



FINANCIAL SERVICES AND CONSUMER CLASS ACTIONS AND HEALTHCARE UPDATE

CFPB Investigating Medical Debt Information Reported to Consumer Reporting Agencies

The Consumer Financial Protection Bureau (CFPB) has announced that it is requiring consumer reporting agencies to provide information regarding which companies furnish the most disputed medical debt information. The next step is likely to be an investigation into whether such companies comply with their obligations under the federal Fair Credit Reporting Act (FCRA) on the accuracy of information furnished to the agencies and/or resolving consumer disputes regarding reported information. Healthcare entities that furnish medical debt information to consumer reporting agencies either directly or indirectly through their debt collectors should be aware that their debt collection practices could soon be subject to investigation by the CFPB.

By way of background, the CFPB (which was formed in 2011 under the Dodd-Frank Act) has broad regulatory authority to bring enforcement actions for violations of consumer financial services laws, including the FCRA. The CFPB has repeatedly identified consumer credit reporting as a key area of enforcement focus for the agency because reporting inaccurate information results in consumers being denied for credit or paying more for their loans. The CFPB has authority under the FCRA with respect to businesses, even if they do not provide consumer financial services, like medical service providers, if they report their debts to consumer reporting agencies or their debt collectors do so on their behalf.

Last week, the CFPB released a report that found medical debt has a significant impact on a consumer's ability to obtain credit. According to the report nearly 43 million consumers have an overdue medical bill on their credit report. The CFPB believes that a large number of late or missed medical expense payments are attributable to a confusing system for billing, collecting and reporting medical debts that is hard for consumers to navigate and understand, and thus consumers may be reported delinquent inappropriately in many cases. The CFPB has indicated support for a recent proposal by the Internal Revenue Service that would require nonprofit hospitals to give the consumer 120 days before beginning "extraordinary debt collection methods," which include reporting medical debts as collection items to consumer reporting agencies. The CFPB supports expansion of that proposal to for-profit hospitals and other medical providers.

The FCRA requires companies that furnish information to consumer reporting agencies to have reasonable procedures to ensure the accuracy of the information that they report. The statute also provides consumers with the right to dispute information provided to consumer reporting agencies, either with the agency to which the information has been reported or directly with the furnisher. In addition, furnishers must follow specific procedures in connection with the investigation and resolution of those disputes.

The CFPB has been aggressive in bringing administrative enforcement actions for failure to follow obligations on furnishers of information to consumer reporting agencies, and has indicated an intent to bring additional actions. For example, in one recent action against a small auto lender, the CFPB obtained a civil money penalty of \$2.75 million. Private plaintiffs have brought many class actions under the FCRA alleging failure of furnishers to investigate and correct disputed bills, in part because the statute provides a civil money penalty of up to \$1000 per violation, without the need to show any actual damages and with no limit on total class recovery.

Sidley lawyers have extensive experience advising companies that furnish data to consumer reporting agencies on compliance with the FCRA. We also have experience defending CFPB enforcement matters. Our team includes a former CFPB Enforcement attorney with experience on FCRA matters.

If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work.

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Sidley Financial Services and Consumer Class Actions Practice

Sidley's Financial Services/Consumer Class Actions practice team is dedicated to defending financial services companies, banks, insurance companies and companies that offer products and services to consumers against the expanding array of class actions that challenge products, methodologies and procedures. We have served as lead counsel in over 100 such class actions in over 40 jurisdictions across the United States.

Sidley Healthcare Practice

Our Healthcare Practice represents participants in all facets of the healthcare industry, including pharmaceutical, biotech and device companies, DME suppliers, hospitals, skilled nursing facilities, physician-owned companies, professional associations and research institutions. Our lawyers combine a strong background in the complexities of healthcare financing and delivery, including coding, reimbursement, and coverage issues, privacy and security, trade regulation, and competition. We have extensive experience representing clients on enforcement and regulatory matters before federal and state enforcement agencies.

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