



pulse

Consistency is Key with Medical Debts

ACA International members dissect itemization date requirements and working with health care clients during ACA Huddle on the CFPB's debt collection rule.

Medical debt adds another layer of compliance with the Consumer Financial Protection Bureau's final debt collection rule, which ACA International members reviewed in a presentation concluding the ACA Huddle CFPB Rule Series in January.

In the presentation, "Itemization of Medical Debt, Creditors and Medical Providers," members reviewed the itemization date definition and rules.

They explained that once you pick an itemization date, stick with it. In other words, while the medical debt compliance requirements are complicated, a good rule of thumb is to be consistent.

Here are a few pointers on the definition of the itemization date that is the best fit for medical debt, according to Section 1000.34 of the rule on notice of validation debts.

The definition of the itemization date means any one of the following five reference dates for which a debt collector can ascertain the amount of the debt:

- The last statement date, which is the date of the last periodic statement or written account statement or invoice provided to the consumer by a creditor;
- The charge-off date, which is the date the debt was charged off;
- The last payment date, which is the

date the last payment was applied to the debt;

- The transaction date, which is the date of the transaction that gave rise to the debt; or
- The judgment date, which is the date of the final court judgment that determines the amount of the debt owed by the consumer.

The webinar also included best practices for the itemization of multiple debts and how to make it understandable for the patient as well as details on what information to include on the validation notice for the consumer.

Examples of information to include on the validation notice include the itemization date, the amount of the debt owed on the itemization date and the amount of the debt owed at the time the notice is sent.

When it comes to medical debt, it's also important to consider how to handle disputes if multiple debts are included in a single validation notice, balance increases due to late charges, payment reversals and debit adjustments, and the addition of interest after an account is placed with a collector.

Remember, once you pick an itemization date option, stick with it when communicating with the consumer.

ACA's panel of experts continues to review the comprehensive rule and will be providing detailed analysis and compliance resources through articles, member alerts and additional webinars.

ACA hosted 22 comprehensive ACA Huddle webinars on the CFPB's final debt collection rule. If you missed any of the presentations or need a refresher throughout this year, recordings and presentation materials have been archived for members to use here:

www.acainternational.org/about/huddle-cfpb-series

FCC Proceeds with Best Practices of Hospital Robocall Protection Group

The Federal Communications Commission's Hospital Robocall Protection Group (HRPG) has issued best practices to help stop unlawful robocalls to hospitals.

As required by the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act of 2019, the FCC established the HRPG to issue best practices on:

- How voice service providers can better combat unlawful robocalls made to hospitals;
- How hospitals can better protect themselves from such calls, including by using robocall mitigation techniques; and
- How the federal government and state governments can help combat such calls.

The HRPG was required to develop the best practices within 180 days of its establishment in 2020 and the FCC sought comments on the group's recommendations in January.

"Recognizing that efforts by any single entity will not adequately protect hospitals from illegal robocalls, the HRPG best practices focus on collective efforts and encourage a coordinated response among hospitals, phone companies, and government agencies to mitigate the impact of these calls," according to a news release from the FCC.

The HRPG separated its best practices into two categories. One focuses on how unlawful robocalls to hospitals can be prevented, and the second focuses on how hospitals can respond to unlawful robocalls that have occurred and mitigate their impact, according to the news release.

Comments on the best practices were due to the FCC Feb. 1 and, as required by the TRACED Act, the FCC will assess how to facilitate voluntary adoption of the best practices to protect hospitals and other institutions no later than June 13, 2021.

At its first meeting in July 2020, the HRPG discussed the best practices to help health care providers manage unlawful robocalls as well as call blocking and labeling, caller ID authentication and the FCC's robocall enforcement efforts.

"I am all too familiar with the negative impact robocalls have had on health care organizations and their ability to effectively operate and provide care to patients," said Dave Summitt, chief information security officer of Moffitt Cancer Center and chairman of the HRPG during the meeting.

Read the complete best practices from the HPRG here: www.fcc.gov/hospital-robocall-protection-group

Pulling Credit Reports: What's Permissible?

Fair Credit Reporting Act amendments and certain court decisions have narrowed the scope of debt collection as a permissible purpose.

The ability to review a consumer's credit report can be an important collection tool. These reports provide information about a consumer's financial condition and ability to pay a debt, which can aid collectors in determining the best way to help a consumer resolve the debt.

To access a consumer report, one must have a "permissible purpose" under the FCRA. Using a consumer report for debt collection is generally considered to be a permissible purpose, because 15 U.S.C. Section 1681b(a)(3)(A) (Sec. 604 of the FCRA) allows a consumer reporting agency to furnish a consumer report to a person who "intends to use the information in

connection with a credit transaction ... or review or collection of an account." Many courts have concluded that this language provides debt collectors with a permissible purpose to obtain a consumer report.

However, over time, FCRA amendments and certain court decisions have narrowed the scope of debt collection as a permissible purpose. For example, in *Pintos v. Pacific Creditors Ass'n*, the 9th Circuit Court of Appeals concluded that debt collection can only be relied on as a permissible purpose if the debt arose from a voluntary credit transaction.

The debt in *Pintos* resulted from a consumer's car being towed and impounded. The court found that to qualify for the permissible purpose of debt collection, a transaction must satisfy

two conditions: (1) the credit transaction must "involve" the consumer; and (2) the transaction must involve the extension or review of credit or the collection of an account. Because the consumer in *Pintos* did not participate in obtaining credit, the court concluded that the permissible purpose set forth in Section 1681b(a)(3)(A) did not apply.

Judgments

In *Pintos*, the 9th Circuit stepped away from its holding in *Hasbun v. County of Los Angeles*, which had provided that a government agency looking to enforce a child support judgment "stood in the shoes of [a] judgment creditor" and could, "like any other creditor," obtain credit reports for collection. The 9th Circuit noted in *Pintos* that "*Hasbun* was decided prior to the 2003 FACTA

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[Fair and Accurate Credit Transactions Act of 2003] amendments,” which made it “apparent that debt collection is not always a permissible purpose for obtaining credit reports.” Accordingly, the 9th Circuit held that “FACTA makes clear that debt collection is a permissible purpose ... *only* in connection with a ‘credit transaction’ in which a consumer has participated directly and voluntarily.”

More recent court decisions have clarified this aspect of *Pintos* considering the 2003 FACTA amendments, which amended the FCRA’s definition of “credit” to limit the scope of transactions for which third parties can seek credit reports.

For example, in *Rodriguez v. Experian Info. Solutions Inc.*, the U.S. District Court for the Western District of Washington denied a debt collector’s motion to dismiss, concluding in light of the “recission of the FTC commentary on which *Hasbun* relied . . . a defendant’s status as a judgment creditor does not automatically indicate that a debt collection agency has a permissible purpose for obtaining consumer credit reports.”

In *Rodriguez*, the debt collector relied on *Pintos* to argue that it had a permissible purpose to request a copy of a consumer’s credit report to collect outstanding parking violations because it was a judgment creditor. The court rejected this argument, finding that the judgment debt must arise from a “credit transaction” to provide a permissible purpose. In particular, citing *Pintos*, the *Rodriguez* court found that “when deciding whether a third party has a permissible purpose for requesting a consumer’s credit report, courts limited their section 1681b(a)(3) (A) analyses to determining (1) whether a credit transaction ‘involved’ the consumer, and (2) whether the transaction involved the extension of credit to a consumer, the review of an account of a consumer, or the collection of an account of a consumer.”

Likewise, in *Baron v. Kirkorsky* the U.S. District Court for the District of Arizona concluded that “FACTA’s definition of ‘credit’ limits the scope of Section 1681b(a)(3)(A).”

In light of court decisions like these, creditors may wish to avoid requesting a consumer’s credit report if the debt did not arise from a “proper” credit transaction (in the *Pintos* court’s parlance), regardless of whether the debt has been reduced to a judgment.

Remember, to determine if a permissible purpose exists a debt collector should apply the two-pronged test set forth in *Pintos* and reiterated in *Rodriguez* and other decisions: (1) the credit transaction must “involve” the consumer; and (2) the transaction must involve the extension or review of credit or the collection of an account.

For more information, members can access the recently updated ACA SearchPoint document #1154, Permissible Purposes Under the FCRA.

Have you checked out ACA’s members-only SearchPoint library? ACA SearchPoint is filled with documents that put important compliance information related to the FDCPA, FCRA, TCPA, state laws and many other topics at your fingertips. To access ACA SearchPoint, visit www.acainternational.org/searchpoint or check it out on ACA’s new mobile app.

Idaho Patient Act is in Effect

New requirements for medical debt collectors under the Idaho Patient Act (HB 515) took effect in January. The Idaho Patient Act was the subject of an ongoing grassroots campaign by the Idaho Collectors Association to educate key lawmakers about the potential impact of the requirements. The law includes requirements on timing to submit a bill to a patient’s insurance company as well as interest rates and a cap on attorneys’ fees.

<https://bit.ly/3nFbVIP>

Snapshot: Federal Health Insurance Exchange 2021

According to the Center for Medicare and Medicaid Services, approximately 8.3 million people selected or were automatically reenrolled in plans using the HealthCare.gov platform during the 2021 open enrollment period. This includes enrollment in new health care plans, active plan renewals and automatic renewals.

<https://go.cms.gov/3oOyWnC>

We Want to Hear From You

Pulse is published for ACA International health care collection agencies to provide current industry information for health care providers. ACA welcomes article ideas and submissions for consideration in *Pulse* to the Communications Department at comm@acainternational.org.

For more health care collections news, visit ACA’s Health Care Collections page at www.acainternational.org/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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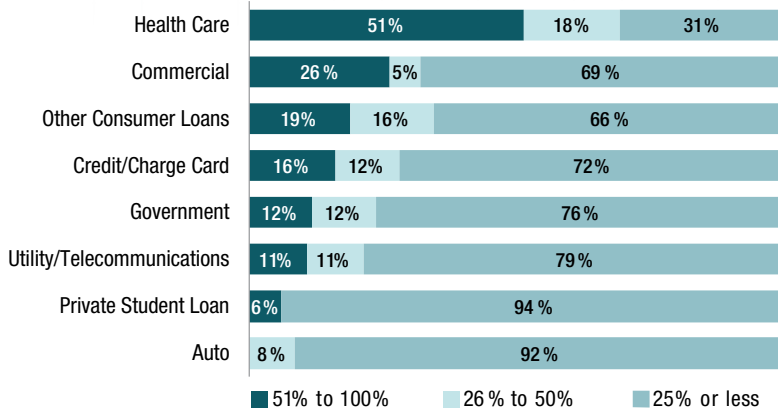


Health Care Debt Concentration

A new report, “A Year of Pivots, Challenges, and Opportunities: The Collections Industry in 2020,” explores how the COVID-19 pandemic has impacted the accounts receivable management industry and predicts what may be in store for 2021. The report includes a survey of third-party debt collectors on concentration of accounts worked, including medical debt, with the results shown below.

Relative Concentration Across Debt Types

Q. Please provide the approximate percentage of the total accounts worked in 2018 for each of the following categories. (Among companies that collected these types of debt in 2018)



Source: TransUnion and Aite Group Third-Party Debt Collection Survey, May 2019 to June 2019. <https://solutions.transunion.com/collections-annual-report-2020>