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SB248 Comment Submission re: Draft Proposed Regulation (medical debt collections)

[redacted] Thu, Sep 9, 2021 at 2 43 PM

To whom it may concern:

I am writing to you on behalf of the Consumer Relations Consortium (CRC), which is an organization comprised of more than 60 national companies representing creditors, data/technology providers, and compliance-oriented debt collectors that are larger market participants. The CRC is focused on fashioning real-world solutions that seek to improve the consumer's experience during the debt collection process. The CRC's collaborative and candid approach is unique in the market

We are sending this email to comment upon the draft proposed regulation pertaining to SB248 because it will not resolve the harm and frustration medical debtors will suffer as a result of the law The CRC first presented the unintended harm to consumers caused by SB248 to the Nevada Financial Institutions Division on June 22, 2021, via email (attached).

Despite the attempt to clarify SB248 through the draft proposed regulation, consumers will continue to be harmed by SB248 in the following manner:

(1) Section 3 of the draft proposed regulation purports to allow medical debt collectors to respond to inquiries from medical debtors during the 60 day notice period; however, it does not define the parameters of what is and is not permitted during such responsive conversations or letters. Specifically, while section 3(e) prohibits debt collectors from "demanding payment," it does not specify what "demanding payment" actually means. For instance, if a debtor asks how they might clear the balance and what options they may have, is a collector permitted to provide the different payment options, to set up a payment plan, or offer a settlement? Must they wait to do that until after the 60 days have passed, even though the debtor wants to discuss the matter much sooner?

Thus, if a consumer contacts a debt collector in response to the 60 day letter, although the debt collector may respond as authorized by draft regulation Section 3(2)(a), there is no guidance as to how a debt collector should respond if the consumer questions the balance since any potential answer the debt collector gives could be considered a "demand for payment." Out of an abundance of caution, collectors are likely to respond by saying that they are not permitted to discuss the balance until after the 60 day notice period has expired Similar to the harms outlined in the CRC's June 22, 2021 email, if a consumer asks a question about the balance, without further definition of a "demand for payment" a cautious debt collector fearing possible claims or enforcement actions can only terminate the call or not respond to a consumer's letter.

(2) Section 4 of the draft proposed regulation harms consumers by depriving them of their federal rights under the Fair Debt Collection Practices Act (FDCPA). As currently phrased, the regulations now prohibit a debt collector from including FDCPA disclosures. As we explained in our June 22, 2021, correspondence: prohibiting collection agencies from providing consumers notice of their federal rights will harm consumers because it will deprive them of 60 days in which they could have exercised those rights. More importantly, in response to the 60-day notice, some may choose to voluntarily pay the medical debt without knowing they had any federal rights at all. While officials in Nevada may believe that this correspondence would not be considered a communication in connection with a debt, thus sidestepping federal law disclosure requirements, it is not clear that Nevada officials have the ability to make such a determination regarding federal law – that would be left to the federal regulators and the courts.

(3) The certified mail requirement harms consumers The draft proposed regulations continue to require the first collection agency to forward its 60-day notice by certified mail. However, certified mail creates several problems for debtors. First, it creates a false sense of urgency. Next, it makes it less likely that the debtor will actually receive the notice. Certified mail is typically used for urgent communications where proof of delivery is paramount Debtors, particularly those who are having difficulty paying their bills, will likely consider a certified notice to be a precursor to litigation, garnishment, or other serious action against them. Debtors receiving such notices will feel more compelled to address the outstanding balance, which is seemingly opposite of what SB248 and the regulations intend.

Further, oftentimes the recipient of certified mail will not receive the mailing. If the debtor is not home, which is often the case when mail is delivered, the delivery person must leave an attempted delivery ("pink") slip advising that there is mail that needs to be picked up at the post office This creates an added stress and burden on a consumer to travel to the post office during regular business hours to retrieve the piece of mail. If they work, that may be difficult or impossible. Given that these types of mail often contain bad news, many debtors simply choose not to accept delivery of certified mail even if they could get to the post office. Thus, the certified requirement will make it less likely that the debtor will be notified of the outstanding debt

(4) The draft proposed regulations do not address the harm to consumers who attempt to pay via mail during the 60 day period As stated in our June 22, 2021, correspondence The mandated disclosures of Section 7 5 appear to apply to voluntary payments made over the phone, where a collection representative can provide the disclosures verbally. Section 7.5 fails to address parameters regarding mailed-in payments. Assuming Section 7.5 contemplates these disclosures being sent to the medical debtor via a letter, Section 7.5 fails to address how long a collection agency must wait before depositing the payment Without additional guidance, a collection agency can only comply with Section 7.5 for mailed-in payments by (a) sending a letter with the disclosures and waiting until the expiration of the 60-day notice period to deposit the payment; or (b) returning the payment to the medical debtor with the disclosures asking the medical debtor to remail the payment. Since the debtor has clearly attempted to make the payment and clear the balance, this will both frustrate the debtor and harm them by not accepting a payment when that is what both the creditor and the debtor desire. Any medical debtor paying by check who does not routinely balance their checkbook may have the payment withdrawn well after they sent it, causing overdraft fees or other penalties; or simply the frustration of having an unexpected withdrawal Further, asking medical debtors to remail a payment to ensure they received the disclosures will cause medical debtors to incur the cost of mailing twice and the frustration of making the payment twice. Finally, federal law requires the mini-Miranda disclosure to be included with any sort of collection related correspondence, and including the disclosure may be deemed an "action to collect" under the Nevada statute and regulation

(5) The draft proposed regulations do not cure the undue stress consumers will suffer caused by requiring medical debt collectors who do not credit report to provide the credit reporting disclosure. As stated in the CRC's June 22, 2021, correspondence Section 7 5 requires collection agencies to notify a medical debtor who wishes to make a voluntary payment that "the medical debt will not be reported to any credit reporting agency during the 60-day notification period." This statement leaves the impression that after the 60-day notice period, the debt will be reported to the credit reporting agencies. For a variety of reasons, many collection agencies do not report medical debt to credit reporting agencies Requiring collection agencies to make this disclosure, phrased in this manner, even where the debt will not be reported to a credit bureau, will cause undue stress and confusion to consumers concerned about maintaining their credit. Further, by requiring this disclosure phrased in this manner, a consumer may choose to pay a medical bill to prevent it from being reported on their credit, even where the collection agency will never report the debt

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