

# PUBLICATION

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## Health Care Providers Beware: Consumer Finance Regulations Apply to Medical Debt Collection

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**While the prosecution of consumer banks and other lenders is the type of federal regulation that typically makes the headlines, many of the same debt collection regulations also apply to the collection of medical debts.**

Formed in the wake of the 2008 financial crisis, the Consumer Financial Protection Bureau (CFPB) began as an agency focused on the collection practices of financial institutions and other lenders. However, as early as 2014, the CFPB began scrutinizing the collection and reporting of medical debt.

In its [December 2014 study](#), the CFPB determined that more than 43 million Americans have overdue medical debt reported on their credit reports. The tremendous volume got the attention of the CFPB, which then placed the medical establishment squarely in its crosshairs. Enforcement actions against collectors of medical debt were initiated shortly thereafter.

Therefore, it is critical that health care providers possess a working knowledge of applicable federal debt collection regulations, and that providers also assess and closely monitor third-party debt collectors to ensure the policies and procedures of the collector comply with the law.

First and foremost, health care providers and their counsel should be familiar with the federal regulations that pose the most risk, including the Fair Debt Collection Practices Act (FDCPA) and the Telephone Consumer Protection Act (TCPA), both of which have dramatically affected the landscape of debt collection. A review of corresponding state laws would also be prudent as many states have adopted similar regulations.

The bottom line is that health care providers and their counsel should understand the actual risk and exposure involved, including penalties for each and every phone call or other contact made in violation of these statutes. Be aware, too, that repeated violations of provisions of these statutes on a large scale could lead to a class action lawsuit or enforcement actions by the CFPB, which could have a significant impact on a provider's bottom line. In some cases, courts have found creditors vicariously liable for FDCPA violations committed by agents acting on their behalf.

With this in mind, it is imperative that providers have foundational knowledge of the FDCPA and TCPA and that they or their counsel monitor enforcement actions by the CFPB.

### **Federal Debt Collection Practices Act, 15 U.S.C. 1692 et seq.**

Only consumer debts – acquired primarily for personal, family or household purposes – are covered by the FDCPA. Therefore, medical debt, which is acquired for a personal purpose, is subject to the Act. The most common violations include ignoring the FDCPA's general prohibitions against harassment, deception and unfair debt collection practices. However, note that each of these terms is defined broadly to encompass actions that one would not normally fit the definition.

In general, the FDCPA regulates the conduct of a debt collector, which is defined as "anyone who collects a debt." The Act applies to debt collection agencies or any other entity that is attempting to collect a debt on behalf of another. The definition is also applicable to law firms and their attorneys if they are regularly involved in debt collection. The FDCPA would *not* apply to a health care provider attempting to collect its own debts; however, if the original creditor or health care provider used an entity with a different name to collect the debt, it could trigger the Act (The definition of debt collector is located at 15 U.S.C. 1692(a)).

Contact with a debtor is heavily regulated by the FDCPA. The statute defines when a debtor may be contacted (the time of day or night the contact might take place); where and how the debtor may be contacted (work, home, cell phone, answering machines); and what kind of communication is actionable. The list of prohibited acts under the FDCPA is extensive. Likewise, the FDCPA also regulates debt collectors in their communication with debtors.

A few examples of alleged violations by medical debt collectors include:

- Failing to provide consumers with appropriate notices under the FDCPA;
- Failing to disclose their identity as a medical debt collector in telephone calls;
- Failing to abide by a cease communications request;
- Failing to verify medical debts and respond to requests for validation from the consumer as required by the FDCPA;
- Contacting debtors represented by counsel;
- Contacting third parties for information beyond location information;
- Sending debt verification notices that instruct debtors to direct questions regarding insurance filings with insurers, which could mislead debtors into believing that they should resolve debt collection issues by pursuing claims with insurers;
- Attempting to collect unpaid medical bills against consumers who had filed for bankruptcy protection, in violation of the automatic stay or discharge injunction;
- Misstating the amount of the unpaid medical debt as more than legally owed – even if inadvertent;
- Collecting medical debts already paid by insurance, government programs, or by the debtor;
- Attempting to collect unpaid medical bills that were disputed by the consumer while failing to provide the validation required by the FDCPA;
- Suing victims of identity theft for medical bills incurred by the thief.

The legal industry's awareness of the FDCPA has created a cottage industry out of FDCPA claims. A simple Internet search will reveal dozens of law firms advertising to represent those who have unpaid medical debt. For this reason alone, providers would do well to ensure that collectors have written policies and procedures that require employees to act in accordance with the requirements of the FDCPA. If the debt collector ever does fall under CFPB scrutiny, the CFPB will want to see the policies and procedures, and if those written policies and procedures are not in place, the likelihood of an enforcement action will increase exponentially.

Certainly, the best practice is to have the debt collector's policies and procedures reviewed by an attorney with knowledge of the FDCPA and the CFPB's enforcement actions to ensure that there can be no latent exposure to the medical provider.

### **Telephone Consumer Protection Act**

As the name indicates, the Telephone Consumer Protection Act (TCPA) regulates collection communications made over the telephone. Although distinct from the FDCPA described above, a violation of the TCPA will often trigger allegations of an FDCPA violation, particularly if any of the forbidden communication described in the FDCPA is made during a phone call or on a phone message device. The biggest culprit in TCPA violations has been the use of automatic dialers or prerecorded messages (See 15 U.S.C. 227). While there are

exceptions to this rule, documentation reflecting the debtor's consent to being contacted in a manner that invokes the TCPA is a must. Even then the debt collectors must be aware that such permission could be revoked by the debtor at any time.

Generally speaking, debt collectors should avoid using automatic dialers with prerecorded messages.

### **Do the Diligence**

Clearly, the FDCPA and the TCPA are each minefields to be navigated by medical providers and their collectors with caution. At the very least, medical providers should have a basic knowledge of the rights provided to consumers to assure that exposure (even inadvertent) is minimized. Providers should work with legal counsel with diligence to make sure their debt collection practices do not put them in the crosshairs of the CFPB.