



pulse

Medical Debt Credit Reporting Checkup

Insights from recent case law and the CFPB's proposed rules can help you navigate issues surrounding medical debt credit reporting practices. *Editor's Note: The following article is an excerpt from a piece published in the November 2019 issue of Collector magazine.*

By Tim Dressen

Credit reporting past-due medical debt is a common and effective step in the collection process. However, the practice includes some risk. Recent lawsuits and the Consumer Financial Protection Bureau's proposed debt collection rule illustrate the challenges surrounding medical debt credit reporting practices.

ACA International members Eric Mock, president of Medical Business Bureau, and Karen Scheibe Eliason, chief compliance officer and legal counsel for Wakefield & Associates, discussed these developments during a session at ACA's 2019 Convention & Expo. Here, we dig into some of the issues they explored.

Need to Know: Relevant Case Law

Filed in 2016, *Rhone v. Medical Business Bureau LLC* addressed the practice of credit reporting multiple individual medical debt accounts for a single consumer rather than a single aggregate account.

The plaintiff in the *Rhone* lawsuit accrued charges for several physical therapy appointments during an approximately six-month period. Insurance covered many of the appointments, but nine remained unpaid

with charges of \$60 each, totaling \$540.

The therapy provider sent the unpaid charges to Medical Business Bureau to collect. Each of the \$60 charges had a unique date of service and a separate account number. Medical Business Bureau, as part of its collection process, credit reported the accounts in the same manner as the provider submitted them—as nine separate accounts with separate dates of service, dates of delinquency and account numbers. The therapy patient sued.

"Rhone and her legal counsel expected us to treat it as one debt because she went in for one ailment," Mock said. "They thought we should know that and combine them, aggregating the report as one tradeline for \$540, not nine tradelines for \$60 each."

A Northern District of Illinois judge agreed, ruling in favor of the plaintiff.

"The judge misstated the facts of the case in his own opinion letter," Mock said. "He said that all of the [plaintiff's therapy] dates fell within one month,



which was false. He said we didn't credit report for three years. That's completely false. And because we didn't report for three years, it's inexplicable to choose to report as nine different tradelines for one debt. We should have known that's not the right thing to do."

Medical Business Bureau appealed to the U.S. Court of Appeals for the Seventh Circuit and sought support from ACA's Industry Advancement Program. Recognizing the significance of the case, the program helped fund the appeal and wrote an amicus brief.

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EXECUTIVE ORDER ON TRANSPARENCY

And the Price Is....

Hospitals trying to figure out how to post their rates per CMS proposed requirement

In the last issue of *Pulse*, ACA published an article titled, “Trump Executive Order Opens Door for Hospital Price Transparency,” about the Centers for Medicare & Medicaid Services proposed a rule that would require hospitals to make pricing information publicly available. CMS officials believe the rule will increase competition by enabling patients to shop for health care that meets their needs and budgets.

As of press time, CMS was scheduled to release a final rule by November, with an implementation date of Jan. 1, 2020, according to Fierce Healthcare, which stated hospitals would be required to

post “payer-negotiated rates for certain shoppable services.”

While CMS projected the proposed rule would cost about \$1,000 per hospital, Fierce Healthcare reporter Robert King spoke with several sources who indicated that it will be extremely difficult to “display every contract rate in a searchable form, regardless of infinite time and money.” The article said the requirement could be challenging for smaller, rural hospitals. King’s article titled, “CMS Wants Hospitals to Post Their Rates. But Hospitals Aren’t Sure How,” is available on Fierce Healthcare’s website accessible here <https://tinyurl.com/y2sj2cpd>



Additional information, including a list of public comments submitted, may be found on the federal register website at <https://www.federalregister.gov> or (<https://tinyurl.com/y5zywwhs>, comments were due Sept. 27, 2019) or at CMS’s website at www.cms.gov. To read President Trump’s executive order, visit www.whitehouse.gov and search for “Executive Order on Improving Price and Quality Transparency in American Healthcare to Put Patients First.”

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Fortunately, the appeals court reversed the earlier decision in February 2019, ruling in favor of Medical Business Bureau.

Meanwhile, another credit reporting challenge collectors face is handling the flood of frivolous disputes submitted by unscrupulous credit repair organizations (CROs). This practice can result in valid payment plans being interrupted, inaccurate credit reporting and lost revenue.

To combat fraudulent CROs’ practices, ACA member companies The CBE Group and RGS Financial sued Lexington Law Firm and Progrexion.

The jury in the class-action suit found Lexington Law and Progrexion guilty of fraud, awarding compensatory and exemplary damages totaling approximately \$2.5 million.

An deeper analysis of the Lexington Law and Progrexion case is discussed in the November 2019 issue of *Collector*

magazine. Cases like this and Rhone v. Medical Business Bureau LLC are good reminders to review your company’s policies and procedures.

Need to Know: CFPB Focus

As part of its proposed debt collection rulemaking, the CFPB addresses credit reporting practices, specifying that agencies must communicate with consumers about the debt before credit reporting it.

The proposed rule does not currently specify that collectors need to explicitly tell consumers they are planning to credit report, only that they need to communicate about the debt.

Specific requirements may change before the bureau adopts finalized rules, so taking action based on the proposed rules would be premature. However, businesses may want to begin considering what policies they will implement if the proposed rules are approved as they currently stand.

The Future

Medical debt and the way it is credit reported will continue to be hot topics. The CFPB and state attorneys general are sensitive to the manner in which medical debt arises and seek to ensure consumers are treated fairly.

With the amount of medical debt showing no signs of significantly declining, the courts will surely continue to consider cases affecting medical debt collection practices as well. Agencies collecting medical debt should continue to fine-tune their practices as such developments warrant.

Collector magazine articles may be accessed on here <https://www.acainternational.org/collector-magazine>

Tim Dressen is a communications consultant and former editor of *Collector* magazine.

SBA Encourages CFPB to Mitigate Rule's Impact on Small Business

Certain proposed provisions of the rule could be extremely costly to the small companies

The U.S. Small Business Administration (SBA) Office of Advocacy submitted comments on the Consumer Financial Protection Bureau's proposed rule for the Fair Debt Collection Practices Act (Regulation F) in line with ACA International's suggestions on consumer communications and disclosure notices and noting the significant impact it could have on small businesses.

Here are a few top-level comments from the SBA Office of Advocacy:

- Several provisions of the rule will be particularly difficult for small debt collectors and require consideration of alternative approaches. These include the requirement of compliance with the E-Sign Act for electronic disclosures, the requirement of an itemized validation notice, liability for an attempt to collect a debt that is time-barred and requirements for retention of records.
- The initial regulatory flexibility analysis states that larger collectors may already have some of the proposed provisions in place. The small debt collectors may not. Some of the provisions may require expensive changes to technology and additional training. Advocacy encouraged the bureau to give small entities additional time to comply, if they cannot be

exempted from the requirements of the proposed rule.

- The bureau is prescribing the rules pursuant to its authority under the FDCPA, as well as the Dodd-Frank Act's prohibitions on unfair, deceptive or abusive acts or practices (UDAAP). The UDAAP provisions create uncertainty for first party creditors who are not supposed to be regulated by the proposal. Advocacy encouraged the bureau to limit the rule to the FDCPA.
- The rule imposes a limit on the frequency of debt collection calls and provides a safe harbor for debt collectors who comply with the call caps. Because small entities do not usually make calls that exceed the limits in the proposal, Advocacy encouraged the bureau to exempt small debt collectors from the call limit caps.

The SBA Office of Advocacy's comment letter and fact sheet may be accessed on the SBA's website at www.sba.gov or here <https://tinyurl.com/y2fmeicf>.

Additionally, ACA International submitted a 154-page comment letter available on its website at www.acainternational.org

NEWS & NOTES

UVA reviews holds on student accounts over unpaid medical bills

The University of Virginia in Charlottesville, Virginia is reviewing a policy that allows holds on student accounts if medical debt to UVA Health System isn't paid, a university spokesperson told *The Cavalier Daily*.

The holds are permitted under the university's Extension and Collection of Credit policy

The article may be accessed here <https://tinyurl.com/y4gxc9tv>

Tennessee hospital plans to reopen after abruptly closing in June

West Palm Beach, Fla.-based Rennova Health is taking steps to reopen Jamestown (Tenn.) Regional Medical Center after closing the 85-bed hospital in June, according to the *Independent Herald*.

In a statement to the *Independent Herald*, Rennova, which owns Jamestown Regional, said mistakes made during the transition to a new billing company in December 2018 led to financial challenges at the hospital.

This article may be accessed on Becker's Hospital Review at <https://tinyurl.com/yy4wxhvg>

For more health care collections news, visit ACA's Health Care Collections page at www.acainternational.org/pulse.



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Views on Health Care Costs

Health care continues to be one of the most important issues facing the nation as nearly 70 percent of Americans say they are not confident that lawmakers can work together to reduce costs, according to a West Health and Gallup poll. Here's how consumers responded when asked, "How confident are you that elected Republicans and Democrats will be able to achieve bipartisan legislation to reduce healthcare costs?"

"NOT AT ALL CONFIDENT"

Political Affiliation

Democrats	67%
Independents	72%
Republicans	70%

Source: *West Health-Gallup U.S. Healthcare Cost Crisis Report, 2019*

