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PULSE

CFPB's Latest Circular on Nursing Home Bills Hits *Federal Register*

The publication makes official the bureau's policy statements exploring third-party debt collectors' role in collecting on behalf of nursing homes and the liability that could occur under laws enforced by the CFPB; however, it is not clear how prevalent the issue is.

The Consumer Financial Protection Bureau's policy statements highlighting nursing home bills and debt collection are now published in the *Federal Register*.

The policy statements outline a three-prong effort in partnership with the Centers for Medicare and Medicaid Services (CMS).

The effort includes:

- An issue spotlight from the CFPB highlighting "some of the difficulties and experiences heard from caregivers about being pursued over friends' or family members' alleged debts from nursing home facilities."
- A joint letter from the CFPB and CMS confirming that a nursing care facility may not require that a third-party caregiver personally guarantee payment of a nursing home resident's bills as a condition of the resident's admission to the facility.
- A new Consumer Financial Protection Circular discussing conditions that violate the Nursing Home Reform Act (NHRA) and that subsequent attempts to collect debts from caregivers may violate the Fair Debt Collection Practices Act and Fair Credit Reporting Act.

It is unclear from the CFPB's reports the expanse of the issue of FDCPA and FCRA violations related to collecting debts from caregivers.

ACA International issued a response to the report for members, which was also quoted in *MarketWatch*.

"ACA International members have strong compliance management systems that take into account contractual and legal obligations when working with reputable creditors," said CEO Scott Purcell. "We are unaware of a pattern of abuse or problems within nursing home debt collection practices."

Of note, according to the news release from the CFPB, "while the CFPB does not enforce the Nursing Home Reform Act, contract terms that violate the [a]ct's ban on requesting or requiring a third-party guarantee of payment are unenforceable. This means that subsequent collection of debts from those contracts may violate the consumer financial protection laws the CFPB does enforce, including the Fair Debt Collection Practices Act and its prohibition of 'any false, deceptive, or misleading representation or means in connection with the collection of any debt.'"

The effort is documented as part of the bureau's new enforcement strategy known as "Consumer Financial Protection Circulars."

The circulars are "policy statements under the Administrative Procedure Act and will be released publicly to increase transparency for the benefit of the public and regulated entities," according to the CFPB.

They are published on the CFPB website and in the *Federal Register* with Director Rohit Chopra's authorization.

The question presented in the CFPB's latest circular is "Can debt collection and consumer reporting practices relating to nursing home debts that are invalid under the Nursing Home Reform Act violate the FDCPA and FCRA?"

The CFPB says yes.

Under the NHRA, enacted in 1987, a nursing facility may not condition a resident's admission or continued stay on receiving a guarantee of payment from a third party, such as a relative or friend. Contractual provisions that violate that prohibition are illegal and unenforceable. As detailed in the circular, certain practices related to the collection of nursing home debts that are invalid under the NHRA and its implementing

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regulation violate the FDCPA and FCRA, according to the CFPB.

The CFPB reports third-party debt collectors working with nursing home clients may be subject to the false representation components of the FDCPA when collecting that debt.

"A debt collector may violate the FDCPA's prohibition on misrepresentations by making a false, baseless allegation in a lawsuit that a third party engaged in financial wrongdoing as a means to hold them personally liable for a resident's debts," the CFPB notes.

The CFPB adds the FCRA into the mix by reminding collectors that those furnishing data based on "illegal contract terms" may be subject to violations of the law.

"Thus, a debt collector who furnishes information about nursing home debts, or a consumer reporting company that includes such information in a consumer report, may violate FCRA and Regulation V if those debts are invalid and unenforceable under the Nursing Home Reform Act, its implementing regulation, or one of its state law analogues. A furnisher or consumer reporting company also violates FCRA or Regulation V if it fails to meet its dispute obligations with respect to information related to such debts," according to the CFPB.

ACA Insights

Compliance with the FCRA and FDCPA are at the core of ACA members' compliance policies, and medical debt collections have extra steps for collection and credit reporting.

The prevalence of FCRA and FDCPA violations related to the collection of nursing home medical debts is unclear and the CFPB's reports lack specific data showing this trend. It needs additional context and examples of supposed violations and nursing home medical debt collections to inform the industry of compliance best practices it may need to consider.

A Kaiser Family Foundation (KFF) and National Public Radio report found that "about one in seven adults who have had health care debt say they've been threatened with a lawsuit or arrest."

KFF studied some local trends on these lawsuits. For example, in Monroe County New York, where Rochester is located, 24 federally licensed nursing homes filed 238 debt collection cases from 2018 to 2021 seeking almost $7.6 million, according to the report. Several nursing homes did not file any lawsuits in that period.

However, nationally, lawsuits against families for nursing home debt are "not a common occurrence," Beth Martino, a spokesperson for the American Health Care Association, the largest nursing home industry group, told *Kaiser Health News*.

CMS Releases FAQs for No Surprises Act Implementation

According to the No Surprises Act FAQs, those with public health care coverage are not protected against balance billing, and notification and consent forms must be given and accepted in writing.

The Centers for Medicare and Medicaid Services (CMS) has released new Frequently Asked Questions (FAQs) on the No Surprises Act's implementation, which include information on balance billing and notice and consent restrictions.

The No Surprises Act forbids charging patients more than their applicable cost-sharing amounts by nonparticipating physicians and emergency institutions, also known as balance billing.

Depending on the services they offer and the environments in which they practice, different providers have different restrictions on balance billing and cost-sharing safeguards.

For example, if they provide emergency services for a medical condition related to a visit to a hospital's emergency department or an independent free-standing emergency department, nonparticipating providers and nonparticipating emergency facilities are prohibited from balance billing and must abide by cost-sharing restrictions.

Nonparticipating providers who offer nonemergency services must abide by the rules when the services are rendered in conjunction with a patient's visit to an in-network hospital, hospital outpatient department or ambulatory surgical facility.

Additionally, providers or facilities that provide care to people with public health insurance coverage—including Medicare, Medicare Advantage, Medicaid, Medicaid managed care plans, Veterans Affairs Health Care, the Indian Health Service and TRICARE—are not covered by the balance billing protections under the No Surprises Act, according to CMS.

The No Surprises Act's notice and consent procedures were also included in the FAQs. If they give notice and get the person's permission to forego the protections, providers and facilities may hold patients liable for more than the applicable cost-sharing amount for a service.

According to CMS, a facility operating on behalf of a nonparticipating provider or the provider itself may notify and solicit consent from a person. The written notice and consent must be kept by the facility for at least seven years if it receives the consent. The notification and consent must be kept for seven years if a provider accepts the consent; otherwise, the provider must work with the facility to arrange for the facility to keep them for that long.

Finally, the FAQs noted that facilities or providers cannot ask a patient's permission to forego No Surprises Act protections at the moment care is to be provided. The notice and permission document must be given to the person at least 72 hours before the services if they are scheduled at least 72 hours in advance.

Read the full list of FAQs here.

NEWS & NOTES

Health Care Worker Burnout Rose During Pandemic

According to two studies published in JAMA and JAMA Network Open, health care workers experienced increased clinician burnout during the COVID-19 pandemic but only a minor rise in unemployment rates.

Twenty-eight percent of health care workers and 3.82% of non-health care workers reported being unemployed during the pre-pandemic era. Health care employees experienced a smaller increase in reported unemployment during the pandemic, with the jobless rate rising to 3.18% compared to 6.13% for non-health care workers.

Researchers noted the disparities in unemployment among health care professionals may be related to how emergency funding was allocated to health care institutions throughout the pandemic and which service lines were given priority.

Read the release here.

Medical Groups May Reduce Staff in Response to Medicare Cuts

Medical practices are considering limiting the number of new Medicare patients and reducing clinical staff to guarantee financial stability as medical groups anticipate Medicare payment reductions in 2023, according to the Medical Group Management Association (MGMA).

The majority of practices (92%) claimed that Medicare reimbursement rates for 2022 are currently insufficient to cover the cost of the services rendered.

Medical groups will need to change some of their practices to maintain financial stability in the aftermath of additional reductions, according to MGMA.

Read more here.

Learn More

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

Inflation and Labor Costs Will Increase Health Care Spending by $370B

A McKinsey report predicts health care spending will reach a record high of $370 billion by 2027.

Inflation and rising labor costs will increase U.S. national health care spending by $370 billion in the next five years, according to a McKinsey report.

Between 2019 and 2022, labor costs per adjusted hospital discharge rose 25%, pharmaceutical costs increased by 21%, supplies costs grew 18%, and services costs rose 16%. These costs have somewhat stabilized in 2022, but they remain high above the norm.

In addition to the ongoing clinical labor shortage, McKinsey researchers estimate a shortage of 200,000 to 450,000 registered nurses and 50,000 to 80,000 doctors by 2025, with clinical labor costs expected to grow by 6 to 10% over the next two years, which is 3 to 7 percentage points higher than the prevailing inflation rate.

The annual demand for registered nurses continues to grow and is expected to increase by 7 to 10% between 2022 and 2025, with workforce shortages predicted to worsen due to increasing demand and decreasing supply. Attrition rates and retirements are also likely to exceed the number of nurses and health care workers obtaining licensures, further increasing shortages.

"From a practices perspective, many nurses, especially in hospital settings, have sought to move away from direct patient care," according to the McKinsey report. "Our surveys indicate that reasons include a perceived lack of support, safety, and flexibility."

Clinical labor shortages are also predicted to account for $170 billion of the total expected health care spending increase by 2027. This will also likely affect care access in part due to potential clinic closures and increased wait times, in addition to nonclinical workers and personal care aides being overworked, making it harder for practices to retain their nonclinical staff.

McKinsey researchers also predict supply chain issues will continue in the U.S., causing health care costs to increase by up to $110 billion in the next five years.

Inflation Rates

While payers may not see a huge increase in insurance costs due to inflation for another three years, providers are being hit hard due to contracting and renewal cycles and their inability to pass on increased costs to employer-sponsored health plans—which are governed by life cycles that typically last for three years.

Public payers, including Medicare and Medicaid, will likely see increased costs in two to three years as these programs will use historical inflation rates to set next year's prices.

Health care leaders expect inflation to have a substantial adverse effect on margins, and some executives said they might have to turn to layoffs and address the clinical labor gaps through technology and skill-mix optimization.

"Health care executives will need a disciplined approach and fast action if they want to come out stronger from this period," the McKinsey researchers wrote. "Well-known tactical actions exist that can spur the required improvements, just as a set of well-understood organizational measures can help companies thrive during a period of uncertainty."

Read the full report.

DATAWATCH

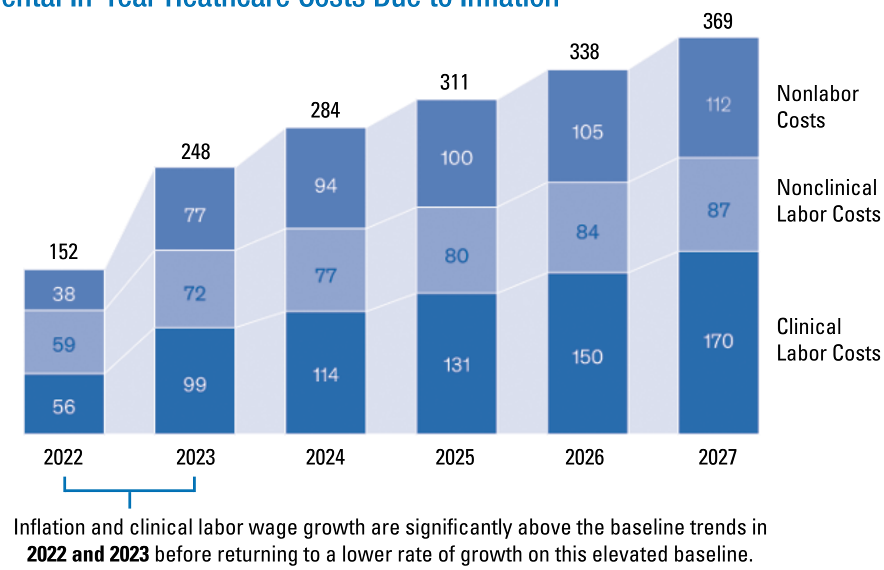
Inflation and Labor Costs in Health Care

According to a report from McKinsey, health care spending is predicted to reach a record high of $370 billion by 2027 due to inflation and clinical labor costs.

Between 2019 and 2022, labor costs per adjusted hospital discharge rose 25%, pharmaceutical costs increased by 21%, supplies costs grew 18%, and services costs rose 16%. These costs have somewhat stabilized in 2022, but they remain high above the norm.

In addition to the ongoing clinical labor shortage, McKinsey researchers estimate a shortage of 200,000 to 450,000 registered nurses and 50,000 to 80,000 doctors by 2025, with clinical labor costs expected to grow by 6 to 10% over the next two years, which is 3 to 7 percentage points higher than the prevailing inflation rate.

Potential Incremental In-Year Heathcare Costs Due to Inflation



Source: McKinsey Analysis in Partnership with Oxford Economics. https://mck.co/3flytJK

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Communications Department
ACA International
3200 Courthouse Lane
Eagan, MN 55121
comm@acainternational.org

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