



January 21, 2022

Director Rohit Chopra
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Dear Director Chopra:

On behalf of the Association of Credit and Collection Professionals (“ACA International” or “ACA”), we ask that you consider the following comments regarding the bulletin issued related to the No Surprises Act (Bulletin 2022-01: Medical Debt Collection and Consumer Reporting Requirements in Connection with the No Surprises Act). ACA International is the leading trade association for credit and collection professionals representing approximately 2,300 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs nearly 125,000 employees worldwide.

Notably, ACA members take their compliance obligations to consumers and to their medical provider clients seriously. They are committed to helping consumers resolve their legally owed debts in a compassionate and responsible way, which in turn helps create a sustainable marketplace where medical care can be provided to those in need. ACA supports the intent of the No Surprises Act. However, this Act was not directed at the debt collection industry. As such, it did not create any new requirements or compliance expectations for the debt collection industry. Instead, when enacting this law, Congress focused on the need for healthcare providers and payors to adopt new consumer protections.

The text outlines the Act’s focus on front-end billing and not collections:

Specifically, the division generally prohibits insurance companies and providers from billing a patient more than the applicable in-network, cost-sharing amount if the patient received care in an emergency situation or in a non-emergency situation where the patient did not have the option to choose an in-network provider. With respect to this prohibition, the division outlines procedures to resolve payment disputes between health insurers and providers and makes changes to increase price transparency, address continuity of care, and expand related consumer protections. It also provides grants for state all-payer claims databases and requires reports on market consolidation and other topics.

Other changes that affect health insurance include (1) prohibiting, subject to privacy rules and other limitations, health insurance plans from entering into agreements with health care providers that restrict the plans from accessing and sharing cost or quality information or anonymous claims information; and (2) requiring agents, brokers, and

consultants who assist employers and individuals with obtaining health insurance to disclose information about certain compensation they expect to receive from insurance carriers.¹

Despite this clearly expressed intent and consistent discussions during Congressional deliberations, Bulletin 2022-01 attempts to use this new law to impose new (and opaque) compliance expectations on the debt collection industry. The laws referenced in the bulletin, the Fair Debt Collections Practices Act (FDCPA) and the Fair Credit Reporting Act (FCRA), were not a focus of and played no part in Congressional consideration and passage of the No Surprises Act.

We respectfully submit that using a bulletin to stretch a law passed by Congress aimed at healthcare providers and insurers to suggest that the CFPB received authority to impose additional burdens on debt collections exceeds the Bureau's statutory mandate and is contrary to the requirements of the Administrative Procedure Act (APA). Were such a practice lawful, agencies could pick any law passed by Congress and expand it as they see fit, ranging far outside the scope of their Congressionally delegated authority and the established rulemaking process. New obligations imposed by a regulatory agency must follow required rulemaking procedures, which include public notice, comment, and agency response, all of which afford stakeholders the ability for meaningful participation.

The CFPB stated that Bulletin 2022-21 “builds on”² the new law passed by Congress. But agencies have no authority to use an issuance such as a bulletin to “build” new obligations onto a law, particularly when the industry impacted by the bulletin was neither included in the discussion during passage of the law nor identified as a subject or target of the Act. Congress never mentioned nor addressed the collection of medical debt in the Consolidated Appropriations Act of 2021; it focused instead on insurance issues related to medical billing. Notably, the Department of Health and Human Services, the Department of Labor, the Department of the Treasury, and the Office of Personnel Management jointly issued an interim final rule implementing provisions of the No Surprises Act -- “Requirements Related to Surprise Billing; Part II,” 86 Fed. Reg. 55,980 (Oct. 7, 2021). This rule, like the law Congress adopted, makes no reference to the debt collection industry.

Also of note, on January 15, 2021, the CFPB finalized a rule to codify a 2018 Interagency Statement Clarifying the Role of Supervisory Guidance.³ This rule governs the legal status of guidance such as Bureau bulletins. The rule states: “Unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the Bureau does not take enforcement actions based on supervisory guidance.” During your Congressional testimony, and in response to questions from Congressman Alex Mooney (R-WV), you agreed to follow this final rule,

¹ Pub.L. 116–260, the Consolidated Appropriations Act of 2021.

² See Tweet from Director Rohit Chopra on January 13, 2022, stating that the bulletin “builds on” the No Surprises Act.

³ 86 Fed. Reg. 9268, now codified at 12 C.F.R. Part 1074.

which is consistent with the CFPB's legal mandate.⁴ Bulletin 2022-01 fails to align with the Interagency Statement Clarifying the Role of Supervisory Guidance and the Bureau's rule.

Further, even apart from the concerns set forth above, it is also problematic that the Bulletin creates ambiguity that in turn puts consumers at risk. The Bulletin could result in decreasing the onus Congress intended to place on healthcare providers and payors, -- the responsibility to ensure accurate billing -- and instead potentially shift some, or all, of that burden to medical debt collectors, which rely on the providers to provide accurate balances for collection. The Bulletin as written, risks harming the purpose of the No Surprises Act, which was designed to ensure *accurate billing*. Consumers who have received medical services are in the best position to know the scope of the services they received and should be encouraged to take early, direct action to engage with their providers and insurers to resolve billing issues. Unfortunately, the Bulletin focuses instead on the back end of the credit cycle and gives consumers a false impression that the debt collection industry is responsible for billing issues that occurred on the front end, contrary to the explicit goals of the No Surprises Act.

In short, Bulletin 2022-01 goes beyond the CFPB's authority, contravenes the APA, and will create confusion in the marketplace, ultimately harming the consumers it aims to protect. It is also worth noting that Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act gives the CFPB the authority to regulate the offering and provision of consumer financial products and services under federal consumer financial laws. The medical industry is regulated by a variety of other federal regulators. ACA asks that this Bulletin is withdrawn and that all stakeholders, including consumers, be given the opportunity for robust involvement, before the CFPB seeks to impose any new requirements under the FDCPA or FCRA.

Sincerely,



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⁴ House Financial Services Committee Hearing, Bringing Consumer Protection Back: A Semi-Annual Review of the Consumer Financial Protection Bureau (October 27, 2021), *available at* <https://financialservices.house.gov/events/eventsingle.aspx?EventID=408560>.