

CFPB and IHS joint letter re: Protecting approved Purchased/Referred Care program patients from improper bills

DEC 12, 2024

The Consumer Financial Protection Bureau (CFPB) and the Indian Health Service (IHS) remind you of your responsibilities to protect IHS-approved purchased/referred care (PRC) program patients from improper bills and collection on improper bills under the Indian Health Care Improvement Act (IHCIA),¹ the Fair Debt Collection Practices Act (FDCPA),² and the Fair Credit Reporting Act (FCRA).³

Today, the IHS reiterates that the IHCIA prohibits medical providers, suppliers, or billers from holding approved PRC program patients liable for any costs or charges associated with the provision of the approved health care services.⁴ This includes co-pays and deductibles. Providers and suppliers must seek payment from all alternate resources first, then the provider or supplier may submit a bill to the PRC program. Providers and suppliers are prohibited from collecting **any** payments for these services from the patient, whether directly or through referral to an agent for collection. This includes but is not limited to **any** balance remaining on the original bill after Medicaid or the PRC program has made payment.

The CFPB is clarifying today how the FDCPA and FCRA apply to attempts by debt collectors to collect improper bills from approved PRC patients. Debt collectors may be strictly liable for violating the FDCPA when they attempt to collect from approved PRC patients improper bills that are not actually owed by the patient or are in the wrong amount. Debt collectors also may violate the FCRA when they furnish inaccurate information, including information about improper bills. Such reporting also may demonstrate that furnishers lack reasonable written policies and procedures regarding the accuracy and integrity of information they furnish.

We urge healthcare providers, medical billers, and debt collectors to examine their practices to ensure that they comply with the IHCIA, FDCPA, and FCRA.

Background

Almost three million individuals report being American Indian or Alaska Native (AI/AN) in the United States, and 6.3 million report this ancestry in combination with one or more races.⁵

Native communities are disproportionately affected by medical debt in collections. As documented in [a recent CFPB report \(cfpb.gov/data-research/research-reports/medical-collections-on-credit-reports-in-native-american-communities/\)](https://cfpb.gov/data-research/research-reports/medical-collections-on-credit-reports-in-native-american-communities/),⁶ people in Native communities are almost twice as likely to have medical debt in collections on their credit records compared to the national average,⁷ and the average amount of debt in collections is about 33 percent higher than the national average.⁸ Moreover, medical debt is often related to factors over which a person has limited control, like proximity to a year-round primary care facility in the IHS system and state Medicaid expansions. One of the most striking issues that emerged through the CFPB's research into AIAN medical debt was the consistent report that many Native consumers ended up with medical debts in collections for bills that Native consumers should not owe.

The IHS is responsible for providing federal health care services to AI/AN individuals. Direct care provided at IHS facilities is free to IHS beneficiaries, and IHS also pays for specialized services or emergency care delivered by private providers through the PRC program, subject to the PRC program authorities. Patients are not liable for any costs or charges associated with the services authorized under the PRC program, which was formerly known as the Contract Health Services program.⁹ Specifically, the IHCIA states:

A patient who receives contract health care services that are authorized by the [Indian Health] Service shall not be liable for the payment of any charges or costs associated with the provision of such services.¹⁰

Under this provision, approved PRC care should have no out-of-pocket costs for the patient. Yet consumer complaints and stakeholder feedback indicate that patients often receive bills or demands for payment from the provider or third-party debt collectors.

PRC-eligible patients whom IHS refers to non-IHS medical providers through the PRC program are often asked by private healthcare providers to assume financial responsibility by signing a patient waiver indicating that the patient will be responsible for the bill. In many cases, that patient waiver then becomes the purported basis for the medical provider or their debt collector to demand payment for services from approved PRC patients. However, under the express prohibition in the IHCIA, these waiver agreements are unenforceable with respect to services authorized by the PRC program and violate applicable federal law.

In other cases, complications in the PRC program billing process may lead to payment delays, which may lead providers to send bills to collections before IHS payment is received (or in some cases, even requested). Any concerns about apparent delays should be directed to the PRC program, so that such concerns may be addressed in a manner upholding the patient protections under the IHCIA. Stated otherwise, payment delays do not obviate the legal protections to which PRC patients are entitled. Many collectors also furnish information about the alleged debts to consumer reporting agencies, which then has negative consequences for those individuals' credit profiles. It may be that in some of these cases, the provider is not aware that patients should not be responsible for bills. To avoid these types of issues, the IHS is further strengthening the patient referral language by clearly placing the No Patient Liability

Clause directly on the referral while also providing detailed directions for how to submit claims to the contracted fiscal intermediary for payment.

Current Guidance

Today, IHS reiterates that:

- Patients are NOT liable for any costs or charges associated with the services authorized under a PRC referral. This includes co-pays and deductibles. Providers are PROHIBITED from collecting any payments for these services from the patient, whether directly or through referral to an agent for collection. If there are any questions about the status of a PRC referral or payment, they should be directed to the appropriate PRC program.
- Providers must adhere to the following steps before submitting a bill to IHS. Please note that if the provider is unable to receive payment due to the provider's/supplier's own failure to follow proper procedures (e.g., non-timely filing with the patient's alternate resource), neither the patient nor the IHS will be responsible for the bill. First, all alternate resources must pay primary to the IHS, because the IHS is the payer of last resort.¹¹ Next, after all alternate resources have been considered and have paid, the PRC program will pay in accordance with the applicable PRC rate rules. Please note that the PRC rate rules specify that payment made by Medicaid is payment in full, and there will be no additional payment from either the PRC program or the patient.¹² Furthermore, PRC payments made in accordance with the applicable regulations constitute "payment in full" under the law, and no additional charges may be imposed upon a PRC patient.¹³
- The IHS takes these matters very seriously. The IHS refers suspected violations by Medicare-participating hospitals to the Centers for Medicare & Medicaid Services (CMS), including instances where the patient was billed for services authorized under PRC.¹⁴ The IHS will continue assisting patients when they are improperly billed by PRC providers/suppliers, and this will include assistance with the submission of complaints to the CFPB for violations of laws within the CFPB's jurisdiction, such as the FDCPA and FCRA.

The CFPB also emphasizes that:

- **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."¹⁵ This may include misrepresentations about whether approved PRC patients owe particular debts or how much they owe. Debt collectors can be held strictly liable for violations under the FDCPA, i.e., they can be held liable for incorrect representations regardless of whether they base their representations on incorrect information provided by healthcare providers or insurance companies.¹⁶ Thus, debt collectors may violate the FDCPA by falsely claiming that a consumer is liable for costs associated with the services authorized under a PRC referral.
- **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.¹⁷ This may include misrepresentations about whether approved PRC patients

owe particular amounts and how much individuals owe. The FCRA and its implementing regulation also require furnishers to investigate consumer disputes to verify the accuracy of the information furnished, and to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information that they furnish. Reporting that a third party owes a debt to a healthcare provider when the underlying bill is prohibited by the IHCA may demonstrate that furnishers have failed to establish or implement reasonable written policies and procedures regarding the accuracy and integrity of information they furnish. And a furnisher may also violate FCRA or Regulation V if it fails to meet its dispute obligations with respect to information related to such debts.

Conclusion

The CFPB and IHS expect medical billing practices and debt collection to comply with federal law. Medical providers for patients seeking services authorized under PRC, their billing agents, and debt collectors should examine their practices to ensure compliance with the IHCA, the FDCPA, and the FCRA, and remediate any harm to consumers stemming from violations. We also encourage medical providers and their billing agents 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,

Roselyn Tso
Director
Indian Health Service

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Director
Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau is a 21st century agency that implements and enforces Federal consumer financial law and ensures that markets for consumer financial products are fair, transparent, and competitive. For more information, visit www.consumerfinance.gov.

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Endnotes

1. 25 U.S.C. §§ 1601 et seq. ↩
2. 15 U.S.C. §§ 1692 et seq. ↩
3. 15 U.S.C. §§ 1681 et seq. ↩
4. 25 U.S.C. § 1621u. ↩
5. 2017-2021 ACS 5-Year Selected Population Tables (SPT) and American Indian and Alaska Native Tables (AI/ANT) Documentation. ↩
6. See Christiana Stoddard, Susan Kerbel, and Rosa Alcazar-Gonzalez, Medical Collections on Credit Reports in Native American Communities, December 2024, <https://www.consumerfinance.gov/data-research/research-reports/medical-collections-on-credit-reports-in-native-american-communities/>. (cfpb.gov/data-research/research-reports/medical-collections-on-credit-reports-in-native-american-communities/) ↩
7. People in Native communities were almost twice as likely to have medical debt in collections on their credit records compared to the national average as of December 2023. This rate (about eight percent) was similar in other rural, high poverty tracts. *Id.* ↩
8. The amount of medical debt in collections on credit reports is also higher in Native communities. Among consumers with medical debt collections tradelines in December 2023, the average total amount in medical collections on consumers' credit records was about \$4,000 in Native communities, 33 percent higher than the national average and 28 percent higher than in other rural high poverty areas. *Id.* ↩
9. The Consolidated Appropriation Act of 2014 adopted the new name, Purchased/Referred Care (PRC), for the Contract Health Service (CHS) program. The name change did not change the program or have any effect on the authorities that govern or apply to the program. ↩
10. 25 U.S.C. § 1621u(a) ↩
11. 25 U.S.C. § 1623(b); 42 C.F.R. § 136.61 ↩
12. See 42 C.F.R. § 136.203(b)(5), 42 C.F.R. § 136.30(g)(5); see also 42 C.F.R. § 136.203(d)(2), 42 C.F.R. § 136.30(j), and 25 U.S.C. § 1621u. ↩
13. See 42 C.F.R. § 489.29, 42 C.F.R. § 136.30, 42 C.F.R. § 136.203, and 25 U.S.C. § 1621u; see also 42 U.S.C. § 1395cc(a)(1)(U). ↩

14. See 42 C.F.R. § 489.29, 42 C.F.R. § 136.30, and 42 U.S.C. § 1395cc(a)(1)(U); see also 25 U.S.C. § 1621u. ↩
15. 15 U.S.C. § 1692e. ↩
16. See Debt Collection Practices (Regulation F); Deceptive and Unfair Collection of Medical Debt, 89 Fed. Reg. 80715, 80718 (Oct. 4, 2024). ↩
17. 15 U.S.C. § 1681s-2(a)(1)(B). The consumer must send the notice 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 the FCRA's 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.” *Id.* § 1681s-2(a)(1)(A). ↩

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