they detect unauthorized access of protected health information to notify the patient. If the breach involves more than 500 individuals, the HHS secretary and a major media outlet in their area must be notified. "This new federal law ensures that covered entities and business associates are accountable to [HHS] and to individuals for proper safeguarding of the private information entrusted to their care," said Robinsue Frohboese, acting director of the Office of Civil Rights at HHS. "These protections will be a cornerstone of maintaining consumer trust as we move forward with meaningful use of electronic health records and electronic exchange of health information." There are exceptions: Notifications are not necessary if the information that was disclosed is unlikely to be retained. For example, if a nurse gives a patient the wrong discharge papers but quickly takes them back, it's reasonable to assume that the patient could not have retained that protected information, according to HHS. More information about the regulation is available at www.hhs.gov/ocr/privacy.

More HIPAA Goes to Rights Office

The Health and Human Services' Office for Civil Rights will now enforce the confidentiality of electronic health information as well as other patient records, HHS Secretary Kathleen Sebelius announced. The office already had responsibility for enforcing the HIPAA's "privacy" rule, which guards nonelectronic personal health information. But enforcement of HIPAA's "security" rule for electronic health information had been delegated to the Centers for Medicare and Medicaid Services. Legislation approved as part of the Recovery Act of 2009 mandated better enforcement of both rules. Ms. Sebelius noted in a statement that electronic and nonelectronic health information increasingly overlaps. "Combining the enforcement authority [for both rules] in one agency within HHS will facilitate improvements by eliminating duplication and increasing efficiency," she said. The CMS will continue to have authority for the administration and enforcement of other HIPAA regulations.

Public Is Biggest ED Payer

More than 40% of the 120 million visits that Americans made to hospital emergency departments in 2006 were billed to Medicare and Medicaid, according to the Agency for Healthcare Research and Quality. In all, 34% of visits were billed to private insurance companies, 18% weren't covered at all, and the rest were billed to workers' compensation, Tricare, and other payers. However, uninsured people were 1.2 times as likely to visit the ED than were people with public or private insurance, the AHRQ said. The uninsured also were the most likely to be treated and released. About 38% of the 24.2 million visits billed to Medicare ended with the patients being admitted, compared with 11% of the 41.5 million visits billed to private insurers, fewer than 10% of the 26 million visits billed to Medicaid, and 7% of the 21.2 million visits by the uninsured, the report found.

Obesity Medicine Exam to Come

Ten professional societies are jointly developing an Obesity Medicine Physician Certification Examination to credential physicians who care for obese adults and children. Last year, the group began assembling the body of knowledge that physicians need to be experts in obesity. The societies have now begun writing questions for the exam, which is scheduled to be completed by March 2010, according to the Obesity Society. Among the 10 groups are the Obesity Society, the American Association of Clinical Endocrinologists, the American Diabetes Association, the American Gastroenterological Association, the American Heart Association, the American Society for Metabolic and Bariatric Surgery, the American Society for Nutrition, and the Endocrine Society.

Bill Seeks Pay for Performance

A small bipartisan group of senators has cosponsored legislation that would pay a physician for work under part of Medicare only if a patient's health status improves. Sen. Ron Wyden (D-Ore.), Sen. John Cornyn (R-Tex.), and Sen. Tom Harkin (D-Iowa) offered the Take Back Your Health Act of 2009 (S. 1640) to create a new Medicare program based on "comprehensive lifestyle programs." Such treatment plans would be designed by physicians specifically for each patient in the program. The plans can include nutritional therapy, exercise, medication management, care coordination, and tobacco-use cessation. Physicians wouldn't be paid if a patient were rehospitalized for a chronic illness accounted for in his or her plan. Sen. Wyden said in a statement that several trials of such a system, including those at Mutual of Omaha Insurance Co. and Highmark Blue Cross Blue Shield, have shown that comprehensive lifestyle programs can result in up to 50% reductions in medical costs.

—Jane Anderson