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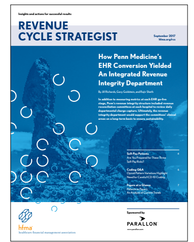
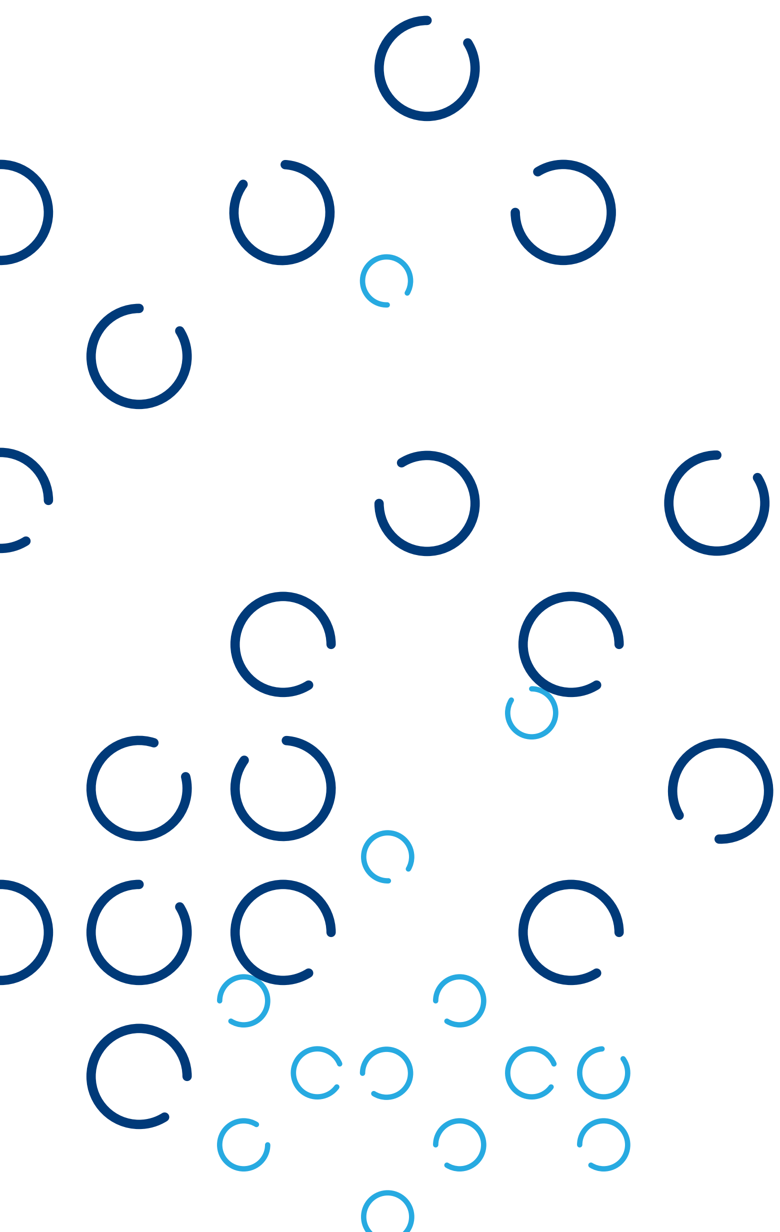




• self-pay patients •

Are You Prepared for These Three Self-Pay Risks?

By Leslie Newman

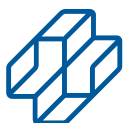
There are several ways hospitals can comply with federal debt-collection laws and avoid litigation.

Hospitals have been largely successful in meeting certain federal debt-collection requirements and improving the patient experience during the past decade. But they continue to face risks associated with three major statutes, including the Telephone Consumer Protection Act (TCPA), which has transformed the way providers and their vendor partners work with patients to collect payment for health-care services.

In recent years, the TCPA's broad and antiquated provisions coupled with an aggressive plaintiffs' bar have resulted in a barrage of class action lawsuits against hospitals. Also, other regulations that restrict collection activities pose new threats. Here's a look at the leading self-pay risk trends and how to limit litigation exposure.

TCPA: Hospital Challenges

The TCPA is a federal statute that prohibits non-consensual calls from autodialers to cell phones or numbers for which there is a charge. It also prohibits leaving pre-recorded messages on cell phones or landlines without consent. It is a strict liability statute, which means intent is not relevant. The TCPA carries a penalty of $500 to $1,500 per autodial call. The TCPA was never intended to prohibit or



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negatively affect legitimate business-related calls, but that is the result because courts are allowing these class action lawsuits.

New Litigation Risks

Initial litigation against hospitals focused on whether patients provided the necessary consent to be called with an autodialer about their medical bills. Hospitals and health systems responded accordingly, changing the consent language in their conditions of admission forms. Although that risk can be mitigated, the plaintiffs' bar has pursued an alternative pitfall in the law, which has led to class action lawsuits against hospitals for calling wrong phone numbers. The lawsuits take aim at healthcare providers and their vendor partners who call patients to discuss their bills but dial numbers that may have been listed on admissions forms, but are no longer correct—or plaintiffs allege are incorrect.

Any organization or vendor engaged in this activity is subject to significant litigation risk if it does not ensure they are calling a cell number that belongs to the patient or guarantor at the time of the attempted call. TCPA lawsuits have increased exponentially between 2015 and 2016 with overwhelming success for plaintiffs. Approximately 4,800 TCPA lawsuits were filed in 2016, a 32 percent jump from the year before. Because of the strict liability standard, the $500 to $1,500 penalty per autodialed call, and the fact that hospitals and their partners make millions of calls and have little to no control over a cell phone number no longer being associated with a patient, these cases are almost always settled to avoid costly and futile litigation.

TCPA Lawsuits Are Exploding

- Approximately 4,800 Telephone Consumer Protection Act (TCPA) lawsuits were filed in 2016.
- TCPA lawsuits increased 32 percent between 2015 and 2016.
- More than 21 percent of TCPA lawsuits are filed as class actions.
- Roughly one-third of the plaintiffs have filed cases before.

Strategies to Limit Exposure

It is critical that healthcare providers take the following steps to restructure debt collection activities and mitigate legal risks related to the TCPA and autodialer technology:

Update admission consent form language. Another option is to consider manually dialing until consent is obtained.

Make sure you have current phone numbers. Update/validate phone numbers at time of registration.

Put technology/vendor agreements in place. Proactively scrub for cell numbers and prevent multiple calls to identified or potential wrong numbers. If numbers cannot be confirmed as belonging to patients, shift those unconfirmed numbers to manual processes until the correct number can be confirmed, and ensure manual calling is done on compliant technology.

Take extra precautions. If a new cell number has been located via skip tracing because consent may not have been clearly given, ensure manual dialing until the right contact is confirmed.

Monitor outbound calls. Consider limiting the total number of outbound dials being placed to discrete phone numbers to minimize consumer discontent.

FDCPA: Regulation and Litigation

Like the TCPA, the Fair Debt Collection Practices Act (FDCPA) imposes regulatory limitations on how hospitals and licensed debt collection agencies may collect debt. It also presents new risks to healthcare providers. The FDCPA focuses on debts in default. It requires anyone defined as a "debt collector" under the FDCPA who is contacting guarantors about their debt on behalf of an underlying creditor to identify themselves as a debt collector and provide the debtor with a validation notice, which allows a 30-day period to dispute the debt. During this time, organizations may not engage in certain collection activities such as credit reporting. Hospitals, as the creditor, are not usually subject to the FDCPA, but they can be if they attempt to collect their own debt under another name to give the impression that a third-party debt collector is collecting its debt.

Debt-collection lawsuits can name both healthcare providers and vendors.

Common Mistakes

Litigation is increasing in the FDCPA world. Typically, both the FDCPA and TCPA are included when a hospital is sued. Unlike the TCPA, however, an FDCPA class action lawsuit has a maximum liability of $500,000 or 10 percent of an organization's net worth, whatever is lower. It is important that hospitals' debt collection vendors avoid common mistakes such as failing to announce themselves as a debt collector or taking collection activity action before the 30-day validation period has expired.

FDCPA Risk

A Fair Debt Collection Practices Act (FDCPA) class action lawsuit carries a maximum penalty of $500,000 or 10 percent of an organization's net worth.

Be aware of state-based FDCPA-like regulations. Although early-out (non-delinquent) medical debt is exempt from the FDCPA, multiple states mimic and are even more restrictive than the federal law's requirements. For example, some states have adopted statutes that require early-out debt collectors to identify themselves as a debt collector, obtain a debt collector license, and rquire them to comply with the same FDCPA notification requirements.

501(r): Charity Care Compliance

IRS Code Section 501(r) Additional Requirements for Charitable Hospitals was rolled out with the Affordable Care Act (ACA). The regulation requires not-for-profit hospitals to delay specific debt-collection activities. It allows patients to submit applications to obtain relief under a charity care program. Patients are allowed to apply within 240 days from the dates that their initial bills were sent for self-pay balances due. The ACA also delays "extraordinary collection activities" such as credit reporting, filing liens, and garnishing wages during the first 120 days following the initial bills that are sent to patients for self-pay balances due.

501(r) also requires not-for-profit hospitals to provide a summary of their charity policies. Although 501(r) penalties are quite serious—noncompliance could result in hospitals losing their not-for-profit statuses—some hospitals are still not compliant and have failed to create charity policy overviews, provide patients with correct notices, or delay collection activities for the appropriate amount of time.

Other Risks

In addition to the TCPA, FDCPA, and 501(r) rules, be aware of state attorney general offices that are enforcing state charity requirements, including those in Washington and California. Moreover, be aware of price transparency laws that protect consumers against surprise billing, requirements for specific notifications on patient statements, rules related to bill estimates, and requirements to post signage about hospital charity programs.

As hospitals continue to face scrutiny in these areas, their debt-collection partners must understand and be compliant with the law. Remember, lawsuits can name both healthcare providers and vendors. Make sure partners have obtained required licenses for each state and understand all restrictions on how they may contact patients regarding their medical bills. •

Leslie Newman
is managing counsel, Parallon
(leslie.newman@parallon.com).

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