

## Red Flags Rule Webinar Questions and Answers

- 1. You stated that if we arrange credit for patients we are considered a creditor. We offer care credit, and credit cards as a way to pay for patients copay. Would that mean we are arranging credit for them just because we offer care credit?**

*Participating* with care credit or allowing for credit card payment for a co-payment does not make you a creditor. However, arranging for the care credit — meaning filling out the applications for the patients or being otherwise involved with the deal terms, the financing process or making decisions about the term or payments, etc. makes you a creditor.

- 2. Should we request a patient present a photo ID at subsequent visits? Maybe if haven't been in for a certain period....i.e. 6months. What do you suggest?**

Six months is a good rule of thumb if the patient has not been seen for a period of time.

- 3. Are we a creditor if we collect co-payment due on insurance at the time of service?**

Yes, you are a creditor by virtue of billing the insurance company because the insurance company sends you the payment after you have rendered the service. This is the case even if you collect co-payments on insurance at the time of service. Only if you collect the full payment (including the amount billed to the insurance company) up front in cash, check or a credit card (that is not issued by your practice), you will not be considered a creditor.

- 4. What would you recommend as a way of transporting charts between offices for the next day services?**

If you must transport charts between offices for the next day services, then they must be placed in a locked box or cabinet. The locked box/cabinet should be transported in designated vehicles, driven by employees who travel directly from one location to the next without interruption. The transporting parties should not possess the keys to the locked boxes/cabinet to prevent tampering with the files unless they already have this level of access to them (considering what you are transporting).

- 5. Where do I get the FTC Identification Theft Affidavit?**

<http://www.ftc.gov/bcp/edu/resources/forms/affidavit.pdf>

- 6. The federal trade commission " A How-to-Guide for Business" says that we should not accept a credit card payment from a third party. What is your position? (i.e., My mom will call with her C/C for payment....)**

From a fraud standpoint and from a pure accounting standpoint, it is not a good idea to accept a credit card payment from a third party. On the other hand, if you are treating minors, and you have a means of verifying the payor, such as having this (adult) person come in the office previously and acknowledge this payment relationship, this could be permitted though you might do better to call the "payor" (adult to verify the charges to be made at the known number before incurring the charge.)

7. **We are an oral surgery practice that allows patients to make monthly payments on a balance due up to 4 months. I assume we would be considered a covered office.**  
Yes, since you allow for installment payments, which are an extension of credit, you are extending credit. Therefore, you are a creditor that must comply with the Red Flags Regulations.
8. **Where can we keep the credit card # when the patient needs a refund?**  
You should not be keeping the credit card number on file as a general practice unless you have the authorization and the means to protect that data. If a patient requires a refund, then the billing office should contact the patient for the number when the refund situation arises. If you are retaining this information it should be in a place with extremely limited access and adequate safeguards.
9. **What is the definition of a "knowing violation"?**  
A "knowing violation" is not a term defined in the Red Flag Regulations. It is defined by federal courts. Generally, courts have ruled that knowing violations are violations of a law that occurs when a person knows his or her legal obligation and purposefully disregards them or is indifferent to them. (Discussed in *American Arms Intern v. Herbert*, 563 F.3d. 78 (C.A.4 (Md.) 2009).
10. **We are currently an electronic office and we scan a patient's care credit application with the account number in to their file. What is your opinion on this?**  
You do not need the care credit application for the patient's file once he or she has obtained the credit. The credit application contains almost all of the patient's identifying information, including his or her social security number, address and cell phone number. If there is a genuine business need to retain the application, then the access to the application should be limited to a set number of persons, password protected and also protected with a screensaver.
11. **Is there some where we can view a template or sample of an Identity Theft manual?**  
**The Red Flag Identity Theft Prevention Program** provides a model program template that can be adapted to fit the needs of your practice. The new easy-to-understand manual will assist your practice in meeting the new FTC requirements. The CD-ROM training module is a narrated PowerPoint presentation that guides your staff in how to implement the Model Identity Theft Prevention Program in your practice. It is available through AAOMS publications at [www.aaomsstore.com](http://www.aaomsstore.com) or by calling **800-366-6725 to order. Refer to Item Code RFM.**
12. **What responsibility do we have to contact the proper authorities if we identify identity theft?**  
This will depend on your individual State's Law on identity theft. Depending on the nature of the information that has been stolen, you may have an obligation under the recent HIPAA amendments to notify law enforcement authorities and even the FTC.

- 13. We extend monthly payment plans to our patients. They make monthly payments to our office via personal check or credit card. Does this make us a creditor?**  
Yes, since you allow for installment payments, you are extending credit. Therefore, you are a creditor, and you must comply with the Red Flags Regulations. The method of payment, personal check or credit card, does not determine whether you are a creditor.
- 14. If I am not a creditor, how often do I need to re-evaluate my status?**  
You should re-evaluate your status either on an annual basis or earlier if there is a change in the manner in which you accept payment (i.e., if you start allowing for insurance billing or if you allow for installment payments).
- 15. What are the chances that the FTC will audit my practice or will it really matter if I am not in compliance with these rules?**  
The FTC is looking for substantial compliance with the Red Flag Rules. In 2009, alone, Congress has increased the FTC's enforcement budget—which will provide the FTC to acquire more manpower and resources to perform audits. If you are not compliant with the Red Flag Rules, and an individual sustains losses due to your non-compliance, then they could report you to the FTC. The FTC would then impose fines on your practice.
- 16. What should I do if I think the practice should get pictures but the individual does not want his or her picture taken?**  
If your patients are minors, you must refer to your individual's State Law regarding photography of minors. If your patients are adults, and they refuse to have their photographs taken, then you may request other forms of identification for verification purposes—a bill, a credit card in addition to photo ID.
- 17. How much information is too much information to retain?**  
This answer depends on how many administrative safeguards you have implemented in your practice to prevent identity theft. The more locked cabinets with limited access, password protected screens your practice has, the more information it can retain safely. However, generally, there is really no need to retain the following information once you have verified the information or have made a charge: (i) drivers' license; (ii) social security number; (iii) credit card numbers/imprints; or (iv) credit applications.

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