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pulse

ACA-Supported Case in 8th Circuit Clarifies Debt Collectors' Role in Providing 501(r) Financial Assistance Policies

The plaintiff argued that the debt collector was required to provide a financial assistance policy to the consumer on behalf of its health care provider client; however, an 8th Circuit judge ruled the entities are separate and dismissed the claim on appeal.

According to a ruling by the U.S. Court of Appeals for the 8th Circuit in *Klein v. The Affiliated Group Inc.*, debt collectors are not required to provide financial assistance policies in collection letters under the Internal Revenue Service's 501(r) rules for nonprofit hospitals; rather, the responsibility lies with the hospital.

ACA International supported the defendants in the case, The Affiliated Group and Credit Management LP, through the Industry Advancement Fund.

This case addresses two separate issues:

1. The debt collector's role to inform consumers of financial assistance policies under 501(r) if they are working on behalf of a health care provider client, and
2. Allegations that the debt collection agency violated the Fair Debt Collection Practices Act by attempting to collect on a debt that was barred by law.

The plaintiff, Dina Klein, owed money on a medical bill and applied for financial assistance through her health care provider. The application was denied, and her bill went to collections.

In November 2017, North Memorial (the health care provider) hired The Affiliated Group (TAG) to collect the debt. TAG sent Klein a letter that month informing her that "the below listed account(s) has been turned over to us by our client, who has given you an opportunity to satisfy this obligation."

TAG's letter did not mention anything about North Memorial's financial assistance policy, according to the court.

At the time, TAG and Credit Management LP (CMLP) were wholly owned but separate subsidiaries of The CMI Group.

At some point, TAG either merged or transferred the debt to CMLP, both of which were owned by The CMI Group. After the two companies consolidated accounts under the CMLP label, that agency sent a substantially similar collection letter to Klein in its own name in March 2018.

Financial Assistance Policy Agreement

After receiving the second collection letter, the consumer sued TAG and CMLP arguing, among other things, that the debt collectors violated Sections 1692e(5) and 1692f(1) of the FDCPA by failing to include information about the hospital's financial assistance policy in the two letters.

The district court entered summary judgment in favor of the debt collectors, and the consumer appealed to the 8th Circuit.

The plaintiff argued that TAG and CMLP needed to provide a financial assistance policy to the consumer since their client was a nonprofit health care provider and, as such, was subject to 501(r). They argued that TAG and CMLP were acting as an extension of the health care provider and, by failing to provide a required notice, were in

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Communications and Protected Health Information

Communications in connection with the collection of a medical debt are regulated by the Health Insurance Portability and Accountability Act (HIPAA), as well as the Fair Debt Collection Practices Act. The U.S. Department of Health and Human Services (HHS) has stated that it is not aware of any conflicts between the HIPAA Privacy Rules and those of the FDCPA.

But how do you ensure security when a medical debt itemization or other communication contains Protected Health Information (PHI)?

According to HHS, the HIPAA Privacy Rule is the place for health care providers and their business associates, including third-party debt collection agencies, to look for answers.

HHS states that "the HIPAA Privacy Rule provides federal protections for personal health information held by covered entities and gives patients an array of rights with respect to that information. At the same time, the privacy rule is balanced so that it permits the disclosure of personal health information needed for patient care and other important purposes."

When it comes to medical debt collection, after the initial communication with a consumer on behalf of a health care provider client, third-party business associates will likely find themselves having to send documents that contain PHI.

Where the use of PHI is necessary for a covered entity (such as a health plan or health care provider) or business associate to fulfill their legal duty, the HIPAA Privacy Rule does not prohibit such use or disclosure as is required by law, according to ACA SearchPoint™ document #2335, *Health Care Collections and Third-Party Communications*.

However, business associates and covered entities should outline their PHI disclosure priorities in a written agreement.

The amount of PHI included in communications with consumers to obtain payment for health care services should be kept to the minimum necessary and confidential.

Business associates that breach their contractual obligations with a covered entity face potential liability under HIPAA.

Before sharing documents containing a consumer's PHI, which is often done in secondary communications after they are informed about their outstanding balance, have them confirm the email address or phone number they provided to you for communication.

The HIPAA Privacy Rule provides further guidance (http://bit.ly/hipaaguidance) about communications between covered entities and business associates containing PHI for treatment, payment or health care operations purposes.

For example, according to the guidance, the HIPAA Privacy Rule allows health care providers and business associates to share PHI through a Health Information Exchange (HIE).

"The guidance provides examples relevant to the COVID-19 public health emergency on how HIPAA permits covered entities and their business associates to disclose PHI to an HIE for reporting to a [public health authority] that is engaged in public health activities," according to the HHS.

The HHS Office for Civil Rights (OCR) also recently finished collecting public comments on proposed changes to the rule.

The HIPAA Privacy Rule changes, which apply to covered entities and business associates, were proposed in 2020 and are focused on strengthening consumers' rights to access their own health information, including electronic information; improving information sharing for care coordination and case management for individuals; enhancing flexibilities for disclosures in emergency or threatening circumstances; and reducing administrative burdens on HIPAA covered health care providers and health plans, while continuing to protect individuals' health information privacy interests.

The comment period ended in May and compliance by health care providers and business associates will be required within 180 days after the updated rule takes effect.

HIPAA COMPLIANCE

ACA members can find more information on PHI and responsibilities for business associates in ACA SearchPoint™ (https://www.acainternational.org/searchpoint) under the Health Care and HIPAA tabs.

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violation of the FDCPA.

Regarding the consumer's claim that the debt collectors violated the FDCPA by failing to notify her of the hospital's financial assistance policy, the court determined that 501(r) regulations required the *hospital* to include its financial assistance policy in its billing statements, rather than the collection agencies. (Emphasis added).

Accordingly, the 8th Circuit affirmed the lower court's grant of summary judgment in the debt collectors' favor and dismissed the 501(r) claim because it applies solely to health care providers, not collection agencies, and there was no connection to the FDCPA.

The court reasoned that the two collection agencies, TAG and CMLP, were separate entities from the hospital, and it assigned only its ability to collect debts to the debt collectors, not its medical billing function.

Further, the court asserted that the record showed the hospital notified the consumer about the charity care policy prior to her receipt of the collection letters, and "[the FDCPA] does not impute [the hospital's] responsibility to comply with Treasury Department medical billing regulations to debt collectors working on its behalf."

Attorneys from ACA member company Malone Frost Martin PLLC represented TAG and CMLP in the appeal.

Attorney General Agreement

Importantly, at all relevant times, the hospital had an agreement with the Minnesota Attorney General requiring the hospital to enter written contracts with third-party debt collection agencies and requiring that such contracts comply with the 501(r) federal regulations by requiring the hospital to confirm that the patient was given a reasonable opportunity to apply for charitable care.

Chris Meier, general counsel and chief compliance officer for The CMI Group and a Members Attorney Program committee member with ACA, weighed in on the case outcome.

"What's most important for agencies is that the court had the opportunity to extend the Minnesota attorney general's order to third parties and vendors but declined to do so," Meier said. "We are extremely pleased that the 8th Circuit reached the conclusion that debt collection agencies are not 'hospital organizations' under 26 CFR 1.501(r) and therefore are not obligated to provide patients with the hospital's financial assistance policies. We are also relieved that the court opted not to extend the Minnesota attorney general's agreement with the hospital to us as its agency given that we were never a party to that negotiated resolution. We thank the Malone Frost Martin firm for their representation on this matter as well as ACA International for its commitment to helping its membership fight back against meritless and misguided lawsuits."

Visit ACA's Industry Advancement Fund website (www.acainternational.org/industry-advancement-fund) for more information about legal resources available for members.

Members can read more about the case here: https://bit.ly/klein-affiliated

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NEWS & NOTES

Survey Shows Trends in Medical Bills Causing Debt

After surveying 1,550 U.S. consumers in February 2021, LendingTree found 60% of Americans have been in debt due to medical bills. On average, the respondents said they owe between $5,000 and $9,999 for medical expenses and the top cause of those bills is often unpredictable, unavoidable procedures. Read more here http://bit.ly/lendingtreesurvey and see a chart from the survey in Data Watch.

Medical Debt Bill Advances in Nevada

Nevada is one of the latest states to propose changes to medical debt collection through legislation. S.B. 248, which revises provisions of state law related to the collection of medical debt, progressed at the state committee level in May. ACA International members testified against the bill, which led to some amendments on voluntary payments. At press time, ACA and the Nevada Collectors Association continued to work with the legislature on additional amendments. http://bit.ly/nevada-medical-debt

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.

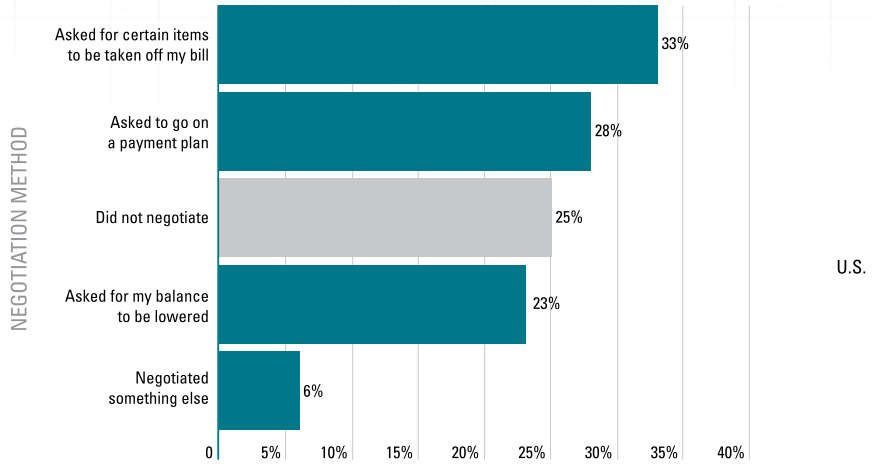
For more health care collections news, visit ACA's Health Care Collections page at www.acainternational.org/pulse.

datawatch

Negotiating Medical Bills

According to a survey by LendingTree, consumers with medical debt tried to negotiate their bill in several ways. Overall, 75% of the 1,550 respondents with medical debt tried to negotiate their bills by asking for payment plans or a lower balance, for example. "Of those who have negotiated a medical bill, 66% did so themselves, while 26% used a service to help them and 9% had another family member negotiate on their behalf," according to the survey.

Ways Consumers with Medical Debt Negotiated Their Bills



Source: LendingTree survey of 1,550 consumers conducted Feb. 19-22, 2021. Of them, only the 932 respondents who have had, medical debt answered this question, and respondents could select more than one answer if applicable. http://bit.ly/lendingtreesurvey

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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