



PULSE



Has the CFPB Missed the Mark on Medical Debt Credit Reporting?

Presentation at ACA International's 2022 Convention & Expo reviews the CFPB's focus on medical debt this year and changes in medical debt credit reporting.

Discussions on the Consumer Financial Protection Bureau's approach to medical debt credit reporting regulations were prominent last month at ACA International's 2022 Convention & Expo in Orlando.

One session kicking off conversations on the topic featured Keith Wier, attorney at law, and Shannon Miller, principal, at Maurice Wutscher LLC in their presentation, *The CFPB's Focus on Medical Debt and Credit Reporting Agencies' Response: What You Need to Know*.

Pursuant to its February 2022 report, the CFPB is taking a particular interest in medical debt, highlighting what it identified as the complicated and burdensome nature of the medical billing system in the U.S.

The presentation explored both the CFPB's medical debt report from February 2022 as well as the credit reporting agencies' (CRAs) proposed policy changes, what impact they will have on the accounts receivable management (ARM) industry and how industry members should use this information.

While the industry can't forget about the requirements of the Fair Debt

Collection Practices Act and Fair Credit Reporting Act, Miller said the CFPB's guidance on the No Surprises Act and medical debt bulletins—including on consumer complaints—are important for everyone involved in health care collections to discuss.

The No Surprises Act has protections for consumers to prevent unexpected medical bills—but compliance responsibility lies with providers, meaning both ARM professionals and providers have to be on the same page.

The No Surprises Act bans surprise medical bills for most emergency services, even those received out-of-network and without prior authorization.

Medical service providers can ask consumers to waive their rights to prevent surprise medical bills under the No Surprises Act *except* for:

- Emergency services.
- Unforeseen emergency medical needs that arise while non-emergency services are being provided.
- Ancillary services, including items and services related to emergency medicine, or anesthesiology, for example.
- Diagnostic services, including radiology and lab services.

The consumer is not required to waive protections under the No Surprises Act and can try to find an in-network provider instead.

The waiver must also include a statement that the out-of-network provider/facility can refuse to treat the patient if they refuse to waive surprise billing protections; a statement that waiving protections could cost the patient more money in out-of-network charges;

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“The No Surprises Act has protections for consumers to prevent unexpected medical bills—but compliance responsibility lies with providers, meaning both ARM professionals and providers have to be on the same page.”

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and a description of the out-of-network services to be provided, along with billing codes and a good faith (nonbinding) estimate of costs the patient may owe.

CFPB Bulletin on Medical Debt Collection

Wier and Miller also provided an overview of the CFPB's medical debt bulletin released in February to coincide with the No Surprises Act and restrictions on medical debt credit reporting.

The CFPB doubled down on its focus by releasing a report on medical debt in March 2022, which ACA responded to, noting the bureau's research focuses on the back end of the credit cycle and gives consumers a false impression that the debt collection industry is responsible for billing issues that occurred on the front end, contrary to the explicit goals of the No Surprises Act.

The CFPB's report describes patients being stuck in the middle of disputes between medical providers and insurance companies.

The CFPB's report also references the No Surprises Act. However, the

CFPB's research misses the mark by not addressing the serious systemic problem of insurance companies not paying claims. Congress, in the No Surprises Act, focused on the need for insurance companies to do a better job paying claims for medical care provided, and not surprising patients with unjustified out-of-network bills.

The CFPB has issued many reports, bulletins and guidance on medical debt in the last four months, meaning the ARM industry and health care provider clients should be on alert for continued actions from the CFPB on medical debt credit reporting.

Credit Reporting Changes

Remember, two of the three changes to medical debt credit reporting practices imposed by the national credit reporting agencies (CRAs)—Equifax, Experian and TransUnion—took effect on July 1.

The announcement outlined three major components:

1. Effective July 1, 2022, the CRAs will no longer include on consumers' credit reports any medical debt that

has been paid in full after being sent to collections.

2. Effective July 1, 2022, unpaid medical bills cannot be reported until they are at least 365 days past the date of first delinquency.
3. Starting next year—on March 30, 2023—the CRAs will no longer include on consumer reports any medical debts with an original balance less than or equal to \$500.

In March, the CRAs released a [summary](#) of these measures that includes information about impacted data furnishers, required furnisher action and the effective dates of each initiative.

ACA remains engaged in talks with the CRAs and policymakers about industry concerns regarding these changes and will continue to advocate for positions that better balance the concerns of the debt collection industry, medical providers, patients, regulators and consumer advocates.

Read more [here](#).

Ninth Circuit Appeals Court Sets Oral Argument in Nevada Medical Debt Law Case

The Sept. 2 oral argument will focus on the appeal to the Nevada medical debt law from the Nevada Collectors Association and other stakeholders.

The 9th Circuit Court of Appeals has set a date for oral argument in the lawsuit challenging S.B. 248, Nevada's medical debt law that took effect in July 2021.

The oral argument will be at 9 a.m. PST Sept. 2, in the 9th Circuit Court of Appeals in San Francisco. Each side in the case will have 15 minutes for their arguments. At this time, it appears the oral argument hearing will be in person. ACA International will monitor the schedule and provide updates for members as the hearing date approaches.

ACA is pleased to see the appeal will have an oral argument for the parties

involved to present their case.

The appeal stems from the lawsuit pending in the U.S. District for the District of Nevada challenging S.B. 248.

The Nevada Collectors Association (NCA) and other stakeholders (plaintiffs-appellants) filed the [appeal brief](#) with the 9th Circuit Court of Appeals in April 2022.

The plaintiffs-appellants are appealing the district court's order denying their motion for a temporary restraining order and preliminary injunction to delay enforcement of S.B. 248, [ACA previously reported](#).

Since the initial appeal brief was filed,

the plaintiffs-appellants' also filed a reply brief addressing arguments advanced by Sandy O'Laughlin, commissioner of the Nevada Financial Institutions Division (NFID), in the appellate brief.

The plaintiffs' original lawsuit arguing that S.B. 248 prohibits debt collectors from engaging in truthful communication with consumers and is preempted by federal law is pending in the U.S. District Court for the District of Nevada.

The reply brief reinforces the original arguments that S.B. 248 is unconstitutional because it is preempted by federal law (i.e., the Fair Debt

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NEWS & NOTES

FTC Blocks 4 Hospital Mergers; More Expected

The Biden administration's new majority on the Federal Trade Commission is ready to take a more forceful stance against consolidation in the health care sector than it has in previous years, especially in light of the FTC's recent victories against four hospital mergers.

The emergence of hospital networks, despite that hospital mergers were intended to increase cost effectiveness, has increased U.S. medical expenses.

The new majority at the FTC has indicated that in addition to considering more conventional hospital and other health care provider mergers, it is also interested in several applied legal theories

of antitrust enforcement that haven't been used as frequently.

Read the full article from Kaiser Health News [here](#).

AHA Pushes CMS to Reconsider Proposed Medicare IPPS Rates

In its proposed rule for the fiscal year 2023 Hospital Inpatient Prospective Payment System (IPPS) and Long Term Care Hospitals, the Centers for Medicare and Medicaid Services has increased Medicare inpatient reimbursement rates by 3.2%.

In a letter to CMS in June, the American Hospital Association said the proposed fiscal year 2023 rates are "woefully inadequate and do not

capture the unprecedented inflationary environment."

The hospital association is now claiming that the proposed rule's rates and other regulations would result in net reductions in Medicare inpatient payments.

Additionally, to avoid net losses, lawmakers are pleading with CMS to use its discretion to modify the fiscal year 2023 Medicare IPPS rates.

Read more [here](#).

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Collection Practices Act and the Fair Credit Reporting Act) and the medical debt law violates the plaintiffs' First Amendment rights when it comes to debt collectors' truthful communications with consumers.

Meanwhile, in March 2022, the NFID advanced [regulations](#) on medical debt collection after taking more public comments from stakeholders, including ACA members and Senior Counsel Colin Winkler, [ACA previously reported](#).

The regulations were reviewed by the Nevada Legislative Commission (NLC), which is comprised of 12 legislators: six from the Nevada Assembly and six from the Nevada Senate.

The regulations were approved by the NLC and took effect June 13.

Of note, the regulations require, as originally stated in S.B. 248, that debt collectors provide medical debtors with a 60-day notice of placement or assignment before taking any "action to collect" a

medical debt, [ACA previously reported](#). The law requires that a 60-day notice be sent by certified or registered mail. In addition, the law restricts certain medical debt collection practices, including limitations on civil actions (lawsuits) to collect medical debt, restraints on credit reporting medical debt, and caps on collection fees (including attorney's fees) that creditors may collect on delinquent medical debt balances sent to legal collections.



"ACA is pleased to see the appeal will have an oral argument for the parties involved to present their case."

Health Care M&A Activity at a Record High

Health care merger and acquisition revenue hit a record high in the second quarter of 2022, with 13 transactions generating \$19.2 billion, according to the latest edition of Kaufman Hall's [M&A Quarterly Activity Report](#).

Although there were fewer transactions than in the years preceding the COVID-19 pandemic, they were comparable to the 14 deals that took place in Q2 2021. In Q1 2022, 12 deals were also announced.

Two of the 13 transactions in Q2 2022 were categorized as mega-mergers, which are those in which the seller or smaller party has annual sales of more than \$1 billion. This contrasts with Q1 2022, which saw no transactions of that size.

Total Q2 Transacted Revenue (\$ in Billions) by Year



Source: Kaufman, Hall & Associates M&A Quarterly Activity Report: Q2 2022. <https://bit.ly/3OE9FbX>



is a monthly bulletin that contains information important to health care credit and collection personnel. Readers are invited to send comments and contributions to:

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