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CREDITORS OR DEBT COLLECTORS: HOSPITALS' POTENTIAL LIABILITY UNDER FDCPA

On September 4, 2019, a Florida district court rendered a decision that could pose significant compliance concerns for health care entities engaging in debt collection practices under the name of their billing or financial services department.

In *Smith v. University Community Hospital, Inc. d/b/a Florida Hospital Carrollwood*,[1] the court denied a hospital's motion for summary judgment against a patient's claims under the federal Fair Debt Collection Practices Act ("FDCPA") and analogous state law. According to the patient, the hospital violated the FDCPA when it (1) filed and posted a lien of the patient's outstanding medical bill in local public records and (2) sent a notification letter and copy of the hospital lien to the patient. The hospital, however, argued the FDCPA was inapplicable because it was acting as a creditor collecting its own debt and not utilizing a third-party debt collection agency.

In general, creditors (i.e., "any person who offers or extends credit creating a debt or to whom a debt is owed"[2]) are exempt from the FDCPA. However, under the *false name exception*, a creditor may become subject to the FDCPA if the creditor "who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts."[3] In its communications with the patient, the creditor-hospital included its own name and the name of its collection department, Patient Financial Services. Moreover, the claim of lien filed by the hospital stated that it was filed on behalf of "Patient Financial Services, a non-profit corporation" and "authorized agent" of the hospital.

The hospital moved for summary judgment, arguing that Patient Financial Services is not a separate entity but is a department of the hospital. Therefore, the hospital maintained it was acting as a creditor attempting to collect its own debt and should be exempt from the FDCPA. The court disagreed. According to the court, triggering the FDCPA is not reliant on whether a third party is in fact collecting or attempting to collect a debt; but rather, whether the least sophisticated consumer would believe that a third party was involved in the collection. The court concluded that a reasonable jury could find that the hospital's collection department presented itself as a third-party debt collector and not as an entity within the hospital, potentially triggering the false name exception and requiring FDCPA compliance. Therefore, the court denied the hospital's motion.

If the FDCPA applied, the court further concluded that a genuine dispute of fact existed as to whether the hospital actually violated the FDCPA by communicating directly with the patient with actual knowledge that the patient was represented by an attorney or by communicating with a third party without the patient's consent.

PRACTICAL TAKEAWAYS

This decision serves as guidance for hospitals and other health care entities engaging in debt collection practices. Although such entities may believe their collection departments are exempt from complying with the FDCPA, safeguards and proper naming practices must be implemented to ensure collection practices do not unintentionally trigger applicability of the FDCPA or similar state laws. By taking proactive steps, such as consistently using the entity's name rather than a department name on any liens or debt collection communications with patients, health care entities can avoid potential exposure under the state and federal collection laws.

If you have any questions or would like additional information about this topic, please contact:

- Stephane Fabus at (414) 721-0904 or sfabus@hallrender.com;
- Kiel Zillmer at (414) 721-0918 or kzillmer@hallrender.com;
- Sara MacCarthy at (414) 721-0478 or smaccarthy@hallrender.com;
- David Honig at (317) 977-1447 or dhonig@hallrender.com; or
- Your regular Hall Render attorney.

[references]

[1] Case No. 8:18-cv-270-T-AAS (M.D. Fla. Sept. 4, 2019).

[2] 15 U.S.C. § 1692a(4).

[3] 15 U.S.C. § 1692a(6).

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