

WATERBURY HOSPITAL
ADMINISTRATIVE POLICY & PROCEDURE MANUAL

POLICY: CHARITY CARE

CATEGORY: MANAGEMENT OF INFORMATION

PAGE (s): 3

OWNER: DIRECTOR, PATIENT ACCOUNTS & FINANCIAL SERVICES

ORIGINATED: 12/5/97
(From PAFS manual)

LAST REVIEWED: 11/11

LAST REVISED: 8/13

RETIRED:

SCOPE: Determination of when charity care is appropriate.

PURPOSE: To make provisions for situations in which charity care is appropriate based on aggregate balance and Encounter review.

POLICY: It is the policy of Waterbury Hospital to appropriately offer charity care in situations where the responsible party for the balance due does not have the financial resources necessary to satisfy their obligation within a reasonable period of time.

1. All patients who request consideration for charity care will be required to apply for public assistance in addition to completing a charity care application unless identified as ineligible by a qualified case worker.
2. In order to be considered for charity care, full financial disclosure is required including:
 - a. All sources of income available at the time of application;
 - b. Assets excluding:
 - i. Primary Residence;
 - ii. Vehicles required for commuting to or facilitating employment;
 - iii. Retirement Accounts.
3. Responsible parties with assets of \$7,500 or less (\$15,000 for a couple) will receive the following discounts based on their annual household income and the published federal poverty guidelines in effect at the date of application:

Income as a % of FPL	Discount
<200%	100%
<= 225%	60%
<= 275%	40%
<= 300%	20%
<= 400%	10%

4. Charity care discounts are to be applied after the 50% uninsured discount from charges.
5. Documentation required to validate declarations made on the charity care application shall include:
 - a. A credit report;
 - b. Most recent 1040 tax return;
 - c. Copies of all bank statements to include but not limited to:
 - i. Checking accounts;
 - ii. Savings accounts;
 - iii. Investment accounts;
 - iv. Certificates of deposit
 - d. Proof of income for the immediate 12 months preceding the application date.
 - e. Public assistance determination.

PROCEDURE:

1. The availability of charity care will be disclosed on all dunning notices issued prior to bad debt assignment.
2. Patients who indicate they are unable to pay for services rendered will be offered charity care;
3. Financial Counselors shall evaluate each applicant's eligibility.
4. Accounts determined to be eligible for charity care discounts shall require the following authorization based on amount to be adjusted:
 - a. PAFS Manager < \$5,000
 - b. PAFS Director \$5,000 or more
 - c. Chief Financial Officer \$10,000 or more
5. Patients shall be issued a determination letter within 30 days of receipt of a completed charity care application.
6. ~~Patients who do not apply for or do not qualify for charity care will be expected to pay the balance due. For uninsured patients, this will be equivalent to 50% of charges. Insured patients will be expected to pay any deductible or co-payment due in addition to 50% of non-covered charges.~~
7. ~~Patient who do not enter into a payment plan or pay satisfy the balance due will be placed with a collection agency for further collection efforts. The collection agency may report the balance due to credit reporting bureaus and/or initiate legal action to resolve the debt.~~

WATERBURY HOSPITAL
ADMINISTRATIVE POLICY & PROCEDURE MANUAL

Approved:

Mark Sammartano
Director, PAFS

Date

Approved:

CFO/VP Finance

Date

WATERBURY HOSPITAL
ADMINISTRATIVE POLICY & PROCEDURE MANUAL

POLICY: UNINSURED PATIENT DISCOUNT		
CATEGORY: MANAGEMENT OF INFORMATION		PAGE (s): 2
OWNER: DIRECTOR, PATIENT ACCOUNTS & FINANCIAL SERVICES		ORIGINATED: 4/13
LAST REVIEWED: 4/15	LAST REVISED:	RETIRED:

SCOPE: All PFS and Patient Access staff.

PURPOSE: To align balances due from uninsured patients with payments received from insurance carriers.

POLICY:

1. Uninsured patients shall be entitled to a discount of 50% of charges.
2. This discount shall be posted to the patient's account at the time a final bill is generated.
3. Any additional discounts such as prompt pay or charity care shall be calculated after the uninsured discount is applied.
4. Accounts forwarded to collections shall be placed net of the uninsured discount.

PROCEDURES:

1. Posting of the uninsured discount shall be automated through the HIS in place at the time the bill is generated.
2. In the event insurance coverage is identified after the uninsured adjustment has been posted, the adjustment shall be reversed and any applicable contractual allowance posted as per standing protocol for the specific payer.

WATERBURY HOSPITAL
ADMINISTRATIVE POLICY & PROCEDURE MANUAL

UNINSURED PATIENT DISCOUNT

Approved:

Mark Sammartano
Director, PAFS

Date

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Edward Romero
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Date

Waterbury Hospital CREDIT & COLLECTION MANUAL

Bad Debt - Collection Agency Referral

CATEGORY: Credit & Collection	Policy: COLLECTION AGENCY REFERRAL
REVIEWED: 06/10	REVISED: 06/10
RETIRED:	Comments:

Purpose: To define the bad debt referral process and maximize cash flow by extending additional collection efforts on uncollectible encounters.

I. POLICY

It is the policy of Waterbury Hospital to transfer patient accounts with outstanding patient liability to bad debt only after all collections efforts have been exhausted. All encounters that are sent to bad debt will meet the standards outlined in the procedure below.

II. PROCEDURE

Once an encounter has been deemed uncollectible according to the Reasonable Collection Effort Policy Waterbury Hospital will refer unpaid patient-due balances [deductibles, co-payments, co-insurances] to collection agencies for additional collection efforts.

Encounters will be referred to Bad Debt Collections in one of two ways:

- **Electronic:** Encounters returned from NCO Outsourcing *with* cancel codes specific to bad debt, will be identified by the cancel code and routed automatically to one of the two collection agencies
 - Encounters with cancel code 81 will be routed to Connecticut Credit
 - Encounters with cancel code 84 will be routed to American Adjustment Bureau
- **Manual:** Encounters returned from NCO Outsourcing *without* cancel codes specific to bad debt, will be reviewed by follow-up staff. In the event that an encounter is returned for another reason. The encounter then needs to be referred to Bad Debts; this will be done annually by the Assistant Director of PAFS or the Reporting Analyst.

Waterbury Hospital staff and NCO (Self Pay vendor) will follow these general guidelines regarding the referral of overdue balances before moving the patient's account to collections:

- **Indigent or Medically Indigent Patients:** Waterbury Hospital will refer a patient to a collection agency unless it has been determined that the patient is uninsured, as per the state of Connecticut regulations governing free care. [PA 03-266].
- **Delinquency:** Waterbury Hospital must confirm that the patient account is delinquent (or 30 days past due).
- **Returned Mail:** The assumption is made that all statements, bills and letters reach the patient unless mail is returned. When returned mail is received, it is researched to find a current address. If mail is returned as undeliverable, and research does not produce a more current address, the encounter is placed manually into collection, regardless of age.
- **Bad Debt Determination Process:** Waterbury Hospital staff must confirm that the encounter has followed the Reasonable Collection Effort Policy before referring the encounter to a collection agency.
- **Disputes:** Waterbury Hospital and its collection agencies should be careful to make certain that the debt is not disputed or that there is not an insurance issue with which the Hospital and/or Collection Agency could resolve. If a patient indicates that they are experiencing health or financial difficulties, they should be referred to Waterbury Hospital Customer Service for Charity Care consideration or other alternate funding.
- **Letters of Protection:** As a rule, letters of protection are not accepted. Encounters that are in litigation for long periods of time should be referred to collection agencies unless the activity on the encounter warrants continued follow-up.

Waterbury Hospital is currently contracted with two collection agencies:

Connecticut Credit
90 National Drive, P.O. Box 1264
Glastonbury, CT 06033-6264
(800) 221-0405

American Adjustment Bureau
89 Willow Street, P.O. Box 2758
Waterbury, CT 06723
(203) 574-4200

1. Collection agencies will expend reasonable, tactful and diplomatic efforts to collect on overdue balances utilizing techniques available to them i.e. skip tracing, credit reporting, or predictive dialing.
2. If a collection agency believes that the patient balance should be pursued through litigation the agency will submit requests for approval to the Assistant Director of PAFS.
3. Payments made to Waterbury Hospital on bad debt encounters will be reported to the collection agencies on a daily basis via a vendor interface.
4. Payments made directly to collection agencies will be reported to Waterbury Hospital on monthly remittances.
5. All payments are gross and are posted directly to the patient encounters in the Cerner system.
6. Contracted fees will be remitted back to the collection agencies via special check request, approved by Director of PAFS and processed by the Accounts Payable Department.

7. Encounters can be recalled at any time due to specific situations with approval of Manager of Customer Service, Assistant Director of PAFS and/or Director of PAFS.
8. Statistics will be maintained on individual agencies to monitor patient complaints, liquidation and collection fee data. This report will be utilized to determine agency performance and recovery rates.

Note: Collection agencies must follow all pertinent regulations pertaining to debt collection to include Public Act 03-266, "An Act Concerning Hospital Billing Practices", effective 10-1-03. [See Uninsured Patient Policy]

Rebilling of Collection Agency Encounters Process:

It is expected that once Encounters are referred to collection agencies, the agencies will take over all aspects of handling the Encounter including billing or rebilling to third-parties.

In some cases encounters must be billed or rebilled by the hospital due to electronic media and contracts. If this should occur, the following will apply:

1. Collection agencies will provide third-party billing requests in writing
2. All required billing data must be provided by the agency and forwarded to the hospital immediately.
3. After billing has taken place, the encounters must be documented and the agency notified.
4. All requests for itemized bills can be honored by both agencies since both have access to the hospital system in their offices.
5. Collection agency staff may also come on-site to pull remittances for additional billing.

Settlement Request Procedure:

All efforts will be expended to collect all encounters in full, however when faced with an offer of settlement, the following guidelines will apply:

1. All facts, including assets and liabilities of the patient must be supplied.
2. The attorney making the settlement request must supply all documentation regarding the amount of the settlement.
3. Recommended settlement offers will be approved by the Director of PAFS (or the Assistant Director of PAFS if the Director is not available) based on the amount of the settlement and the balance due.

The following steps should be taken prior to the enactment of legal action:

1. Patient is sent an initial notice identifying the collection agency and the balance currently due the Hospital.
2. If there is no response to the initial notice, attempts are made to reach the patient by phone.
3. A second letter is generated thirty-one days after the initial letter and there are continued attempts to reach the patient by phone.
4. A third letter is generated fourteen days after the second.

5. If the agency is successful in getting a response from the patient, they determine if the patient agrees that the debt is due. If they agree, the agency attempts to enter into a repayment schedule.
6. When the patient agrees to repay their debt, the payment arrangement is monitored through a series of reminder notices. Additional follow up letters and phone calls are made if the payments become delinquent.
7. If the payment arrangement is not kept and several attempts have been made by phone and letter to bring the payments current, the agency recommends that the Hospital review the encounter. A determination is then made to forward the encounter to an attorney.
8. The agency might also ask the Hospital to review the file for referral to a collection attorney if they were never able to make contact with the patient through letters and phone calls and it had been determined that the patient had assets which justified suit being filed. These patients would have received a minimum of three letters over a 45-day period of time along with numerous attempts to reach them by phone.

Note: Typically, all attempts are made over a 90 to 120 day time period before considering this last course of action.

Compensation

Both Connecticut Credit and American Adjustment Bureau charge fees on a contingency basis. All monies collected by the agencies are forwarded to Waterbury Hospital on a monthly basis, along with an invoice for fees on encounters paid directly to Waterbury Hospital. All encounters are detailed on a monthly statement.

Bad Debt - Collection Agency Returns

Waterbury Hospital receives reports and/or electronic files on a periodic basis, identifying encounters that are deemed to be uncollectible by the collection agency. Agency contracts will stipulate the criteria for returning accounts to Waterbury Hospital which in most cases is one year [12 months] if there is no activity on the patient account.

Note: Waterbury Hospital reserves the right to audit and inspect encounters placed for collection with outside agencies.

Note: Waterbury Hospital will maintain accurate records reflecting which collection agency has been assigned to each encounter. Once encounters are assigned to an agency the agency must not be removed or changed unless by management for valid reason.

Waterbury Hospital CREDIT & COLLECTION MANUAL

Medicare Bad Debt Referrals

CATEGORY: Credit & Collection	Policy: Medicare Bad Debt Referrals
REVIEWED: 06/10	REVISED: 06/10
RETIRED:	Comments:

Purpose: To outline the procedure for referring Medicare deductible and coinsurance balances that are deemed to be uncollectible to Bad Debt.

I. POLICY

Medicare accounts with a patient liability for which payment cannot be obtained after reasonable follow-up efforts have been exhausted (set by hospital policy in conjunction with Federal, State, or payer specific regulations), will be transferred to bad debt status. These accounts shall further be referred to an outside collection agency for additional collection activities provided the Medicare 120-Day Bad Debt Rule has been followed. The goal is to ensure that accounts that are deemed uncollectible with outstanding patient balances are written off to bad debt.

II. PROCEDURE

Refer to the following steps when transferring Medicare accounts to bad debt:

1. Determine that the account meets the following criteria:
 - It has been *at least* 120 days since the first statement was generated subsequent to Medicare processing the claim, Medicare payment posted to account, and patient liability determined
 - Patient/guarantor has defaulted on an agreed installment arrangement
 - Guarantor has received the designated number of statements (at least three, unless account has been flagged as a 'Bad Address' subsequent to at least one statement being generated. *Ensure that account has not been placed on hold.*
2. If the above criteria have been met, transfer the patient's account to 'Bad Debt' in Cerner
3. Identify accounts that are not eligible for bad debt turnover
4. Document in comments the reason that account is not eligible for bad debt write-off, i.e. has not been 120 days since statement
5. Encounters will be referred to Bad Debt Collections in one of two ways:
 - *Electronic:* Encounters returned from NCO Outsourcing *with* cancel codes specific to bad debt, will be identified by the cancel code and routed automatically to one of the two collection agencies
 - Encounters with cancel code 81 will be routed to Connecticut Credit
 - Encounters with cancel code 84 will be routed to American Adjustment Bureau

- **Manual:** Encounters returned from NCO Outsourcing *without* cancel codes specific to bad debt, will be manually assigned to collections as necessary.
 - The manual assignment process is monitored and completed by the Reporting Analyst.

Waterbury Hospital CREDIT & COLLECTION MANUAL

The Fair Debt Collection Practices Act As amended by Pub. L. 109-351, §§ 801-02, 120 Stat. 1966 (2006)

Purpose: To describe the standards by which Waterbury Hospital Patient Accounting, Patient Access staff and outsourced collections vendors will solicit or request patient co-payment or co-insurance obligations.

I. POLICY

Waterbury Hospital Patient Accounting, Patient Access staff and outsourced collections vendors will adhere to the policies set forth in the complete text of the Fair Debt Collection Practices Act (FDCPA) when soliciting or requesting patient co-payment or co-insurance obligations.

II. PROCEDURE

Waterbury Hospital Patient Accounting, Patient Access staff and outsourced collections vendors will refer to the complete text of the Fair Debt Collection Practices Act (FDCPA) detailed below.

III. FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) ADDENDUM

As a public service, the staff of the Federal Trade Commission (FTC) has prepared the following complete text of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692p.

Please note that the format of the text differs in minor ways from the U.S. Code and West's U.S. Code Annotated. For example, this version uses FDCPA section numbers in the headings. In addition, the relevant U.S. Code citation is included with each section heading. Although the staff has made every effort to transcribe the statutory material accurately, this compendium is intended as a convenience for the public and not a substitute for the text in the U.S. Code.

Table of Contents

§ 801 Short title
§ 802 Congressional findings and declaration of purpose
§ 803 Definitions
§ 804 Acquisition of location information
§ 805 Communication in connection with debt collection
§ 806 Harassment or abuse
§ 807 False or misleading representations
§ 808 Unfair practices
§ 809 Validation of debts
§ 810 Multiple debts
§ 811 Legal actions by debt collectors

- § 812 Furnishing certain deceptive forms
- § 813 Civil liability
- § 814 Administrative enforcement
- § 815 Reports to Congress by the Commission
- § 816 Relation to State laws
- § 817 Exemption for State regulation
- § 818 Exception for certain bad check enforcement programs operated by private entities
- § 819 Effective date

§ 801 15 USC 1601 note

§ 801. Short Title

This title may be cited as the "Fair Debt Collection Practices Act."

§ 802. Congressional findings and declaration of purpose

- (a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.
- (b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.
- (c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.
- (d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.
- (e) It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

§ 803. Definitions

As used in this title —

- (1) The term "Commission" means the Federal Trade Commission.
- (2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.
- (3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.
- (4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.
- (5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are

the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

- (6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—
- (A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
 - (B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;
 - (C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
 - (D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
 - (E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and
 - (F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity
 - (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
 - (ii) concerns a debt which was originated by such person;
 - (iii) concerns a debt which was not in default at the time it was obtained by such person; or
 - (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.
- (7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.
- (8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 804. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

- (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- (2) not state that such consumer owes any debt;
- (3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
- (4) not communicate by post card;
- (5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and
- (6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to the communication from the debt collector.

§ 805. Communication in connection with debt collection

- (a) **COMMUNICATION WITH THE CONSUMER GENERALLY.** Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—
 - (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;
 - (2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or
 - (3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.
- (b) **COMMUNICATION WITH THIRD PARTIES.** Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.
- (c) **CEASING COMMUNICATION.** If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further

communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

- (1) to advise the consumer that the debt collector's further efforts are being terminated;
- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

- (d) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 806. Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3)¹ of this Act.
- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- (6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity.

§ 807. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
- (2) The false representation of—
 - (A) the character, amount, or legal status of any debt; or
 - (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.
- (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any

property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.
- (6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—
 - (A) lose any claim or defense to payment of the debt; or
 - (B) become subject to any practice prohibited by this title.
- (7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.
- (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

1. Section 604(3) has been renumbered as Section 604(a)(3).

- (9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.
- (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
- (11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.
- (12) The false representation or implication that accounts have been turned over to innocent purchasers for value.
- (13) The false representation or implication that documents are legal process.
- (14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.
- (15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.
- (16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act.

§ 808. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
 - (2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.
 - (3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
 - (4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
 - (5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.
 - (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—
 - (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - (B) there is no present intention to take possession of the property; or
 - (C) the property is exempt by law from such dispossession or disablement.
- 11 § 808 15 USC 1692f (7) Communicating with a consumer regarding a debt by post card.
- (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

§ 809. Validation of debts

- (a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—
 - (1) the amount of the debt;
 - (2) the name of the creditor to whom the debt is owed;
 - (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
 - (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
 - (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

- (b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this title may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.
- (c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.
- (d) A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).
- (e) The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by the Internal Revenue Code of 1986, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

§ 810. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 811. Legal actions by debt collectors

- (a) Any debt collector who brings any legal action on a debt against any consumer shall—
- (1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or
 - (2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—
 - (A) in which such consumer signed the contract sued upon; or
 - (B) in which such consumer resides at the commencement of the action.
- (b) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

§ 812. Furnishing certain deceptive forms

- (a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

- (b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.

§ 813. Civil liability

- (a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of—
- (1) any actual damage sustained by such person as a result of such failure;
 - (2) (A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or
(B) in the case of a class action,
 - (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and
 - (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and
 - (3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.
- (b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—
- (1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or
 - (2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.
- (c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.
- (d) An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.
- (e) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§ 814. Administrative enforcement

- (a) Compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.
- (b) Compliance with any requirements imposed under this title shall be enforced under—
- (1) section 8 of the Federal Deposit Insurance Act, in the case of—
 - (A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;
 - (B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System; and
 - (C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;
 - (2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;
 - (3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;
 - (4) the Acts to regulate commerce, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;
 - (5) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and
 - (6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.
- The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).
- (c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing

compliance with any requirement imposed under this title any other authority conferred on it by law, except as provided in subsection (d).

- (d) Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this title.

§ 815. Reports to Congress by the Commission

- (a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this title is being achieved and a summary of the enforcement actions taken by the Commission under section 814 of this title.
- (b) In the exercise of its functions under this title, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title.

§ 816. Relation to State laws

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

§ 817. Exemption for State regulation

The Commission shall by regulation exempt from the requirements of this title any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

§ 818. Exception for certain bad check enforcement programs operated by private entities

(a) In General.—

- (1) TREATMENT OF CERTAIN PRIVATE ENTITIES.—Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 803(6), with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).

- (2) CONDITIONS OF APPLICABILITY.—Paragraph (1) shall apply if—

- (A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution;
- (B) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of

- such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and
- (C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—
- (i) complies with the penal laws of the State;
 - (ii) conforms with the terms of the contract and directives of the State or district attorney;
 - (iii) does not exercise independent prosecutorial discretion;
 - (iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph—
 - (I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and
 - (II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;
 - (v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—
 - (I) the alleged offender may dispute the validity of any alleged bad check violation;
 - (II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and
 - (III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and
 - (vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.
- (b) **Certain Checks Excluded.**—A check is described in this subsection if the check involves, or is subsequently found to involve—
- (1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;
 - (2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

- (3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;
 - (4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;
 - (5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or
 - (6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.
- (c) Definitions.—For purposes of this section, the following definitions shall apply:
- (1) STATE OR DISTRICT ATTORNEY.—The term "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1, United States Code), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.
 - (2) CHECK.—The term "check" has the same meaning as in section 3(6) of the Check Clearing for the 21st Century Act.
 - (3) BAD CHECK VIOLATION.—The term "bad check violation" means a violation of the applicable State criminal law relating to the writing of dishonored checks.

§ 819. Effective date

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

Approved: _____ Date _____

Approved: _____ Date _____

Approved: _____ Date _____