

I HAVEN'T EXTENDED CREDIT HAVE I?

Compliance Tips You Need to
Know When Offering
Payment Plans

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The Problem

Total Health Expenditures 2019

- \$3.8 Trillion Dollars
- Average of \$11,582 per person

Average American Family of Four;

Spend in 2020 on Healthcare - \$25,011

Average Insurance Deductible - \$5,490

Average in Non-Retirement Savings - \$5,300

The Problem

Medical Service Provider (MSP) has provided the necessary services

- Entitled to get paid

Problem – Patient can't pay entire amount of deductible and his/her portion of the co-pay until deductible maximum is reached

The Problem

How MSPs Handle Large Debt Owed by Patient

- Receive amount from insurance company
 - Less:
 - Deductible
 - Co-Payment Share of Patient
- Write off a portion to charity
- Arrange for a payment plan with the Patient for remainder

The Problem

The Payment Plan with the Patient is the Problem

- WHY? Regulation Z (implementing regulation of TILA)
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Regulation Z defines in 1026.1(c)(1) what constitutes a covered consumer credit transaction

- (i) The credit is offered or extended to consumers;
- (ii) The offering or extension of credit is done regularly;
- (iii) The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and
- (i) The credit is primarily for personal, family, or household purposes

What Does It Mean?

If you have made a Consumer Credit Extension/Loan

Triggers multiple Consumer Lending and Protection Laws and Regulations

- Truth in Lending Act (TILA) & Regulation Z
- Equal Credit Opportunity Act (ECOA) & Regulation B Electronic Funds Transfer Act (EFTA) & Regulation E Unfair, Deceptive & Abusive Acts or Practices (UDAAP)
- Fair Debt Collections Practices Act (FDCPA) & Regulation F Fair Credit Reporting Act (FCRA) & Regulation V
- State Licensing (where applicable) State Specific Lending Laws

Financial Regulator and State Attorneys General Scrutiny



TILA & Regulation Z

TILA & Regulation Z is all about disclosures

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- Account Opening Disclosures
- Post-Consumation Disclosures
 - Modification Agreement
- Treatment of Credit Balances
 - Must refund to consumer within 7 days of their request
 - If no request, within 6 months from the date credit balance created
- Advertising Rules – If certain payment plan terms are advertised
 - Trigger Terms
 - Triggered Disclosures

TILA & Regulation Z – Account Opening Disclosures

- Name of Creditor
- Amount Financed
- Itemization of Amount Financed
- Finance Charge
- Annual Percentage Rate (APR)
- Payment Schedule
- Total of Payments
- Demand Feature
- Total Sale Price
- Prepayment Penalty
- Late Payment
- Security Interest
- Debt Insurance
- Security Interest Charges
- Contract Reference
- Assumption Policy
- Required Deposit

ECOA & Regulation B

Purpose of ECOA & Regulation B (1002.1(b))

The purpose of this part is to promote the availability of credit to all creditworthy applicants without regard to:

- Race
- Color,
- Religion
- National origin
- Sex
- Marital status
- Age (provided the applicant has the capacity to contract),
- To the fact that all or part of the applicant's income derives from a public assistance program,
- Or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act

Prohibits creditor practices that discriminate on the basis of any of these factors
Requires creditors to notify applicants of action taken on their applications

ECOA & Regulation B

Definition of Completed Application

- An application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested
- Why this is *important*
- Sets the date by which you must notify the consumer of credit decision
 - 1002.9(a)(1) - A creditor shall notify an applicant of action taken within:
 - 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application
- If credit/payment plan cannot be given and the application is denied, must send an Adverse Action Notice

ECOA & Regulation B

Adverse Action Notice (1002.2(c))

The term means:

A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered

Adverse Action Notice under Regulation B for consumers must be in writing

Contents of Adverse Action Notice

Name and address of creditor

ECOA Notice

the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

- (i) A statement of specific reasons for the action taken; or
- (ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days,

if the statement is requested within 60 days of the creditor's notification.



EFTA & Regulation E

Only One Provision of Regulation E That is Important For Our Purposes

- 1005.10(e) Compulsory Use
- No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers

UDAAP

This Law is the Government's 'Catch All'

The Dodd-Frank Act recognizes that Unfair, Deceptive, or Abusive Acts and Practices (UDAAP) can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace; and explicitly prohibits any provider of consumer financial products or services to engage in any unfair, deceptive or abuse acts or practices

UDAAP

Unfair Acts or Practices

- An act or practice is considered unfair when the following three factors are met:
- The act or practice must cause or be likely to cause substantial injury to consumers;
- Consumers must not be reasonably able to avoid the injury;
- The injury must not be outweighed by countervailing benefits to consumers or competition

UDAAP

Deceptive Acts or Practices

- An act or practice is considered deceptive when the following three factors are met.
- The representation, omission, act, or practice mislead or is likely to mislead the consumer;
- The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances;
- The misleading representation, omission, act, or practice is material.

UDAAP

Abusive Acts or Practices

- Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service,
Or
- Takes unreasonable advantage of:
 - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - The inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
 - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

FDCPA & Regulation F

Limited Applicability to Medical Service Providers

- Why? Original Creditors (MSP) are Exempt
 - Exception: If original creditor collects their own debt using a name other than that of the original creditor's
- Conduct Rules do apply to Original Creditors
 - Harassment or Abuse (Sect. 806)
 - False or Misleading (Sect. 807)
 - Unfair Practices (Sect. 808)

FDCPA & Regulation F

New Regulation F – Effective November 30, 2021

- Codified sections of the Act
- Added commentary
- New debt validation rules
 - Must use one of these five as the ‘itemization date’
 - Last statement date
 - Charge off date
 - Last payment date
 - Transaction date
 - Judgment date

FCRA & Regulation V

Limited Applicability for Medical Service Provider

- Probably don't pull credit to make a payment plan
 - If MSP does pull a credit report to determine a payment plan
 - Adverse Action Notice must comply with additional rules under Regulation V
- Probably don't credit report
 - New rules for when can report medical debt
 - New rules for when info on credit report must be withdrawn

FCRA & Regulation V

Notice of Negative Information Should be in the Credit/Payment Plan Disclosure

"We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report"

State Licensing - Kansas

Who Is Required to Have This License?

The principal place of business for any entity:

- Making supervised loans involving Kansas consumers;
- Taking assignments of and directly or indirectly, including through the use of servicing contracts or otherwise, undertaking collection of payments from debtors arising from supervised loans involving Kansas consumers; or
- Taking assignments of and directly or indirectly, including through the use of servicing contracts or otherwise, enforcing rights against debtors arising from supervised loans involving Kansas consumers



State Licensing - Kansas

What is a Supervised Loan?

A Supervised Loan is defined in Kansas as a loan to which:

- The annual percentage rate exceeds 12% per year made by a person regularly engaged in the business of making loans in which:
 - The debtor is a person other than an organization;
The debt is incurred primarily for personal, family, or household purpose;
Either the debt is payable by written agreement in more than four installments or a finance charge is made; and
The amount financed does not exceed \$25,000



State Licensing - Missouri

Definitions

- *Consumer Credit Loan* - loans for personal, family or household purposes in amounts of five hundred dollars or more
- *Lender* - shall mean any person engaged in the business of making consumer credit loans. A person who makes an occasional consumer credit loan or who occasionally makes loans but is not regularly engaged in the business of making consumer credit loans shall not be considered a lender
- *Supervised Business* - shall mean the business of making consumer credit loans, as herein defined, of money, credit, goods, or things in action

State Licensing - Missouri

Licensing Rule

The phrase "consumer installment loans" means secured or unsecured loans of any amount and payable in not less than four substantially equal installments over a period of not less than one hundred twenty days. The phrase "consumer installment lender" means a person licensed to make consumer installment loans. A consumer installment lender shall be licensed in the same manner and upon the same terms as a lender making consumer credit loans.

Regulatory Scrutiny

Why Hasn't This Issue Been Addressed Before Now?

Federal Regulatory Agencies Were Too Busy Regulating Banks,
Thrifts & Credit Unions

FDIC
OCC
OTS
FTC

- New Player Since Dodd-Frank Act of 2011
 - Consumer Financial Protection Bureau (CFPB)
 - Focused Solely on Consumer Protection
- State Attorney's General Typically Take Their Cues From Federal Agencies
- Perceived Benevolence of Medical Service Providers and Hospitals

Regulatory Scrutiny

What Has Changed?

- CFPB – December 2014 Medical Debt Collections Study
- Closer scrutiny of all loans and how they are disclosed State Attorneys General focus on consumer lending
- No record of lawsuits against Medical Service Providers regarding lending practices to date

This Presentation is Not Meant to Scare You, But to Warn You
You Are Making Consumer Loans, Just Do It Correctly



Any Questions?

Thank you

