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Beyond the Boundary of the Law

Court finds that federal regulations require hospital facilities, not collection agencies, to include in billing statements a conspicuous written notice of the hospital facility's financial assistance policy.

By Kari Barber and Andrew Pavlik

Over the last several years, those in the accounts receivable management industry may have seen a general decline in enforcement actions by the Consumer Financial Protection Bureau. However, the industry has also seen an increase in actions by state attorneys general resulting in agreements that may impose certain legal requirements on parties' collection practices involving third-party collectors.

When clear rules are violated, it's important that those responsible for the violation be held accountable. But violating broad rules, enforcement actions or state AG agreements that require a decoder ring to somehow know about and/or interpret should not rise to the level of statutory liability.

In *Klein v. The Affiliated Group, Inc., and Credit Management, LP*, we saw an example of a consumer's attempt to capitalize on an agreement made by a state AG on behalf of that state's citizens, by arguing that the agreement as well as separate irrelevant federal regulations are binding on all parties operating in the health care space.

In a contentious summary judgment battle, the U.S. District Court for the District of Minnesota declined a consumer's efforts to use broad federal rules and an AG agreement as vehicles to legislate through enforcement.

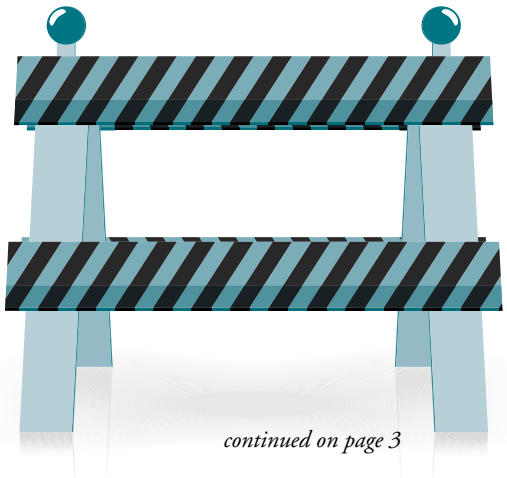
In *Klein*, an ACA International member collection agency attempted to collect a debt incurred by a consumer and owed to a hospital facility. The consumer claimed that the collection letters she received violated the FDCPA because they did not include a conspicuous written notice of the hospital facility's/creditor's financial assistance policy (FAP) pursuant to federal tax regulations. In addition, the consumer argued the firm attempted to collect a debt from her on behalf of its creditor-medical facility client allegedly without a written contract—in violation of an agreement between the medical facility and the Minnesota attorney general.

"The claims alleged in this lawsuit were going beyond the boundaries of the FDCPA and laws related to medical debts," said Xerxes Martin, a partner with the law firm Malone Frost Martin, PLLC, who represented the debt collector. The district court agreed.

"We are very happy the court found the correct result and it will hopefully prevent similar baseless allegations down the road," Martin said.

The district court found in favor of the collection agency on all counts against it. Importantly, the court found that 501(r) federal tax regulations require "hospital facilities," not collection agencies, to widely publicize their FAPs, including providing a conspicuous, written notice of the FAP in billing statements.

The court observed that the consumer could point to no persuasive authority in support of her argument that the defendants, as debt collectors, must include FAP language in their letters under the 501(r) regulations. The



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Congress Eyes Medical Debt in New Legislation

ACA advocates for changes to flawed legislation

Editor's Note: An expanded version of this article will appear in the March 2020 issue of Collector *magazine.*

ACA continues to maintain open lines of communications with lawmakers as they consider moving forward with legislation that could impact the way the industry approaches medical debt collections.

House Legislation

In December, the House Financial Services Committee marked-up legislation titled, "Consumer Protections for Medical Debt Collections Act" (H.R. 5330), which would prohibit medical debt reporting for a year, and would ban reporting on debt arising out of "medically necessary procedures." Introduced by U.S. Rep. Rashida Tlaib (D-Mich.), the legislation would also prohibit collecting medical debt for two years.

These proposed restrictions would make it difficult for accounts receivable management industry professionals seeking to collect rightfully owed debt while creating a disastrous situation for medical providers caring for patients.

Senate Legislation

Meanwhile, ACA has had numerous discussions with lawmakers in the House and Senate regarding more reasonable delays in credit reporting such as 60 or 180 days—despite potential challenges posed by these delays. The Medical Debt Relief Act, introduced by U.S. Sen. Jeff Merkely (D-Ore.), and cosponsored by Senators Richard Blumenthal (D-Conn.), Elizabeth Warren (D-Mass.), Bob Menendez (D-N.J.) and Dick Durbin (D-Ill.), would prohibit credit reporting for one year. However, unlike the House bill, the Senate version clarifies that the legislation does not impact when a debt collector may engage in activities to collect or attempt to collect any debt owed or due or asserted to be owed.

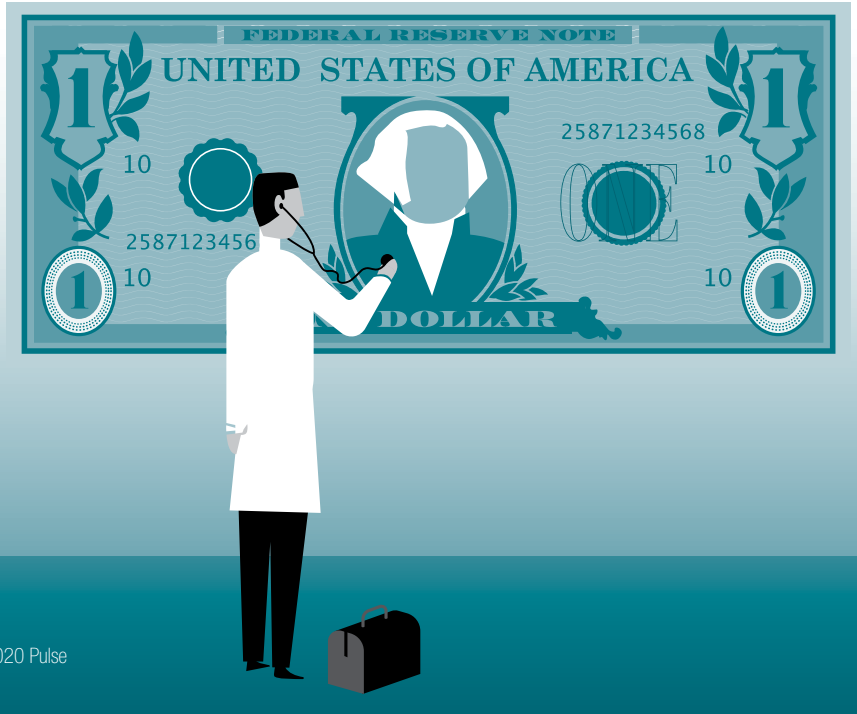
ACA's Efforts

ACA is actively discussing this legislation and the many flaws associated with it, with both Democrats and Republicans , including lawmakers who sit on the House Financial Services Committee and the Senate Banking Committee. ACA sent a letter opposing the legislation to both the House and Senate last fall and launched a grassroots campaign in early 2020 to allow ACA members to engage directly with their members of Congress about how this legislation would impact them and the medical providers they serve (the letter is accessible on ACA's advocacy page or here: https://tinyurl.com/wlm77d8).

ACA is also working closely with other trade associations representing medical providers and credit reporting agencies to ensure that Congress understands the broad impact this issue could have on the ability to provide medical care to consumers, the accuracy of the credit reporting system, and the economy.

As the industry continues to face an unprecedented number of attacks in the 116th Congress, it is critical for ACA to educate lawmakers about flawed policies and to work with the Senate to ensure that House bills such as H.R. 5330 do not move forward in the Senate.

ACA members are encouraged to attend the Washington Insights Fly-In May 19-21, 2019, in Washington, D.C., to discuss this bill and other issues with lawmakers. Watch for updates on the Fly-In!



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court also opined that even if the creditor hospital facility had an internal policy that required it to include a conspicuous notice of its financial assistance policy on billing statements it sends to consumers, that did not in turn extend to unsuspecting collection agencies.

"This case was yet another attempt by the plaintiffs' bar to fashion disclosure requirements out of whole cloth. Fortunately—with the help of great litigation counsel and the support of ACA—we were able to convince the court that 501(r) does not apply to debt collectors merely because they operate in the health care space," said Chris Meier, general counsel and chief compliance officer at The CMI Group, the parent company of the defendants.

ACA is delighted by the court's decision in this case and is proud to have supported its members in defending against the allegations in this case by providing Industry Advancement Program funds to help defray the cost of litigation. ACA is likewise proud of the effort put forth by its members in this lawsuit. Because of their vigorous defense, the accounts receivable management industry has sent a message that there is no appetite for regulation through enforcement where there is no clear evidence of a prohibited practice that would violate the law.

ACA's efforts to proactively support the accounts receivable management industry are part of the association's Industry Advancement Program and are made possible by funding through ACA's Industry Advancement Fund. ACA members interested in reading more about the most recent significant judicial decisions involving the credit and collection industry can always find concise case summaries at acainternational.org/industry-advancement-program.

Kari Barber is ACA International's former corporate counsel. Andrew Pavlik is ACA International's compliance analyst.

POSTING PRICES

Trump Extends Comment Period for Proposed Rule on Price Transparency

Two days after Christmas, the Centers for Medicare and Medicaid Services extended the comment period for the "Transparency in Coverage Proposed Rule" published Nov. 27, 2019 by the Department of Health and Human Services, the Department of Labor and the Department of Treasury, a statement from CMS said. The proposed rule delivers on President Trump's Executive Order on Improving Price and Quality Transparency. The new comment period deadline was extended to Jan. 29, 2020 in response to public feedback and in consideration of the holiday season.

According to the Trump Administration, the proposed rule is "a historic step toward putting health care price information in the hands of consumers, advancing the administration's goal to ensure consumers are empowered with the information they need to make informed health care decision."

Additional information may be obtained here: https://tinyurl.com/sfctrat

NEWS & NOTES

Health Care Collections from a Legal Perspective

Anyone collecting in the health care space can attest that risks associated with this type of work can be challenging and unique. In a complimentary Hot Topic webinar titled "The Unique Legal Risks of Healthcare Collections and How to Address Them," Bassford Remele attorney Jessica Klander and shareholder Christopher Morris provide listeners with tools and information necessary to remain current on federal and state regulations concerning these collection practices. The complimentary webinar, sponsored by Bassford Remele, is available on ACA's website in the "store" at https://www.acainternational.org/shop

Hospital Price Transparency Tool on Agenda in NY

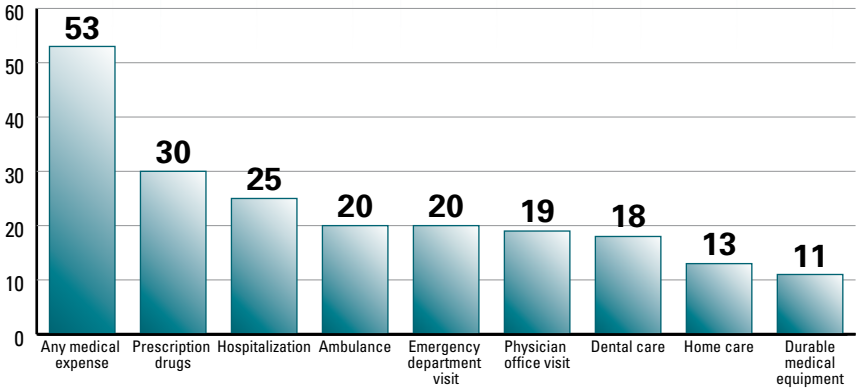
New York Gov. Andrew M. Cuomo announced a plan to create a consumer-friendly website, called NYHealthcareCompare, where New Yorkers can easily compare the cost and quality of healthcare procedures at hospitals around the state. The platform will also provide consumers with educational resources designed to help consumers know their rights including financial assistance options, what to do about a surprise bill and more. Learn more here: https://tinyurl.com/s6y5skm

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

datawatch

Financial Consequences of Serious Illness for Medicare Beneficiaries, 2018

Percent of seriously ill Medicare beneficiaries who had a problem paying a bill for . . .



Source: Adapted from Michael Anne Kyle et al., "Financial Hardships of Medicare Beneficiaries with Serious Illness," *Health Affairs* 38, no. 11 (Nov. 2019): 1801–6. https://doi.org/10.26099/0ep5-dp74

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