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CFPB Issues Bulletin to Restrain Collection and Credit Reporting of Prohibited Medical Debt

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The Consumer Financial Protection Bureau (CFPB) has released a compliance bulletin and policy guidance reminding debt collectors that attempting to collect on or furnishing information to consumer reporting agencies regarding medical debt that is prohibited under the recently passed No Surprises Act may violate the Fair Debt Collection Practices Act (FDCPA) and Fair Credit Reporting Act (FCRA).

The No Surprises Act, which generally went into effect on January 1, 2022, provides protections (including limiting amounts required to be paid) to 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 healthcare facilities, and air ambulance services from nonparticipating providers of air ambulance services.[1] In addition, consumer reporting agencies could be in violation of the FCRA if they issue inaccurate consumer reports regarding such debt.

The bulletin provides guidance to debt collectors and consumer reporting agencies regarding their obligations under the FDCPA and FCRA concerning medical debts that would exceed the limits imposed by the No Surprises Act. In particular, the bulletin provides these reminders:

- Under the FDCPA and its implementing Regulation F, third-party debt collectors are prohibited from misrepresenting the character, amount or legal status of any debt, and cannot use unfair or unconscionable means to collect such debt. This prohibition would include misrepresenting that a debtor must pay a medical debt that exceeds the amount permitted by the No Surprises Act.
- Under the FCRA and its implementing Regulation V, debt collectors who furnish information to consumer reporting agencies must have reasonable written policies and procedures in place regarding the accuracy and integrity of the information provided to the consumer reporting agency, and they must conduct a reasonable and timely investigation of consumer disputes to verify the accuracy of such information. A debt collector who furnishes information to a consumer reporting agency concerning medical debt that exceeds the limits imposed by the No Surprises Act may violate the FCRA if it fails to accurately note this fact or fails to meet the dispute obligations regarding such debt.
- Consumer reporting agencies preparing a consumer report must follow reasonable procedures to assure the maximum possible accuracy of information contained in the report, and they must conduct a reasonable and timely investigation of a consumer dispute involving the accuracy of such information in the report. A consumer reporting agency may be found to have violated the FCRA if it reports medical debt that exceeds the amount permitted by the No Surprises Act.

The CFPB states that it will closely monitor the practices of those engaged in the collection or reporting of medical debt, and will take action against companies that violate either the FDCPA or FCRA. The bulletin makes it clear the CFPB is willing to use both the FDCPA and FCRA to hold debt collectors and consumer reporting agencies accountable for failing to comply with the No Surprises Act.

Notes

1. Surprise medical bills are bills from out-of-network providers, air ambulance services and/or facilities to patients that represent the difference between the amount charged by the provider and/or facility and the amount reimbursed by the patient's health plan. *See* H.R. 133 – Public Law 116-260, Sec. 102-105.

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