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# Legal and Practical Issues of Billing and Collection Practices

An overlooked byproduct of health care reform and the general economic recession is the *multiplier effect* of larger deductibles and co-pays and the reduced ability of patients to make those payments, resulting in more collection problems and the perhaps unintended creation of consumer financing issues. This article is intended to address both the legal and practical issues of your billing and collection practices.

## Legal issues

Two legal issues that are often overlooked are the federal Truth in Lending Act (TLA) and the federal Fair Debt Collection Practice Act (Fair Debt Act).

Most physicians jump to the conclusion that the TLA does not apply to them because they are not engaged in consumer financing. However, TLA applies to any person who regularly extends consumer credit; the definition of consumer credit characterizes the transaction as one in which the party to whom the credit is extended is an actual person, and the services which are the subject of the transaction are primarily for personal, family or household purposes. This definition applies directly to the extension of credit for medical services, and the TLA will apply if your practice meets either of these thresholds:

1. You regularly extend credit, which is defined as extending credit more than 25 times per year; and
2. The credit is either subject to a finance charge or payable and subject to a written agreement in more than four installments.

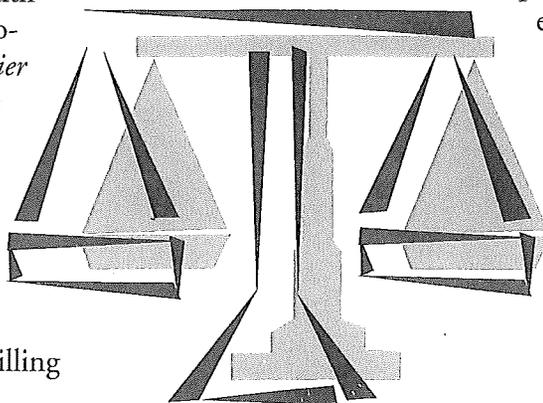
Interest, or "the finance charge," does not include charges for actual, but unanticipated late payment, for exceeding a credit limit, or for events of default or delinquency, such as checks returned for insufficient funds.

If you are extending credit and subject to TLA, then you should consult with your lawyer to prepare the disclosure documents necessary for the Truth in Lending Disclosures, which are basically the same documents you receive in any of the lending transactions in which you may have been involved.

The Fair Debt Act makes it unlawful for anyone to give a consumer, in this case the patient, the false belief that the person other than the creditor is partici-

pating in the collection process. For example, if you threaten to turn patients over to a collection agency, but actually have no arrangements to do so, you are violating the act. Therefore, you should follow these guidelines with regard to compliance with the Fair Debt Collection Practice Act:

- Do not threaten to refer a bill to a collection agency or



take any other action unless you plan to do so or regularly do so with others.

- Do not disclose to any third party, over the phone or otherwise, that you are attempting to collect a debt from a patient.
- Do not send correspondence that reveals collection activities, such as post cards or envelopes with "past due" stamped on the outside.
- Do not call patients before 8 a.m. or after 9 p.m., or at work, if you know they are not permitted to take personal calls.
- You may not call a patient directly if the patient has advised you he or she is represented by counsel.

**Practical issues**

In order to ensure that your medical practice is compliant, it is prudent to create a self-pay financial policy. A written financial policy not only helps your office support staff to be consistent in how self-pay collections are implemented, but also allows your patients who have self-pay balances to know what to

expect from your practice. Consider including the following elements in your policy:

- *How and when your practice verifies patient insurance coverage.* The person who verifies insurance should be instructed to document co-payment amounts by specialty and/or type of service into the patient chart so that office staff knows exactly what to collect from the patient on the date of service.
- *Specifics about what the patient can expect for collection of other patient-responsible balances such as deductibles and co-insurance amounts.* Explain the billing cycle to every patient. Inform them about your patient invoicing procedures, such as the frequency of invoicing and the types of collection activities your practice employs.
- *Patient-due statements.* Design a statement that is readable, that clearly identifies the balance due, specifies the due date and clearly states how patients can contact your office.
- *Bad addresses.* Create a procedure to quickly investigate patient statements that are returned to you due to a bad address. If you are unable to correct it, the patient

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# Med Law Blog



Blog published by  
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chart should be flagged so that any future contact with the patient, including subsequent appointments and invoices, are halted until the address is updated.

- *Reporting bad debt.* If you determine that you want to affect a patient's credit score, you may choose to sign-up with a credit bureau. Patients' concerns about bad debt reporting may motivate them to pay you promptly.
- *Financial hardship.* What criteria does your practice utilize to reduce a patient-due balance? If your practice participates with Medicare, you need to be certain that you are charging all payers equally. This means that co-payments, deductibles and coinsurance amounts are not written off subjectively. Develop standard discounts based on income guarantees that self-pay reductions are handled equitably and objectively.
- *Payment methods that are accepted by the practice.* For example: cash, checks, payment plans, debit cards and credit cards.

✓ *Cash.* Collect co-payments on the date of service, preferably at patient check-out. Practices that collect at check-in may miss co-payments that are assessed by type of service. If you accept cash, be sure to have procedures in place for daily reconciliation.

✓ *Payment plans.* Your policy should specify acceptable payment thresholds with the goal being to collect all balances in three months or less. Determine if your practice management system has functions that can easily create payment coupons. This can help your patients to keep their payment commitment. If your financial policy allows for assessing interest, make sure that the system is set-up to follow TLA guidelines.

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### ***After you've established your policy, take the time to train your front desk and billing staff.***

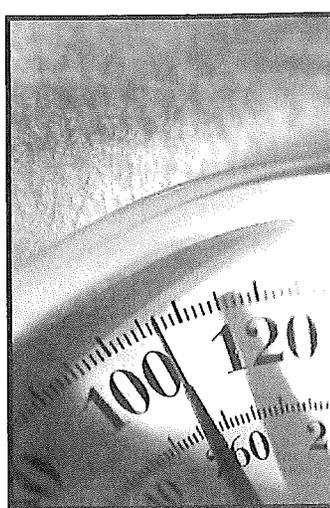
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✓ *Debit and credit cards.* Think about ways to make it easy for your patients to pay their balances, including giving patients an online payment option.

After you've established your policy, take the time to train your front desk and billing staff. Practices can be exposed to legal liability simply due to an employee who is not appropriately trained or who is uncomfortable or incapable of accurately communicating with patients who are delinquent.

Complete understanding of a well-designed financial policy, combined with frequent staff training and refresher seminars—especially with regard to the Fair Debt Act guidelines, patient communications and conflict resolution techniques—can assure legal compliance, patient satisfaction and a steady cash flow regardless of the many economic changes that you face.

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Allegheny County Medical Society is offering free posters explaining body mass index (BMI) and showing a colorful, easy-to-read BMI chart. The posters can be used in your office to help you talk about weight loss and management with your patients.

To order a quantity of posters, call the society office at 412-321-5030. You can view or download a smaller version online at [www.acms.org](http://www.acms.org).

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