

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1006 and 1022

Bulletin 2022-01: Medical Debt Collection and Consumer Reporting Requirements in Connection with the No Surprises Act

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance bulletin and policy guidance.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this compliance bulletin and policy guidance (Bulletin) to remind debt collectors of their obligation to comply with the Fair Debt Collection Practices Act's prohibition on false, deceptive, or misleading representations or means in connection with the collection of any debt and unfair or unconscionable means to collect or attempt to collect any debt, and to remind consumer reporting agencies and information furnishers to comply with the Fair Credit Reporting Act's accuracy and dispute resolution requirements, including when collecting, furnishing information about, and reporting medical debts covered by the No Surprises Act.

DATES: This Bulletin is applicable as of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Seth Caffrey, Courtney Jean, Kristin McPartland, or Alexandra Reimelt, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact

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SUPPLEMENTARY INFORMATION:

I. Bulletin

The Bureau is issuing this Bulletin to emphasize the obligation of debt collectors to comply with the Fair Debt Collection Practices Act's (FDCPA)¹ prohibitions on false, deceptive, or misleading representations or means in connection with the collection of any debt and unfair or unconscionable means to collect or attempt to collect any debt, and the obligation of consumer reporting agencies and information furnishers to comply with the Fair Credit Reporting Act's (FCRA)² accuracy and dispute resolution requirements, including when collecting, furnishing information about, and reporting medical debts covered by the No Surprises Act. This Bulletin describes certain acts or practices related to the collection of medical debts that may violate the FDCPA or the FCRA. The examples described in this bulletin are not exhaustive of all potential violations of the FDCPA and FCRA that could arise from the collection of such debts.

Effective generally for plan years beginning on or after January 1, 2022, the No Surprises Act³ protects participants, beneficiaries, and enrollees in group health plans and group and individual health insurance coverage from surprise medical bills when they receive, under certain circumstances, emergency services, non-emergency services from nonparticipating providers at participating health care facilities, and air ambulance services from nonparticipating providers of air ambulance services.⁴ In addition, the No Surprises Act, among other things, requires certain health care facilities and providers to disclose Federal and State patient protections against

¹ 15 U.S.C. 1692 *et seq.*

² 15 U.S.C. 1681 *et seq.*

³ Pub. L. 116-260, div. BB, tit. I, 134 Stat. 2758 (2020).

⁴ See Requirements Related to Surprise Billing; Part I, 86 FR 36872 (July 13, 2021). The protections against surprise billing also apply to health benefits plans offered by carriers under the Federal Employees Health Benefits (FEHB) Act. See 5 U.S.C. 8901(p).

balance billing and sets forth complaint processes with respect to potential violations of the protections against balance billing and out-of-network cost sharing.⁵ The No Surprises Act also includes certain protections for uninsured (or self-pay) individuals from surprise medical bills.⁶ Several Federal agencies have published rules implementing the No Surprises Act.⁷

Several characteristics of medical debt pose special risks to consumers and distinguish it from other types of debt.⁸ Medical debt often results from an unanticipated event, such as an accident or sudden illness, rather than from a voluntary, planned transaction. Consumers are rarely informed of the costs of medical treatment in advance (although provisions in the No Surprises Act will help to remedy this), and because of price opacity, provider availability, and the emergency nature of some medical care, consumers may have only a limited ability to “shop around.” In addition, medical bills can be rife with errors, and the unique complexity of the medical billing and third-party reimbursement process exacerbates consumer confusion. A consumer faced with a bill for medical services is generally ill suited to the task of identifying billing errors, including, for example, identifying whether the billed services were actually received and whether the correct amount was billed. A consumer also may have difficulty determining whether the amount is covered by insurance (if applicable) and, if so, whether and to what extent the amount was already paid.

⁵ See Requirements Related to Surprise Billing; Part I, 86 FR 36872 (July 13, 2021).

⁶ See Requirements Related to Surprise Billing; Part II, 86 FR 55980 (Oct. 7, 2021).

⁷ See, e.g., *id.* (interim final rule issued by Office of Personnel Management; Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare and Medicaid Services, Department of Health and Human Services); Requirements Related to Surprise Billing; Part I, 86 FR 36872 (July 13, 2021) (same).

⁸ See generally Bureau of Consumer Fin. Prot., *Consumer credit reports: A study of medical and non-medical collections* (Dec. 2014), at 15-16, 38-42, https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.

If a medical bill remains unpaid after a certain amount of time, a medical provider may engage a third party to collect the debt.⁹ To the extent the third party qualifies as a “debt collector” under the FDCPA and its implementing Regulation F, the third party is subject to the FDCPA and Regulation F.¹⁰ The FDCPA and Regulation F prohibit the use of “any false, deceptive, or misleading representation or means in connection with the collection of any debt,”¹¹ including, for example, any false representation of “the character, amount, or legal status of any debt.”¹² The FDCPA and Regulation F also prohibit the use of “unfair or unconscionable means to collect or attempt to collect any debt,”¹³ including, for example, the “collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”¹⁴

The Bureau reminds debt collectors about these FDCPA prohibitions. The prohibition on misrepresentations includes misrepresenting that a consumer must pay a debt stemming from a charge that exceeds the amount permitted by the No Surprises Act. Thus, for example, a debt collector who represents that a consumer owes a debt arising from out-of-network charges for emergency services may violate the prohibition on misrepresentations if those charges exceed the amount permitted by the No Surprises Act. Courts have also emphasized that collecting an

⁹ See generally Debt Collection Practices (Regulation F), 85 FR 76734, 76735-36 (Nov. 30, 2020).

¹⁰ 15 U.S.C. 1692a(6) (defining “debt collector”); 12 CFR 1006.2(i) (same).

¹¹ 15 U.S.C. 1692e; 12 CFR 1006.18(a).

¹² 15 U.S.C. 1692e(2)(A); 12 CFR 1006.18(b)(2)(i).

¹³ 15 U.S.C. 1692f; 12 CFR 1006.22(a).

¹⁴ 15 U.S.C. 1692f(1); 12 CFR 1006.22(b). See also, e.g., *Tuttle v. Equifax Check*, 190 F.3d 9, 13 (2nd Cir. 1999) (noting that, if state law expressly prohibits service charges, a service charge cannot be imposed even if the contract allows it).

amount that exceeds what is owed would violate the prohibition on unfair or unconscionable debt collection practices.

Many debt collectors furnish information about unpaid medical debts to consumer reporting agencies (CRAs).¹⁵ Debt collectors who furnish information and the CRAs to which they furnish that information are subject to the FCRA and its implementing Regulation V.¹⁶ The FCRA and Regulation V impose obligations on CRAs and furnishers relating to the accuracy of information in consumer reports. Among these is the requirement that, when preparing a consumer report, CRAs “shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates,”¹⁷ and the requirement that furnishers “establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency.”¹⁸ The FCRA and Regulation V also require CRAs and furnishers to conduct reasonable and timely investigations of consumer disputes to verify the accuracy of furnished information.¹⁹

The Bureau reminds furnishers and CRAs that the accuracy and dispute obligations imposed by the FCRA and Regulation V apply with respect to debts stemming from charges that

¹⁵ See Bureau of Consumer Fin. Prot., *Market Snapshot: Third-Party Debt Collections Tradeline Reporting*, at 5, 12-14 (July 2019), https://files.consumerfinance.gov/f/documents/201907_cfpb_third-party-debt-collections_report.pdf (finding that, in the second quarter of 2018, medical debt accounted for approximately two-thirds of total third-party collections tradelines). See also Bureau of Consumer Fin. Prot., *Consumer credit reports: A study of medical and non-medical collections*, at 4-5 (Dec. 2014), https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf (finding that, based on data from 2012 through 2014, medical debt collections tradelines affected the credit reports of nearly one-fifth of all consumers with credit reports); *id.* at 5 (finding that, based on data from 2012 through 2014, medical debt collection tradelines accounted for over half of all debt collection tradelines with an identifiable creditor or provider).

¹⁶ 15 U.S.C. 1681 through 1681x; 12 CFR part 1022.

¹⁷ 15 U.S.C. 1681e(b).

¹⁸ 12 CFR 1022.42(a).

¹⁹ 15 U.S.C. 1681i, 1681s-2; 12 CFR 1022.43.

exceed the amount permitted by the No Surprises Act. Thus, for example, a debt collector who furnishes information indicating that a consumer owes a debt arising from out-of-network charges for emergency services (or a CRA that includes such information in a consumer report) may violate the FCRA and Regulation V if those charges exceed the amount permitted by the No Surprises Act or if the furnisher (or CRA) fails to meet its dispute obligations.

The Bureau will closely review the practices of those engaged in the collection or reporting of medical debt. The Bureau will hold debt collectors accountable for failing to comply with the FDCPA and Regulation F, and it will hold CRAs and furnishers accountable for failing to comply with the FCRA and Regulation V. The Bureau will use all appropriate tools to assess whether supervisory, enforcement, or other action may be necessary.

II. Regulatory Matters

This Bulletin constitutes a general statement of policy exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act.²⁰ It summarizes existing legal requirements. It does not impose any legal requirements on external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required in issuing this Bulletin, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis.²¹ The Bureau has also determined that the issuance of this Bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of

²⁰ 5 U.S.C. 553(b).

²¹ 5 U.S.C. 603(a), 604(a).

information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.²²

/s/ Rohit Chopra

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²² 44 U.S.C. 3501 *et seq.*