

PUBLICATION

CFPB Continues Its Focus on Medical Debt

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Last week, the Consumer Financial Protection Bureau (CFPB) announced a [consent order with two debt collection law firms specializing in medical debt](#). This action is similar to prior CFPB enforcement actions taken against debt collection law firms, such as [Faloni & Associates, LLC](#) and [Pressler & Pressler, LLP](#), in which the CFPB alleged violations of the Fair Debt Collection and Practices Act (FDCPA), claiming the firms engaged in unfair, false or deceptive practices. What is interesting about this consent order is that the Bureau specifically highlighted the fact that the law firms specialized in the collection of medical debt.

It is clear that the Bureau believes there is an escalated consumer risk when medical debt is the subject of collection activity and/or credit reporting. As far back as 2012, the CFPB displayed an increased focus on medical debt. First, when the CFPB was defining a [larger participants rule to govern debt collection](#) the Bureau stated, "In some situations, a medical provider may grant the right to defer payment after the medical service is rendered. In those circumstances, the transaction might involve an extension of credit." The Bureau further noted, "The Proposed Rule suggested that medical debt is not a consumer financial product or service and that collection of such debt therefore did not fall within the proposed definition of 'consumer debt collection.' The Final Consumer Debt Collection Rule acknowledges that medical debt may, if it arose from an extension of credit within the meaning of the Dodd-Frank Act, involve a 'consumer financial product or service.'" This language showed the Bureau's intention to assert its authority over health care providers' billing and collection practices.

The Bureau issued a [study](#) of medical debt collections in 2014, in which it stated, "roughly half of all collection trade lines that appear on credit reports are reported by debt collectors seeking to collect on medical bills claimed to be owed to hospitals and other medical providers. These medical debt collections trade lines affect the credit reports of nearly one-fifth of all consumers in the credit reporting system." It is important to note that the CFPB bases its rule-making, supervision and enforcement activity on the overall risk to consumers within a market. With medical debt accounting for 50 percent of debt collection and touching 20 percent of consumers in the credit reporting space, both the effect on and the risk to consumers is enormous, which in turn brings the attention of the CFPB.

The same survey indicated that the Healthcare Financial Management Association (HFMA) stated that furnishing to a consumer reporting agency (CRA) is a common practice in the hospital industry. The CFPB views this practice as passive debt collection and has indicated disapproval of the variance in age of delinquencies prior to negative credit reporting by health care providers and their debt collection vendors. In a 2015 [enforcement action](#) against Syndicated Office Systems, an indirect subsidiary of Conifer Health Solutions, LLC, the Bureau required the respondent to "refrain from furnishing information to a CRA relating to a consumer's medical debt for at least 90 days from the date the account is assigned to respondent for collection." This is contrary to some health care industry participants who routinely report to a CRA after 30 days of delinquency, in hopes it will encourage consumers to pay their outstanding balances.

In a separate [announcement](#) of a field hearing on medical debt collection, the Bureau again stated, "The CFPB is concerned that the systems for incurring, collecting, and reporting medical debt can create difficult challenges for consumers." A move towards enforcement authority over medical providers' collecting their own

unpaid medical bills would not be a complete surprise given all of this activity around the topic. Health care industry groups have taken notice. For example, in February of 2014, the American Hospital Association (AHA) submitted a comment letter to the CFPB in response to the Bureau's Advance Notice of Proposed Rulemaking (ANPR) to govern debt collection. The AHA stated it wanted to ensure the "CFPB recognizes the significant ways in which medical debt differs from other types of consumer debt, and accounts for those differences when issuing future rules or guidance, or setting CFPB policy."

The CFPB is expected to take the next step in issuing a rule governing first-party debt collection in the near future. Many believe it may propose to include internal debt collection practices of health care providers or at least test the waters to gauge the industry response. It would be prudent for health care providers to be proactive and use this enforcement action and the comments found in the 2014 study as an opportunity to access third-party debt collection vendors, documentation procedures, controls around internal debt collection and the sale of debt and accounts receivable. At the very least, health care providers should expect the CFPB to continue its jurisdictional creep into health care. If you have any questions regarding consumer debt collections or applicable best practices, please contact your regular Baker Donelson attorney or a member of Baker Donelson's [Financial Services](#) Department.