



## **NOTIFICATION LETTER**

ATTENTION: Nursing facilities and debt collectors  
DATE: September 8, 2022  
SUBJECT: Nursing facility debt collection practices

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The Consumer Financial Protection Bureau (CFPB) and the Centers for Medicare & Medicaid Services (CMS) remind you of your responsibilities under the Nursing Home Reform Act (NHRA), Fair Debt Collections Practices Act (FDCPA), and Fair Credit Reporting Act (FCRA).

The NHRA prohibits nursing facilities from requesting or requiring that a third party personally guarantee payment to the facility as a condition of a resident's admission or continued stay in the facility. Contract terms that conflict with the NHRA are unlawful, and alleged debts resulting from such unlawful contract terms are invalid and unenforceable. Some nursing facilities have attempted to evade this prohibition by creating admission contracts that attempt to hold third parties liable for a resident's debt. When a nursing facility claims that a non-resident is personally financially responsible for a resident's bill and engages a third-party debt collector to collect the debt, the debt collector may violate the FDCPA by attempting to collect debts that are invalid under the NHRA. They may also violate the FCRA by furnishing information regarding such invalid debts to consumer reporting agencies.

Nursing facilities that violate the NHRA's requirements may be subject to enforcement action by state agencies and by CMS. Debt collectors who violate the FDCPA and FCRA may be subject to enforcement actions by the CFPB and other federal and state government agencies, as well as to private actions brought by consumers. We urge nursing facilities and their debt collectors to examine their practices to ensure that they comply with the NHRA, FDCPA, and FCRA.

### ***Background***

There are approximately 48 million family members and friends caring for adults with health or functional needs in the United States. Nearly one in six adults are supporting the health and well-being of an older adult through illness or disability.<sup>1</sup> As the U.S. population ages, the challenges

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<sup>1</sup> Approximately 19 percent of U.S. adults are caregivers for an adult with health or functional limitations, and 16 percent of U.S. adults (41.8 million) are caregivers for someone ages 50 and older. AARP & Nat'l Alliance for Caregiving, *Caregiving in the U.S. 2020*, at 4 (May 2020), available at <https://www.aarp.org/content/dam/aarp/ppi/2020/05/full-report-caregiving-in-the-united-states.doi.10.26419-2Fppi.00103.001.pdf>.

faced by these caregivers are likely to become increasingly acute. The CFPB and CMS are committed to supporting and protecting this population from financial harm.

Nursing facilities play a critical role in caring for older Americans and people with disabilities. For caregivers, the decision to place a family member or friend in a nursing facility is often made at a difficult time. Choices can be limited, as individuals may seek a nursing facility that is within a reasonable distance from family or the caregiver. This choice constraint may be especially pronounced in rural areas.<sup>2</sup>

During the admissions process, caregivers must often sign lengthy admission agreements along with many other documents. Although many nursing homes treat caregivers with compassion and respect during this difficult step, the caregiver often has no meaningful opportunity to negotiate the agreement even if the caregiver has the time, attention, and ability to read and understand it.

These agreements may include terms that purport to hold a third party personally liable for the resident's nursing facility costs. For instance, some agreements purport to hold both residents and their caregivers personally liable for payment. Others may assert that the caregiver, as a "responsible party," is personally liable for the resident's unpaid bills if the resident's Medicaid application is deemed inaccurate, untimely, or incomplete.

Some nursing facilities engage debt collectors, including law firms, to collect the resident's unpaid bill from third parties based on these contract terms. In addition to alleging breach of the admission agreement, law firms may claim in lawsuits that the caregiver has engaged in financial wrongdoing. In some cases, these debt collectors may do so as a matter of course and without having any factual basis to believe that such wrongdoing occurred.<sup>3</sup>

#### ***Legal issues<sup>4</sup>***

- **Under the Nursing Home Reform Act (NHRA) and its implementing regulation,** nursing facilities that participate in Medicaid or Medicare may not request or require any third party, including a family member or caregiver, to personally guarantee payment of the costs of the resident's stay as a condition of admission, expedited admission, or continued stay in the facility.<sup>5</sup> This prohibition prevents a nursing facility "from requiring

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<sup>2</sup> Rural Policy Research Institute, *Nursing Homes in Rural America: A Chartbook 3* (July 2022), available at <https://rupri.public-health.uiowa.edu/publications/other/Nursing%20Home%20Chartbook.pdf>.

<sup>3</sup> Consumer Financial Protection Bureau, Nursing home debt collection: Issue spotlight (Sept. 8, 2022), <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-nursing-home-debt-collection>.

<sup>4</sup> For a more detailed discussion, see Consumer Financial Protection Bureau, Consumer Financial Protection Circular 2022-05 (Sept. 8, 2022), <https://www.consumerfinance.gov/compliance/circulars/circular-2022-05-debt-collection-and-consumer-reporting-practices-involving-invalid-nursing-home-debts>.

<sup>5</sup> With respect to admissions practices, a nursing facility "must not *request or require a third-party guarantee of payment to the facility as a condition of admission* or expedited admission, or continued stay in the facility. However, the facility may request and require a resident representative who has legal access to a resident's

a person other than the resident to assume personal responsibility for any cost of the resident's care.”<sup>6</sup> The prohibition applies to all residents and prospective residents of a nursing facility, regardless of whether they are eligible for Medicare or Medicaid.<sup>7</sup> Courts have recognized that contract terms that conflict with the NHRA and its implementing regulation are unenforceable.<sup>8</sup>

- **The Fair Debt Collection Practices Act (FDCPA)** prohibits the use of “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”<sup>9</sup> Debt collectors, including law firms, who collect on behalf of nursing facilities may violate the FDCPA by misrepresenting that a consumer must pay a debt that arises from a contract provision that is illegal and unenforceable under federal law.<sup>10</sup> Thus, debt collectors may violate the FDCPA by falsely claiming that caregivers are personally liable for residents’ nursing facility bills based on admission agreement terms that violate the NHRA.

In lawsuits against third parties, debt collection law firms have also alleged that the caregiver is responsible for the resident’s debt because they engaged in financial wrongdoing in relation to the resident’s resources. In some cases, debt collectors lack any basis for such allegations, and the allegations prove to be false. A debt collector may violate the FDCPA’s prohibition on misrepresentations by making a false, baseless allegation in a lawsuit that a third party engaged in financial wrongdoing as a means to hold them personally liable for a resident’s debts.

- **The Fair Credit Reporting Act (FCRA)** prohibits persons from furnishing inaccurate information to any consumer reporting agency after receiving notice from a consumer that the information is inaccurate.<sup>11</sup> The FCRA and its implementing regulation also

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income or resources available to pay for facility care to sign a contract, *without incurring personal financial liability*, to provide facility payment from the resident's income or resources.” 42 C.F.R. § 483.15(a)(3) (emphasis added); *see also* 42 U.S.C. §§ 1395i-3(c)(5)(A)(ii), (B)(ii); *id.* §§ 1396r(c)(5)(A)(ii), (B)(ii).

<sup>6</sup> 56 Fed. Reg. 48841 (Sept. 26, 1991).

<sup>7</sup> *See id.*; *see also* Centers for Medicare & Medicaid Services, State Operations Manual, Appendix PP - Guidance to § 483.15(a)(3) (Nov. 22, 2017), available at <https://www.cms.gov/files/document/appendix-pp-guidance-surveyor-long-term-care-facilities.pdf>.

<sup>8</sup> *See, e.g., Manor of Lake City, Inc. v. Hinnars*, 548 N.W.2d 573, 576 (Iowa 1996); *Knight v. John Knox Manor, Inc.*, 92 So. 3d 111, 120 (Ala. Civ. App. 2012); *Village at the Greene v. Smith*, 2020-Ohio-4088, ¶ 25 (Ohio App. 2020).

<sup>9</sup> 15 U.S.C. § 1692e; 12 C.F.R. § 1006.18(a).

<sup>10</sup> A debt collector violates the FDCPA by, among other things, making a “false representation of . . . the character, amount, or legal status of any debt;” “threat[ening] to take any action that cannot legally be taken or that is not intended to be taken;” and “us[ing] . . . any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.” 15 U.S.C. §§ 1692e(2), (5), (10).

<sup>11</sup> 15 U.S.C. § 1681s-2(a)(1)(B). The consumer must send the notification to the address specified by the furnisher for such notices. *Id.* If the furnisher has not specified such an address, then the furnisher is subject to FCRA’s

require furnishers to investigate consumer disputes to verify the accuracy of the information furnished,<sup>12</sup> and to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information that they furnish.<sup>13</sup> Reporting that a third party owes a debt to a nursing facility for the costs of a resident's care when the debt is based on an illegal contract clause may demonstrate that furnishers lack reasonable written policies and procedures regarding the accuracy and integrity of information they furnish.

The CFPB and CMS expect nursing facility admissions practices and debt collection activities to be conducted in accordance with federal law. Nursing facilities and their debt collectors should examine their practices to ensure compliance with the NHRA, the FDCPA, and the FCRA, as applicable, and remediate any harm to consumers stemming from violations. We also encourage nursing facilities to notify debt collectors working on their behalf, which may include debt collection law firms and companies, of their ongoing obligations under the FDCPA and the FCRA.

Sincerely,



Chiquita Brooks-LaSure  
CMS Administrator  
U.S. Department of Health and Human Services



Rohit Chopra  
Director  
Consumer Financial Protection Bureau

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general prohibition against “furnish[ing] any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.” 15 U.S.C. § 1681s-2(a)(1)(A).

<sup>12</sup> 15 U.S.C. §§ 1681s-2(a)(8), (b); 12 C.F.R. § 1022.43(a).

<sup>13</sup> 12 C.F.R. § 1022.42(a).