Good News for Revenue Cycle Management Companies

Section 1.01 Recent Supreme Court Decision on the Scope of the Fair Debt Collection Practices Act Has Positive Ramifications for Revenue Cycle Management Companies

Background

The U.S. Supreme Court, in its June 12, 2017, decision, *Henson v. Santander Consumer USA, Inc.,* resolves and clarifies key questions with respect to the applicability of the Fair Debt Collection Practices Act ("FDCPA") in a manner that is helpful to revenue cycle management ("RCM") companies. In the first opinion authored by new Justice Neil Gorsuch, the Court resolved the question of whether a debt purchaser could be viewed as a "debt collector" under the FDCPA such that the requirements and remedies contained within the FDCPA would apply. The Court unanimously held that the term "debt collector" does not include a company that has purchased debts for its own account and is therefore attempting to collect debts for itself. Rather, the focus of the term "debt collector" is on third party debt collection agents that do not own debts but attempt to collect on behalf of their debt owner clients.

Significantly, the Petitioners (the plaintiffs in the underlying case) argued for a holding that the term "debt collector" includes debt purchasers by, among other things, attempting to convince the Court that the phrase "regularly collects or attempts to collect…debts owed or due…another" (from the FDCPA's definition of "debt collector") means that a debt collector is any party who regularly seeks to collect debts previously owed to another. In other words, the Petitioners argued that, even though Santander Consumer USA had purchased the debt and was not attempting to collect it on behalf of another, it was nonetheless attempting to collect a debt previously owed to another and was therefore a debt collector for purposes of the FDCPA.

In attempting to support the foregoing argument, the Petitioners pointed to the exception to the FDCPA's definition of debt collector (an exception commonly relied upon by RCM companies) for "any person collecting or attempting to collect any debt owed or due…another to the extent such activity…concerns a debt which was not in default at the time it was obtained by such person." The Petitioners argued that this exception anticipated a company might obtain a debt owed to another, and that therefore the word "owed" must refer only to the previous owner. Moreover, the Petitioners claimed that this conclusion was necessary because once a company has "obtained" a debt, the debt would not be owed to another. However, the Court rejected this strict reading, stating that "[I]t's easy enough to see how you might also come to possess (obtain) a debt without taking ownership of it. You might, for example, take possession of a debt for servicing and collection even while the debt formally remains owed another." In the course of its discussion, the Court also very helpfully affirmed that "…the statute surely excludes from the debt collector definition certain persons who acquire a debt before default…"

Impact on RCM Companies

The Supreme Court's holding in this case, and its response to the foregoing arguments of the Petitioners, is helpful to RCM companies for several reasons:

First, as a general matter, the Supreme Court's broad reading of the term "obtained" in the exception for debts not in default at the time they are obtained preserves and clarifies the availability of the exception utilized by most RCM companies in their standard accounts receivable management practices. Had the Court agreed with the Petitioners'

strict reading of “obtained,” RCM companies that do not actually purchase debt might have lost the ability to utilize the exception and thereby avoid the application of the FDCPA. However, the Court disagreed with the Petitioners’ strict reading, stating that “obtained” can, and often does, refer to taking possession of a piece of property without also taking ownership. Thus, RCM companies can readily assert that they “obtain” accounts from their clients and can thereby utilize the exception.

Second, situations arise in which health care providers switch from one RCM company to another, and the successor RCM company receives preexisting accounts that were formerly managed by the prior RCM company (i.e., “converted” accounts). For the successor RCM company, questions arise as to whether the converted accounts are in default such that the successor RCM company would not be able to utilize the FDCPA exception for debts not in default at the time they are obtained. We recommend that such successor RCM companies verify and obtain appropriate written assurances from their clients that converted accounts are not in default. However, provided that RCM companies take these steps and although some risk can still exist, the Court’s clarifications and affirmations are particularly helpful to companies receiving such converted accounts since such accounts are more likely to test the boundaries of the FDCPA exception.

Lastly, for companies that actually “purchase” medical debts from their clients, the Court’s opinion resolves a key issue. Such companies now know that the term “debt collector” does not include a company that has purchased and attempts to collect debts for its own account. Thus, companies that fall into this category will not be considered debt collectors, even if they are not able to utilize the exception for debts not in default.

Conclusion

It remains to be seen how Congress, the Consumer Financial Protection Bureau and the Federal Trade Commission will react to this decision. However, absent further legislative or regulatory action, the Court’s decision constitutes a clear win for RCM companies and similar entities.

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