

Blog Post

Direct Patient Billing Can Create Provider Liability in Florida

October 21, 2019

To bill or not to bill, that is the question. Or, more appropriately, who to bill and when to bill, that is the question. Providers who bill patients under the circumstances described below may face liability. What is a provider to do?

A patient was injured in the course of her employment in December 2013 and applied for workers' compensation benefits. As part of her treatment for her injury under workers compensation, she had a preoperative chest x-ray taken in October of 2014, and a clinical laboratory provided medical testing. She received bills for these services from the providers. The patient alleged that the providers knew she was a workers' compensation patient and thus not responsible for paying the medical bills. Despite this knowledge, the providers continued to send bills demanding payment over a period of many months. In June of 2015, the patient received a bill from a collection agency on behalf of one of the providers. In response, the patient's workers' compensation carrier contacted the provider to inform it that the patient was not responsible for payment and warned that billing the patient was a violation of the Workers' Compensation Law (WCL). Despite this warning, the provider sent yet another bill to the patient in July of 2015. The second provider, a clinical laboratory company, billed the patient twice for what the patient alleged was an illegitimate debt.

Related Work

Healthcare
Healthcare Fraud and Abuse
Hospitals and Health Systems

Related Offices

Miami

Health Law Rx Blog

Akerman Perspectives on the Latest Developments in Healthcare Law

[View this Akerman blog](#)

The patient filed two separate lawsuits in the circuit court under the Florida Consumer Collection Practices Act (FCCPA). She alleged that, as an injured employee under the WCL, two medical service providers illegally attempted to collect money from her. Her complaints alleged two violations of the FCCPA, section 559.72(9), for attempting to collect an illegitimate debt, and section 559.72(5), for disclosing false information to a collection agency.

The trial courts dismissed her actions, finding that because the WCL grants exclusive jurisdiction over any matter concerning reimbursement to the Florida Department of Financial Services, the patient is precluded from filing her claims under the FCCPA. However, the appellate court reversed both dismissals and held that the WCL does not preclude the patient's claims filed against the providers for a violation of the FCCPA. A patient may bring a claim against a provider under the FCCPA based on the following three elements: 1. the debt is illegitimate, 2. the provider threatens or attempts to enforce that debt, and 3. the provider has knowledge that the debt is illegitimate.

Providers should also be aware that the FCCPA prohibits providers from communicating "...with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address,..." [Section 559.72(18), Florida Statutes]. Providers who continue to send statements to or attempt to contact a patient regarding a bill after receipt of a letter regarding the bill from the patient's attorney may be liable for actual damages, statutory damages, attorneys' fees and court costs.

If a provider receives a letter of representation from an attorney regarding a debt, it is important to immediately suppress any further communication with the patient regarding the account. If the provider uses a billing service or a collection agency, the provider should immediately instruct them to

suppress all communication with the patient. A delay in suppression may result in the provider, the billing service, or the collection agency sending a statement or making phone calls to the patient in violation of the FCCPA. The provider may then be served with a lawsuit or receive a demand from the patient's attorney for payment to settle the violation to avoid costly litigation.

In summary, providers should be aware that under the Florida Consumer Collection Practices Act, a patient may bring a civil action against the provider for attempting to enforce a debt when the provider knows that the debt is not legitimate. In addition, a patient may bring an action against a provider for disclosing false information to a collection agency, or communicating with the patient if the provider knows that the patient is represented by an attorney.

Keep collection records current and ensure that key information is communicated timely to employees and contractors attempting to collect patient accounts. If an inadvertent error occurs, the provider may not be held liable under the FCCPA if the provider shows by a preponderance of the evidence that the violation was not intentional and resulted from a *bona fide* error even though there were procedures in place to avoid the error. But avoidance of the error is preferable to incurring the cost of defending against an avoidable lawsuit.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.