



The Impact of Out-of-Statute Bankruptcy Claims on Healthcare Collections

The U.S. Supreme Court recently ruled in favor of the credit and collection industry in a case focusing on whether a debt collector's filing of a proof of claim that on its face indicates that the limitations period has run falls within the scope of the Fair Debt Collection Practices Act.

In May, the U.S. Supreme Court ruled 5-3 to reverse an Eleventh Circuit Court of Appeals decision in *Midland Funding, LLC v. Johnson*, No. 16-348.

The high court concluded it does not, holding "[t]he filing of a proof of claim that is obviously time barred is not a false, deceptive, misleading, unfair, or unconscionable debt collection practice within the meaning of the Fair Debt Collection Practices Act."

Justice Sonia Sotomayor, joined by Justices Ruth Bader Ginsburg and Elena Kagan, filed a dissenting opinion. Newly confirmed Justice Neil Gorsuch did not participate in the decision because he was not on the high court bench at the time of oral arguments in January.

On Nov. 21, 2016, ACA International submitted an *amicus* (friend of the court) brief to the U.S. Supreme Court, urging it to reverse the Eleventh Circuit's judgment. In its *amicus* brief, ACA convincingly argued that filing a bankruptcy proof of claim on an out-of-

statute debt does not violate the FDCPA.

As first published by HFMA News, (<http://www.hfma.org/Content.aspx?id=54236>), several industry experts predicted that the decision in the case would lift collection efforts on old healthcare debts.

ACA International's Corporate Counsel Karen Scheibe Eliason said in an interview with HFMA News that "more cases in all areas of unsecured debt—including healthcare are likely."

"In an abundance of caution, particularly now having this ruling, I would think that debt collectors and creditors would file these proofs of claim on debt that is owed because they may or may not be time-barred," Scheibe Eliason told HFMA.

"It's still owed, even if it is beyond the statute of limitations," Eliason told HFMA News.

There are often reasons why the debtor wants to resolve an otherwise time-barred debt. If a debt collector cannot work with the debtor on resolving



debt that may be time-barred, then both the creditor and the debtor may end up worse off, ACA International previously reported.

When it comes to old debt, the U.S. Supreme Court in its *Midland Funding, LLC v. Johnson* ruling recognized that the law should not force debt collectors and debt buyers (and their attorneys) into the Hobson's choice of either filing a proof of claim and facing liability under the FDCPA, or being excluded from the bankruptcy process in order to avoid such liability.

In the healthcare industry, as first published by HFMA News, the appeal of removing bad debt is on the rise.

continued on page 2



STUDY:

More Patients Lag on Paying Hospital Bills in Full

The percentage of consumers not paying their hospital bills in full has increased in recent years, according to an analysis from TransUnion Healthcare.

In 2016, approximately 68 percent of consumers with medical bills of \$500 or less did not pay the total balance, an increase from 53 percent of consumers in 2015 and 49 percent in 2014.

“There are many reasons why more patients are struggling to make their healthcare payments in full, the most prominent of which are higher deductibles and the increase in patient responsibility from 10 percent to 30 percent over the last few years,” said Jonathan Wiik, principal for healthcare revenue cycle management at TransUnion, in a news release. “This shift in healthcare payments has been taking place for well over a decade, but we are seeing more pronounced changes in how hospital bills are paid during just the last few years.”

TransUnion Healthcare also projects this trend could continue in the future.

According to the analysis, TransUnion Healthcare reports the percentage of consumers not paying their total hospital bills will increase to 95 percent by 2020.

“The study also revealed that the percentage of patients that have made partial payments toward their hospital bills has gone down dramatically from 89-90 percent in 2015-2016 to 77 percent in 2016,” according to the news release.

Additional findings from TransUnion Healthcare’s analysis on payment patterns between 2014 and 2016 include:

- “63 percent of hospital bills were \$500 or less; of those hospital bills, 68 percent were not paid in full in 2016;”
- “14 percent of hospital bills were \$3,000 or more; of those hospital bills, 99 percent were not paid in full in 2016;”
- “10 percent of hospital bills were \$500 to \$1,000; of those bills, 85 percent were not paid in full in 2016.”

“Higher deductibles and the increase in patient responsibility are causing a decrease in patient payments to providers for patient care services rendered,” said John Yount, vice president for healthcare products at TransUnion, in the news release. “While uncompensated care has declined, it appears to be primarily due to the increased number of individuals with Medicaid and commercial insurance coverage.”

Uncompensated care is the total of a hospital’s bad debt and the financial assistance it provides.

Despite the decline in uncompensated care, TransUnion Healthcare reports that in 2015 hospitals still wrote off approximately \$35.7 billion as bad debt or charity care.

“With millions of dollars in unpaid medical debt, hospitals have begun implementing new processes to prevent revenue leakage while also providing a better patient experience,” Yount said.

More information:

<http://ow.ly/CA6x30cW5MW>

Out-of-Statute Bankruptcy Claims *cont. from page 1*

“There certainly is more pressure to collect the patient liability—no doubt about it,” Terry Allison Rappuhn, formerly the leader of HFMA’s Patient Friendly Billing Project, told HFMA News. “The high-deductible plans [HDHPs] are creating a huge amount of pressure on patients and also on the hospitals and the physicians.”

Attention to resolving patients’ medical accounts has increased with the prevalence of HDHPs and the burden of medical debt.

In 2014, a Medical Debt Collection Task Force led by the Healthcare

Financial Management Association and ACA International developed best practices to help make paying of medical bills an easier and fairer proposition for consumers.

“If a hospital is going to have someone else contact their patient about their debt, they should have a process in place on how they treat the patient, [ensuring] that there is respect and that if the patient contests the bill, they have some sort of recourse—which frankly is not going to happen with a 10-year-old debt,” Rappuhn said in the HFMA News article.

As first published by HFMA News the ruling in *Midland Funding, LLC v. Johnson* could, “have an unintended benefit for healthcare providers targeted over unintentionally disclosing identifiable personal information or unredacted healthcare records as part of court filings,” according to Stephen Sather, an attorney at Barron & Newburger.

“While this decision doesn’t directly speak to that, it could have some encouraging language to try to beat back some of those lawsuits,” Sather told HFMA News.

SURVEY:

Younger Generations More Likely to Avoid Healthcare Due to Cost

The impacts of possible changes, including repealing and replacing the Affordable Care Act, to healthcare legislation and services in the U.S. remain uncertain; but consumers are consistent in their concern about the cost of care, according to results from Bankrate's recent Money Pulse survey.

Thirty-one percent of Millennials said they avoid medical care because of the cost, according to the survey of 1,002 adults in the U.S. conducted in May. Twenty-five percent of Generation X, 23 percent of Baby Boomers and 8 percent of the Silent Generation in the survey said cost caused them to avoid medical care, Bankrate.com reports.

"It's very concerning that people are forgoing medical attention because of the expense," said Robin Saks Frankel, credit card analyst at Bankrate.com, in a news release. "Thirteen percent of respondents don't have any health insurance at all—a risk that could cost them. Unexpected medical bills can lead to a huge financial burden that could take years to pay off should something go wrong."

"Older millennials (ages 27-36) are most likely to forgo care due to cost ... [and] about one in three Americans in that age group say they've chosen not to seek needed medical attention because they couldn't afford it," according to Bankrate.com

When asked how worried they are about access to affordable health insurance in the future, 35 percent

of respondents said they are very worried; 21 percent said they are somewhat worried; 17 percent said they are not too worried; and 24 percent said they are not at all worried.

"That's about the same level of concern we found when we asked the same question in August 2014, nearly a year after the opening of the health insurance exchanges created under former President Barack Obama's healthcare overhaul," Bankrate.com reports.

The survey also shows more than half (56 percent) of all respondents are concerned about health insurance coverage. Sixty-four percent of Generation X respondents said they are concerned about coverage; followed by 58 percent of Baby Boomers; and 56 percent of Millennials, according to Bankrate.com.

"That fear of the unknown is understandable, Tevi Troy, CEO of the American Health Policy Institute, told Bankrate.com. "But, he says coverage isn't likely to change much for the estimated 177 million Americans who get health insurance through work. Employers are likely to continue providing affordable healthcare because it helps with recruitment, retention and employee morale—factors unrelated to any changes in government policy."

More information:
<http://ow.ly/9IEh30cOLsd> and
<http://ow.ly/ixnA30dZvFJ>

NEWS & NOTES

Second Quarter Health Spending Growth Estimates Decline

Health spending growth estimates for the start of the second quarter 2017, show 4.5 percent growth year-over-year, compared to 5.2 percent for the first quarter and 5.2 percent for 2016, according to the "Altarum Institute Center for Sustainable Health Spending Health Sector Trend Report" released in July 2017.

<http://ow.ly/pL0c30eec1Z>

Consumers Report Favorable Interactions with Healthcare Providers

Consumers surveyed by the Pew Research Center report positive experiences with their healthcare providers, including 87 percent with a doctor visit in the last year who said their "concerns or descriptions of symptoms were carefully listened to." Twenty-three percent said they "felt rushed by their healthcare provider." <http://ow.ly/u2ud30eeeaY>

Report: U.S. Healthcare System Remains Behind Other Countries

The Commonwealth Fund's latest research on the U.S. healthcare system shows while there has been "significant progress," the U.S. still lags behind other countries. For example, 33 percent of U.S. adults in the survey reported they did not take a prescription medicine, visit a doctor when sick or receive recommended treatment in the last year because of the cost; compared to 7 percent in Germany and the United Kingdom and 8 percent in Sweden and the Netherlands.

<http://ow.ly/RaMd30eeefpU>

For more healthcare collections news, visit ACA's Healthcare Collections page at www.acainternational.org/pulse.

