November 2022 – Vol. 38 No. 11
Published for Health Care Providers by ACA International
www.acainternational.org

PULSE

Consumer Groups Call for CFPB Rulemaking on Medical Debt Credit Reporting

NCLC petition pushes for rulemaking to prohibit any "medically necessary" debts from appearing on credit reports.

The National Consumer Law Center (NCLC) is leading a group of consumer, civil rights, health care and advocacy organizations in a petition for the Consumer Financial Protection Bureau to use its rulemaking authority to "prohibit medical debts from appearing on credit reports if the debts arose from medically necessary services."

"While there have been great strides in recent months in reducing the amount of medical debt on credit reports, we believe rulemaking is ultimately necessary to protect consumers, particularly vulnerable consumers. We implore you to begin this rulemaking expeditiously, given the amount of time needed for the notice-and-comment process," the petition for rulemaking letter from the NCLC and 90 other groups states.

They argue that while the national credit reporting agencies' (CRAs) reforms to medical debt credit reporting will result in most medical debt being removed from consumers' credit reports, the debts of the "most vulnerable consumers" will continue to be documented.

Further, the groups state that VantageScore's announcement that neither of its most recently introduced scoring models will use medical debt collection data in the calculation of consumers' credit scores show that reporting these debts is not necessary for credit scores to be predictive of a consumer's creditworthiness.

The NCLC says the "CFPB has ample regulatory authority to prohibit the appearance of medical debt on credit reports," adding that the Fair Credit Reporting Act provides the bureau with "specific rulemaking authority concerning medical information."

ACA's Take

ACA International continues to advocate that the CFPB's actions taken outside of the rulemaking process will have negative consequences for the accounts receivable management (ARM) industry.

A blanket removal of all medical debt records from consumers' credit reports is not the answer.

ACA believes that focusing on medical debt without input from stakeholders in the health care industry will ultimately harm patients.

Attention to these topics grew after the CRAs—Equifax, Experian and TransUnion—announced that effective March 30, 2023, they will no longer include medical debt that was under $500 at the time of furnishing on credit reports, among other changes.

Credit reports that do not account for financial obligations, including past-due medical bills, increase the chance of future credit grantors extending credit that a consumer cannot afford, ACA said

continued on page 2

"While the national credit reporting agencies' reforms to medical debt credit reporting will result in most medical debt being removed from consumers' credit reports, the debts of the 'most vulnerable consumers' will continue to be documented."

in a letter to the CRAs.

The CFPB issued a compliance bulletin on medical debt collection in January followed by reports and research on the U.S. medical billing system, the credit reporting infrastructure and consumer experiences with medical billing. ACA responded to each item, clarifying the work of its members to help consumers and clients with these processes and expressing concerns with the bureau relying on outdated data and anecdotal reports that only exacerbate the issue without offering workable solutions.

"Treating medical debt as though it's not real debt is a slippery slope," said ACA CEO Scott Purcell. "The CFPB came into existence because people had been given loans they couldn't afford, and now making this debt invisible seems like it would cause a similar problem. The issue of medical debt is a complex one—and ACA agrees that it should be handled with many more stakeholders at the table to identify workable solutions that won't bring about the risk of significant negative consequences."

He noted that this 'solution' to remove all medical debt from consumers' credit reports will not bring about meaningful change to the underlying issue of health care access, health care affordability and ensuring insurance companies pay their contractual obligations in a timely manner.

"America's credit-based economy has created a really high standard of living for its citizens," Purcell said. "We should be focusing on solving the high cost of health care at its root. Dismantling the fundamental basics of the credit file only hurts the proper functioning of the system. Americans should have the opportunity to continue their high standard of living by having robust access to credit at affordable prices."

Court Finds Reg F Does Not Require Debt Collectors to Use Model Validation Notice

Federal district court issues a first-in-the-nation decision about the interpretation of Reg F's model validation notice provisions.

In the first substantive decision on the new Reg F requirements handed down by a federal district court in the country, the U.S. District Court for the Central District of Illinois has remanded a case to state court, in part on its finding that the Consumer Financial Protection Bureau's Debt Collection Regulation (Reg F) *does not require* debt collectors to use the CFPB's Model Validation Notice (MVN) in order to comply with the rule.

In the court's words:

While the amended complaint hints at a dispute over whether Regulation F requires use of the model form . . . it clearly does not. The phrase "safe harbor" indicates that use of the form is sufficient but not necessary for compliance. See 12 C.F.R. Section 1006.34(d)(2). A debt collector may comply by using a different form so long as the required information is provided in a clear and conspicuous manner. Id. Section 1006.34(d)(1).

In this first-in-the-nation decision about the interpretation of Reg F's MVN provisions and the applicable safe harbor under 12 C.F.R. 1006.34, the court concluded that Reg F "clearly does not" require debt collectors to use the MVN.

As a result, the dispute in the case—*Collection Professionals Inc. vs. McDonough District Hospital*— amounted to an unremarkable contract dispute between a hospital and debt collector and therefore did not raise a substantial question of federal law.

Although this lawsuit did not arise

continued on page 3

NEWS & NOTES

Emergency Department Wait Times Spike, Leaving Patients Without Care

According to two studies published by the JAMA Network, emergency department wait times are rapidly increasing, leaving patients without access to the care they need. In some cases, wait times lasted as long as nine hours.

Researchers of the first study found that wait times between December and January 2021 were especially long, with an average of 6.5 hours to wait for a bed, compared to 2.4 hours during other months.

The second study examined the rate at which patients would leave the emergency department (ED) without being seen by a physician and found that the median rate nearly doubled from 1.1% to 2.1% from January 2017 to December 2021, revealing EDs largely struggled to maintain patient care during the COVID-19 pandemic. Among the worst-performing hospitals, 10% of ED patients left before a medical evaluation.

Read the full article here.

HHS Announces Initiatives to Address Language Barriers in Care Access

The U.S. Department of Health and Human Services (HHS) recently announced several commitments to ease language barriers preventing patients from accessing care.

As a first step, HHS will relaunch its Language Access Steering Committee to improve communication with limited English proficiency (LEP) patients. Alongside this committee, HHS will require all agencies to update their language access plans.

In addition to its committee outreach, the HHS Office of Minority Health announced it will distribute more than $4 million in grants to 11 organizations for an initiative called Promoting Equitable Access to Language Services in Health and Human Services.

Read the full release here.

Learn More

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

Court Finds Reg F cont. from page 2

from a consumer-plaintiff's complaint but rather from a contract dispute between a hospital and a debt collector about whether the debt collector's decision to use a validation letter other than the MVN—but one that still, according to the debt collector's filings, complied with all requirements of federal law—the court's conclusion that Reg F "clearly does not" *require* debt collectors to use the MVN reflects the first federal decision drawing that line in the sand.

ACA's Take

ACA International continues to watch Reg F litigation very closely. We are bringing this case to members' immediate attention because of the foundational nature of the court's conclusion regarding debt collectors' use of the MVN.

For those debt collectors whose clients have pushed back on whether the MVN *must* be used, this case provides one important data point to the contrary. Rather, a debt collector may comply with both the FDCPA and Reg F as long as its validation notice complies with the requirements of FDCPA Section 1692g and Reg F Section 1006.34(c), which requires debt collectors to convey in their initial communications in a clear and conspicuous manner specific information about a debt, information about consumer protections, and consumer-response information including prompts for consumers to dispute their debts.

"The court's conclusion that Reg F 'clearly does not' require debt collectors to use the MVN reflects the first federal decision drawing that line in the sand."

DATAWATCH

Health Care M&A Activity Dips in Third Quarter

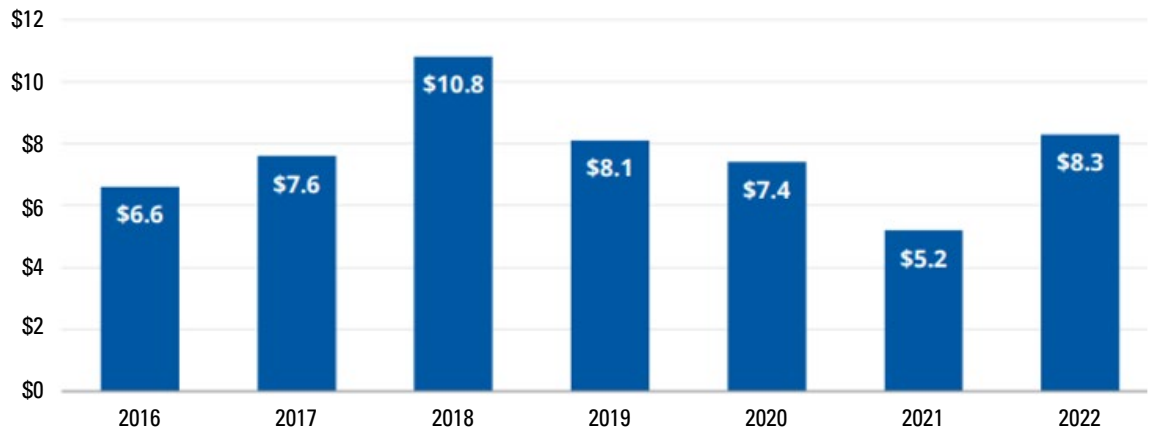
Health care merger and acquisition revenue hit a lull in the third quarter of 2022, with just 10 transactions generating $8.3 billion, according to the latest edition of Kaufman Hall's M&A Quarterly Activity Report.

This is in sharp contrast to the $19.2 billion generated from the second quarter of 2022, across 13 transactions.

However, Q3 2022 trends were fairly consistent with merger and acquisition activity being lower than it was before the COVID-19 pandemic. Additionally, compared to Q3 2021, the number of transactions and revenue volumes increased.

Two of the 10 transactions in Q3 2022 were categorized as mega transactions, in which the seller or smaller party has annual sales of more than $1 billion. These transactions included Pure Health's $500 million equity investment in Ardent Health Services and Prime Healthcare's acquisition of nine hospitals and two medical office buildings from Medical Properties Trust Inc.

Total Q3 Transacted Revenue ($s in Billions) by Year



Source: Kaufman, Hall & Associates M&A Quarterly Activity Report: Q3 2022. https://bit.ly/3N51dTN

PULSE
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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