

# PFC COMPLIANCE BULLETIN



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## CFPB IMPACT CONSIDERATIONS

52% of all debt reported to credit bureaus is identified as healthcare debt with over 19% containing more than one medical debt<sup>iii</sup>.



With new CFPB rulings, collection agencies may have more autonomy with consumer communication efforts via email, text message, and web portals.

## CFPB'S NEW PROPOSED DEBT COLLECTION RULES TO HAVE MAJOR IMPACT ON MEDICAL COLLECTIONS

The Consumer Financial Protection Bureau (“CFPB”) released its long-awaited proposed rules for debt collection on May 7, 2019. While these new rules would apply to all classes of debt, the requirements for account balance itemization are particularly burdensome for medical providers. The Accounts Receivable Management industry continues to lobby the CFPB in advance of final rulemaking to ensure that the impact to medical creditors is minimized.

### Debt Collection Regulation Enters the 21<sup>st</sup> Century

In 1977, Congress passed the Fair Debt Collection Practices Act (“FDCPA”) to eliminate abusive debt collection practices by debt collectors and to ensure that compliant collectors who avoid abusive debt collection practices are not competitively disadvantaged. Since its passage, the FDCPA has remained largely unchanged, leaving courts to grapple with an antiquated regulatory scheme that was never intended to address modern communication technology.

The CFPB, which was given regulatory responsibility over debt collection in 2013, recognizes that “consumers may prefer communicating with debt collectors using newer technologies, such as emails, text messages, or web portals, because these technologies may offer greater efficiency, convenience, and privacy.”<sup>i</sup> Thus, creditors can look forward to their collection agencies being able to communicate with their customers in a more effective way.

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*“...an increased use of voice and text messages should make it more convenient for consumers to communicate with debt collectors because consumers will be better able to arrange a discussion at a time that is convenient for them rather than at a time when the debt collector happens to reach them.”<sup>i</sup>*

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## ITEMIZATION OF THE AMOUNT OF A DEBT LEADS TO AN UNFAIR BURDEN FOR MEDICAL CREDITORS

One of the most oft-litigated issues under the FDCPA is whether the amount of the debt disclosed to the consumer is confusing or misleading. With a static communication, such as a letter, it can be difficult to relay that a debt is accruing interest, how that interest is calculated, whether fees have accrued on the debt, and whether future fees may accrue. In an attempt to curb the thousands of lawsuits filed in federal court against collection agencies each year, the CFPB has proposed a Model Notice that would provide a safe harbor for debt collectors. As long as a collection agencies letter mirrored the CFPB's Model Notice, they could not be in violation of the FDCPA. However, the portion of this Model Notice meant to provide clarity to the amount of the debt owed contains a requirement to provide an itemization of that debt. The CFPB's itemization requirement includes "the current amount of the debt in a tabular format reflecting interest, fees, payments, and credits".<sup>i</sup> The nature of medical debt illustrates how difficult this itemization may be. The CFPB has not clarified how to treat insurance payments, adjustments, credits, reversals, or any of the other insurance transactions that are unique to medical accounts. Without clarification from the CFPB, the Model Notice may turn a simple collection letter into a confusing Explanation of Benefits.



*The proposed Model Notice requirements by the CFPB, intended to provide more clarity, may actually cause more confusion if not further clarified.*

Nearly 40% of consumer complaints received by the CFPB are about inaccurate information or claims with their account. The most common complaint is that the consumer does not recognize the debt as his or hers, suggesting that the consumers are confused or mistaken about their accounts.<sup>iii</sup>

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Further, many medical providers do not currently send their collectors an itemization of the insurance payments, adjustments, and credits. Beyond the obvious risks inherent in exchanging larger amounts of data, both providers and collectors will incur higher information technology expenses in modifying their current account placement process.

### The ARM Industry is Pushing for Clarity on Medical Debts

Luckily, the regulations put forth by the CFPB are merely proposal at this point. Accounts Receivable Management industry leaders and tradegroups have engaged with the CFPB to ensure that regulation is both fair for consumers and reasonable for collectors and creditors. Additionally, the CFPB is taking written comments on their Proposed Rules until August 19, 2019.

Professional Finance Company, Inc. (“PFC”), as a national leader and advocate in the ARM industry, is working to make the CFPB aware of the burden created on medical providers by the itemization of debt rules as they are currently written. PFC’s position is that the

payments and adjustments itemization requirement should refer only to payments made directly by the consumer patient in the medical debt context. A consumer patient should already be aware of any payments and adjustments made by their insurer through the Explanation of Benefits provided by the insurer. Limiting the amount of data that needs to be exchanged between a medical provider and their collector regarding the balance of an account leads to less error and more clarity for the consumer. Further, a collection notice’s focus should be on the patient’s responsibility, not what the insurer may have done well in advance of an account getting to the collection stage. ■

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Nick Prola, Esq. is the General Counsel at Professional Finance Company, inc. (PFC). Nick is admitted to practice law in Illinois and Colorado, as well as federal courts across the country. Nick has years of experience in the consumer and financial regulations industry and has successfully defended clients from claims of regulatory violations, including litigation through jury trial. Nick has presented on healthcare and consumer compliance for several organizations including the ACA International—the Association of Credit and Collection Professionals, and HFMA.

<sup>i</sup> CFPB Proposal to Amend Regulation F at 6.

<sup>ii</sup> 12 CFR 1006.34(c)(2)(ix)

<sup>iii</sup> *Consumer credit reports: A study of medical and non-medical collections*, CFPB 2014.