

Regulating medical debt collection: A 2022 review and look ahead

By Shannon P. Miller, Maurice Wutscher*

JANUARY 11, 2023

The COVID-19 pandemic created record amounts of unexpected medical debt for consumers, which only exacerbated the growing amount of delinquent medical debt. Even before the pandemic, federal and state legislators and regulators identified what they believed to be fundamental flaws in how medical services are billed and what understanding consumers have of their financial responsibility for these services.

Last year saw an influx of federal and state regulation aimed at what information must be conveyed to consumers in anticipation of the provision of medical services as well as restrictions on the collection of medical debt. Expect more activity in 2023.

Federal regulation of medical debt

The No Surprises Act, effective Jan. 1, 2023, created new federal protections for consumers against “surprise medical bills.” The NSA regulates how medical providers may bill consumers for services and specifically bans surprise bills for emergency services, bans higher co-pays for out-of-network services, bans out-of-network charges for services provided during in-network facility visits, requires medical providers to provide consumers with notice of the NSA protections, and requires medical providers to provide uninsured consumers an up-front good faith estimate of costs for services.

Last year saw an influx of federal and state regulation aimed at what information must be conveyed to consumers.

On the heels of the NSA, the Consumer Financial Protection Bureau issued its first bulletin regarding the collection and credit reporting of medical debt. The bulletin’s purpose functioned as a refresher of sorts, reminding those who operate in the medical debt realm to comply with the Fair Debt Collection Practices Act and the Fair Credit Reporting Act.

Importantly, the bulletin concluded that medical debt posed a “special risk” to consumers because medical debt is typically an

unanticipated indebtedness, consumers are not always advised of the costs of medical services in advance, and there is no real “marketplace” for medical services where consumers can shop for the best value. The CFPB also pointed to a lack of consumer education regarding medical insurance and how they can identify potential billing errors.

The CFPB warned it is targeting abusive medical debt collection, specifically collection of amounts not properly owed by operation of the NSA and will “closely review the practices of those engaged in the collection or reporting of medical debt.” To this end, the CFPB reminded credit reporting agencies (“CRAs”) and furnishers that they must have in place and follow reasonable procedures to assure the accuracy of the information being reported and furnished, as well as for investigations and dispute resolution.

In March of 2022, the CFPB issued its “official report” on the burdens faced by consumers created by medical debt. The report’s key findings were that as of June 2021 there was approximately \$88 billion in medical debt reflected on consumer credit records, with most of the related tradelines being \$500 or less. As of 2021, 58% of all consumer tradelines were medical debt, which, the report added, were negatively impacting credit scores.

The CFPB warned it is targeting abusive medical debt collection, specifically collection of amounts not properly owed by operation of the No Surprises Act.

The CFPB believed such tradelines were not a good predictor of creditworthiness, and significantly and disproportionately impacted certain communities. It concluded that current practices related to medical debt collections and credit reporting can cause “significant harm” to consumers. It also warned that CRAs and furnishers who fail to have reasonable procedures in place to assure that medical debt information is accurate will be held accountable.

Coming as no surprise, also in March of 2022, the CRAs responded to the CFPB’s official report by identifying changes they were implementing. Specifically, beginning July 1, 2022, defaulted

medical debt placed for collections and which had subsequently been paid would no longer appear on a consumer credit report, diverging from the text of the FCRA, which allows for defaulted debt to be reported for seven years, regardless of whether it has been paid.

The CRAs also stated that defaulted medical debt will not be reported until one year after default, diverging from the CRAs' prior policy of reporting same after six months. And, beginning March 30, 2023, the CRAs will not place medical debts with furnished balances below \$500 on a consumer report.

In April of 2022, the CFPB issued a bulletin illustrating how medical billing and collections may negatively impact consumers.

The bulletin identified the most common consumer complaints regarding medical debt as:

- (1) not recognizing or disputing that they owe a medical debt;
- (2) that collection notices either contained too little information regarding the nature of the debt or too much personal medical information; and
- (3) that medical debt was being credit reported improperly.

The CFPB added, this "strongly suggest[s] that many medical bills reported on credit reports are disputed, inaccurate, or not owed" and that it intends to "hold bad actors in the consumer financial services marketplace accountable."

State regulation of medical debt

Last year saw several states enact laws similar to the NSA to regulate medical debt and its collection.

The state laws share common themes including:

- providing greater protections to indigent patients by limiting the actions creditors and collectors can take to recover balances owed
- requiring notice to be provided to consumers prior to collection activity beginning with an opportunity to cure any default
- requiring the provision of detailed information regarding a medical debt
- limiting the legal remedies and recourses available to recover on a medical debt, including limits on the ability to bring a suit and executing on any judgment obtained on a medical debt

What to expect in 2023

In late November, a bill was introduced in the U.S. Senate by Sen. Chris Murphy (D-Conn.) taking aim at the collection of medical debt, S. 5150, the Strengthening Consumer Protections and Medical Debt Transparency Act.

The legislation would provide for certain consumer protections related to medical debt collection applicable to both the medical provider as well as any "debt collector," as defined by the FDCPA. It would also limit a medical provider, or its debt collector, from

engaging in "extraordinary collection actions" ("ECAs") prior to satisfying various conditions.

ECAs are defined to include selling an individual's debt to another party; reporting adverse information about the individual to consumer credit reporting agencies or credit bureaus; deferring or denying, or requiring a payment before providing, medically necessary care because of an individual's nonpayment of existing medical debt; and actions that require a legal or judicial process.

Among the conditions that must be satisfied before engaging in an ECA, the bill requires a healthcare provider or its debt collector to determine if the patient qualifies for financial assistance via state or federal programs, or via the facility's own charity or assistance programs. It also prohibits engaging in an ECA until the expiration of a 180-day period beginning on the date on which an initial bill is sent to the consumer.

*The message should be received
by the receivables management industry
loud and clear: medical debt is an area
of great concern for state and federal
regulators and lawmakers.*

The legislation would also prohibit an ECA from commencing (or require it to be halted) if notice is provided that a health insurance coverage appeal is pending.

Beyond ECAs, the bill would require that, prior to any collection activity, the medical provider or its debt collector "make all reasonable efforts to confirm the identity of the debtor." It would also require the patient consumer to be provided with "an easy-to-understand itemized statement" of the debt owed prior to any debt collection activity along with a copy of any receipts for any payments made on the debt within 30 days of any such payment.

The message should be received by the receivables management industry loud and clear: medical debt is an area of great concern for state and federal regulators and lawmakers. The industry needs to respond accordingly by ensuring compliance with the newly enacted laws, including the NSA and state regulations. This includes revamping policies and procedures related to resolving consumer disputes of medical debt and ensuring the accuracy of any medical debt being furnished.

The accuracy and propriety of medical debt balances being collected upon and credit reported will face heightened scrutiny from regulators and, in turn, the consumer bar who will no doubt focus more attention on medical debt collection. It will be thorough and detailed policies and procedures with documented compliance that will address the heightened scrutiny over medical debt collection in 2023.

About the author



Shannon P. Miller is a principal attorney in **Maurice Wutscher's** office in Media, Pennsylvania, where he focuses on financial services law, particularly consumer financial services litigation. He has represented financial institutions and law firms across the country in claims filed under the Fair Debt Collection Practices Act, Fair Credit Reporting Act and state consumer protection statutes. He can be reached at smiller@MauriceWutscher.com. This article was originally published Jan. 10, 2023, on the firm's website. Republished with permission.

This article was published on Westlaw Today on January 11, 2023.

* © 2023 Shannon P. Miller, Maurice Wutscher

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit legalsolutions.thomsonreuters.com.