



Protecting Medical Service Providers from the Extension of Credit

According to the Centers for Medicare & Medicaid Services (a federal US Government Agency) the National Health Expenditure for all Americans in 2019 reached \$3.8 trillion or an average of \$11,582 per person. The average family of four in the U.S. spent \$25,011 on healthcare in 2020 including both premiums and deductibles. The average annual deductible in 2021 is \$5,490. If a patient has a major health issue or requires surgery of almost any type, it is not unreasonable to believe that the patient will be subject to pay their entire deductible and their co-pay responsibility due to the one illness or surgery. Additionally, the Federal Reserve recently reported that the median savings amount held by an American household is only \$5,300. A patient will most likely be unable to work due to the illness or surgery and thus may be off work for a prolonged period of time. The \$5,300 in savings will be used up fairly quickly for everyday living expenses with only a small portion, if any, being used towards paying their insurance deductible.

What is a Medical Service Provider (“MSP”) to do in that case? After all, the MSP has rendered their services and are entitled to the fees and expenses charged for the provided medical services.

Typically, the MSP will take a multi-pronged approach. First, they will bill the patient’s insurance company for the amount due for the medical procedure. They will receive from the insurance company the payment for the amount due less the amount of the patient’s deductible and the patient’s co-pay responsibility. Second, depending upon the patient’s financial situation (income vs expenses, debt vs assets, etc.) the MSP may write off a certain amount of the bill to charity. Finally, the MSP will present the patient with the bill for the remainder. In many instances the patient will ask if they can make monthly payments until the bill is paid off. The MSP, wanting to get paid, agrees and puts the payment plan with the patient in writing.

This last circumstance is the topic of this paper. Regulation Z (“Reg Z”), which is issued by the Consumer Financial Protection Bureau (“CFPB”) implements the Federal Truth in Lending Act (“TILA”). TILA is an integral part of the Consumer Credit Protection Act, which governs any transaction when an individual or a business issues consumer credit.

Reg Z Section 1026.1(c)(1) states that consumer credit is offered when four conditions are met:

1. The credit is offered or extended to consumers;
2. The offering or extension of credit is done regularly;
3. The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and
4. The credit is primarily for personal, family, or household purposes.

Many MSPs object to the notion that they are issuing credit or any type of loan product. They reason that they are not a bank, that lending is not their business and (in most instances) they do not charge interest so they couldn’t possibly be making loans.

The bottom line is this. A careful reading of Reg Z makes it clear that the offering or extension of credit done regularly rather than as an entity’s primary business **and** is subject to a finance charge **or payable by a written agreement in more than four installments and** is primarily for *personal, family, or household purposes* means that the MSP has in fact made a Reg Z covered extension of credit. This extension of credit opens the MSP up to a previously unknown world of laws, regulations and licensing that govern lending both on a federal and a state level.



These laws and regulations include the TILA and Reg Z, the Equal Credit Opportunity Act (ECOA) and Regulation B (“Reg B”), the Electronic Funds Transfer Act (EFTA) and Regulation E (“Reg E”), the Unfair, Deceptive and Abusive Acts or Practices Act (UDAAP), and possibly the Fair Debt Collections Practices Act (FDCPA) and Regulation F (“Reg F”) as well as the Fair Credit Reporting Act (FCRA) and Regulation V. Those are just the applicable federal laws. State laws include state variations of each of those regulations as well as licensing requirements of some states that govern consumer credit.

Reg Z and TILA govern the disclosures that need to be presented to a consumer when an extension of consumer credit is made. In most instances, a MSP will create a payment plan with a consumer patient that will exceed four monthly payments, depending upon the amount of the debt. Even if the MSP does not charge interest, the fact that the payment plan is set down in writing and exceeds four payments makes this a Reg Z covered loan. This type of payment plan or loan is considered to be closed-end credit. Closed-end credit has a set payment amount over a defined period of time resulting in a zero balance.

Given the limited scope of the loan, many of the required disclosures will not be applicable. However, there are several disclosures that should be included in the payment plan documentation. These disclosures, which are required to be in a specific table format (defined by Reg Z) include:

1. The applicable Annual Percentage Rate
2. The calculated Finance Charge
3. The Amount Financed
4. The Total of Payments
5. The Total Sales Price

It is not enough to tell a consumer that they will pay X dollar amount per month until their bill is paid off.

There are other lesser, but no less applicable, regulations that govern consumer debt under Reg Z. These include specific rules concerning crediting of payments, advertising rules and post consummation communications.

Furthermore, ECOA and Reg B are also applicable for payment plans. Those two laws promote the availability of credit to all creditworthy applicants without regard to:

- Race
- Color
- Religion
- National origin
- Sex
- Marital status
- Age (provided the applicant has reached the age of majority)
- The fact that all or part of the applicant’s income derives from a public assistance program
- The fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act

A MSP cannot consider any of these consumer attributes when making a decision to offer, approve and service the consumer loan.



Reg B requires that everyone should be offered a credit plan that needs it. Everyone should be evaluated in making a credit decision the same as anyone in a like circumstance. This requires a MSP to have policies and procedures in place concerning the offering, granting, and servicing of the account in which practically all discretion is taken out of the equation. Credit decisions should be based on table driven data decided on beforehand to account for risk. A MSP should not require any information that allows the MSP to know what prohibited class attributes a consumer may fall under (other than age and that is just to determine if they have reached the age of majority). For example, an application asks for a patient's name, address, social security number and date of birth studiously avoids any of these protected classes. It makes it very difficult on the part of a litigious patient to bring any sort of complaint or court action claiming discrimination if the MSP never asked for nor retains any of that information on file.

Another applicable of Reg B is the requirement of sending notifications to the patient within 30 days after the application has been made for credit (either in writing or orally). The notice to the patient must be in writing and inform the patient of one of the following:

1. An approval for credit
2. Informing the patient their application is incomplete
3. Denying the patient's application for credit or taking an adverse action on an existing account (lessening or closing an active account)

In the case of a denial then the MSP must send an adverse action notice, which has very specific requirements that are beyond the scope of this paper. It is only important to know that these notices are required when granting or denying consumer credit.

As stated earlier there are other federal laws that are applicable to a lesser degree meaning they don't have as many rules to comply with as TILA and ECOA but are still important to know and prepare for.

One point worth discussing is the federal Fair Debt Collections Practices Act (FDCPA). Although, under most circumstances, MSPs are not included in the coverage of the FDCPA. However, recent pronouncements and rules issued by the CFPB have a direct effect on the ability of MSPs to collect on outstanding medical bills.

In 2014, the CFPB conducted a study entitled "Consumer credit reports: A study of medical and non-medical collections." The study found that given the nature of medical debt with its expenses from many different providers for the same condition, timing of insurance payments, etc., that medical debt is adversely affecting all consumers adversely when reported to credit reporting agencies.

In response to this study, many state legislatures passed laws that prohibit medical debt from being placed on a consumer's credit report until after 180 days after the account is first reported to the consumer reporting agency. The three major credit reporting agencies also adopted this rule for all medical debts sent to their respective agencies.

This action makes it more difficult for 3rd party debt collection agencies to collect any medical bills on behalf of MSPs. A collection agency's best tool for collecting funds is the ability to put the debt on a consumer's credit report. One of the cardinal rules of debt collection is that the older the debt the harder it is to collect. The urgency to pay a bill in the mind of a consumer lessens over time.



"Lack of price transparency and the complex system of insurance coverage and cost sharing means many consumers, including those who have health coverage, receive medical bills that are a source of confusion. As a result, they can incur medical debts in collections without certainty about what they owe, to whom, when, or for what. This uncertainty could affect any consumer, regardless of their financial condition."

Consumer Financial Protection Bureau
(CFPB) Study, 2014



This new rule essentially gives the consumer almost 9 months to avoid paying a MSP. Typically, a MSP will not charge off a bill until 90 to 120 days have passed since the last payment was made. Tack on another 180 days before any credit reporting can take place and 9 months have passed before the medical bill shows up on the consumer's credit report.

On November 30, 2021, new Reg F became effective. Reg F is the new implementing regulation of the FDCPA. Reg F has new provisions that will require a MSP to work with their 3rd party debt collection agency to determine the proper 'itemization date' for a debt. The collection agency is required to list the validation notice that they are required to send to the patient. The validation date must be one of the following:

1. Charge off date
2. Last transaction date
3. Last payment date
4. Last statement date
5. Judgment date

Additionally, the MSP must forward any subsequent, payments, credits or fees charged between the 'itemization date' and the printing of the validation notice to the collection agency.

All of these credit reporting and FDCPA issues can be avoided however by utilizing a finance company like Choice. That same CFPB report states "The process of incurring medical expenses and the process by which such expenses are turned into medical bills differs from recurring bills from installment lenders, credit card companies, utilities, or telecommunications companies." Choice would not be subject to the 180-day rule concerning credit reporting. As to complying with Reg F, Choice is better situated than an MSP to work with a 3rd party collection agency to ensure proper reporting.

There is also the matter of state statutes and regulations as well as state licensing. About half of the states in the union have some sort of licensing or notice requirement when a non-bank entity conducts consumer lending. Although there are some exceptions that a MSP may fall into, the majority of these states make their licensing requirements applicable to any entity making consumer loans or extending consumer credit. Keep in mind that even if a state doesn't require licensing of a MSP, it doesn't mean that the MSP can ignore the specific lending requirements of the states they operate in, or the federal laws that we have described above.

Choice Payment Services, Inc. is a financial technology company focused on changing patient financing for the better through its comprehensive financing solutions, innovative technology and world class provider and patient support. Choice gives our MSP partners the control to better serve their patients. Choice offers a complete solution to an MSP which gives them the benefit of making credit available to all patients without accepting the regulatory and legal risk. Choice's bank partner model removes the necessity of an MSP from having to comply with any of these laws, statutes and regulations and even state licensing! Choice takes on the legal and regulatory risk while giving the MSP the ability to provide financing to all applicants, regardless of income or credit score and participate in Choice's unique revenue sharing plan.