



**August 29, 2022**

Department of Financial Protection and Innovation  
2101 Arena Blvd. Sacramento, CA 95834

SUBMITTED VIA EMAIL TO: [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)

**RE: Comments for PRO 05-21 – Debt Collection Regulations: Scope, Annual Reports, and Records Retention**

Dear Acting Commissioner Shultz:

Thank you for the opportunity to submit comments for proposed changes to regulations for PRO-05-21 regarding Debt Collection Regulations: Scope, Annual Reports, and Records retention.

Fresenius Medical Care North America (“FMCNA”) is a vertically integrated kidney health care organization. FMCNA includes a network of dialysis centers, outpatient cardiac and vascular labs, and specialty pharmacy and laboratory services. We also manufacture and distribute a comprehensive line of dialysis equipment, disposable products, and renal pharmaceuticals.

While FMCNA appreciates the intention of the proposed regulatory changes, we strongly encourage additional changes which would help ensure healthcare providers can reasonably operate under the new debt collection regulations. These recommended changes will also ensure that California consumers and patients are appropriately protected for debt collection practices by debt collectors through the California Debt Collection Licensing Act. Below, please find FMCNA’s proposed changes.

**1. 10 CCR 1850(j): Addition of definition of “Engage in the business of debt collection”**

The DFPI proposed to add the following to 10 CCR 1850:

*(j) “Engage in the business of debt collection”: A person engages in the business of debt collection and is required to be licensed pursuant to section 100001, subdivision (a) of the Financial Code if the person (A) engages in debt collection for a profit or gain, and (B) the activity is of a regular, frequent, or continuous nature. Advertising or otherwise offering the service of debt collection for remuneration constitutes engaging in the business of debt collection.*

FMCNA supports providing clarity regarding those entities to which the debt collection licensure laws apply. However, FMCNA believes this definition as written is overly broad. While FMCNA supports protections for California consumers with regard to debt collection practices, FMCNA believes that this definition casts a far wider net with respect to debt collection practices than is necessary or appropriate. There is a large conceptual distinction between entities that perform collections as a small or incidental part of a larger suite of services, e.g. a company that manages a healthcare clinic or residential property, versus a traditional debt

collection agency that focuses on performing debt collection services for aged accounts transferred over by a creditor. FMCNA proposes that this definition be revised as follows:

*(j) “Engage in the business of debt collection”: A person engages in the business of debt collection and is required to be licensed pursuant to section 100001, subdivision (a) of the Financial Code if the person (A) engages in debt collection for a profit or gain, ~~and~~ (B) the activity is of a regular, frequent, or continuous nature, and (C) debt collection is the primary purpose of the person’s business or is a primary source revenue. A person who performs collection services as an incidental part of the services rendered by a person to another person shall not be deemed to be engaging in the business of debt collection for the purposes of this section. Advertising or otherwise offering the service of debt collection as described here for remuneration constitutes engaging in the business of debt collection.*

## **2. 10 CCR 1850.1(c): Licensing Exemption for Original Creditors; Accounts Receivable**

The DFPI proposed to enact the following as 10 CCR 1850.1(c):

*(c) Original creditors: A creditor seeking, in its own name, repayment of consumer debt arising from credit the creditor extended is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act, unless it meets one or more of the following criteria:*

*(1) Five percent or more of the creditor’s annual profits over the last twelve months, whether contracted for or received, constitute collection fees, late fees, or any other charges added to the original consumer credit transaction that created the debt.*

*(2) Within the last 12 months, an average of ten percent or more of the creditor’s inventory was repossessed at least once, either by the creditor directly or through a third-party.*

*(3) The creditor has a monthly average over the last 12 months of twenty-five percent or more of the gross amount of its accounts receivables ninety or more days past due.*

FMCNA understands that the DFPI does not want original creditors to egregiously profit from late fees and charges or repossessions. However, the 25% threshold for the proposed 10 CCR 1850.1(c)(3) is not particularly large. FMCNA’s understanding is that many healthcare providers may have accounts receivable that exceed this threshold during the ordinary course of business. This proposed subsection is expected to cause many healthcare providers to unwittingly subject themselves to the Debt Collection Licensing Act’s licensure requirement and its associated operational requirements and thus to unknowingly expose themselves to the penalties associated with violations of the debt collection licensure laws. Additionally, the existence of accounts receivables ninety days or more past due can be a function of an entity’s routine practices in collecting its own debts, rather than being a function of consumers failing to pay their invoices in a timely manner. FMCNA believes that simply increasing the threshold would not suffice to address this potential issue for healthcare providers. FMCNA proposes removing this subsection completely as shown below:

*(c) Original creditors: A creditor seeking, in its own name, repayment of consumer debt arising from credit the creditor extended is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act, unless it meets **at least one** ~~or more~~ of the following criteria:*

(1) Five percent or more of the creditor's annual profits over the last twelve months, whether contracted for or received, constitute collection fees, late fees, or any other charges added to the original consumer credit transaction that created the debt.

(2) Within the last 12 months, an average of ten percent or more of the creditor's inventory was repossessed at least once, either by the creditor directly or through a third-party.

~~(3) The creditor has a monthly average over the last 12 months of twenty five percent or more of the gross amount of its accounts receivables ninety or more days past due.~~

### **3. 10 CCR 1850.1(d): Licensing Exemption for Servicing Debts Not in Default**

The DFPI proposed to enact the following as 10 CCR 1850.1(d):

*(d) A person solely servicing debts not in default on behalf of an original creditor, as described in subdivision (c), is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act. For purposes of this section, "default" means more than 90 days past due, unless the contract governing the transaction or another law provides otherwise.*

FMCNA supports this clarification. As noted above, there is a large conceptual difference between an entity that performs collection services as an incidental part of a larger suite of services, e.g. a company that manages a healthcare clinic or residential property, versus a traditional debt collection agency that focuses on performing debt collection services for aged accounts transferred over by a creditor. While the exception being proposed partially conveys this conceptual difference, FMCNA believes that it does not truly capture the spirit of such difference. FMCNA believes that healthcare entities will unwittingly subject themselves to the Debt Collection Licensing Act, through no fault of their own, if California consumers simply fail to pay invoices or charges they owe and the age of the debt reaches the threshold of more than 90 days. FMCNA also believes that there is a distinct difference between an account which is simply past due versus an account where the consumer is subject to penalties, interest, or late payments for failure to pay when due pursuant to the policies of the creditor. FMCNA proposes two revised versions of this section to account for the different nature of collection services.

The first, preferred, proposed revised version is:

*(d) A person solely servicing debts not in default **at the time the debts were obtained by such person** on behalf of an original creditor, as described in subdivision (c), is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act. For purposes of this section, "default" means more than 90 days past due, unless the contract governing the transaction or another law provides otherwise.*

Alternatively, a second proposed revised version is:

*(d) A person solely servicing debts not in default on behalf of an original creditor, as described in subdivision (c), is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act. For purposes of this section, "default" means more than 90 days past due **and if the debt is subject to penalty, interest, or late payment**, unless the contract governing the transaction or another law provides otherwise.*

**4. 10 CCR 1850.1(e): Licensing Exemption for Healthcare Providers, Healthcare Facilities, or Hospitals**

The DFPI proposed to enact the following as 10 CCR 1850.1(e):

*(e) Notwithstanding subdivision (c), a healthcare provider, healthcare facility, or hospital is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act if the only debt it collects is on its own behalf and is payment for medical or other services or products it provided.*

FMCNA supports the addition of this exemption. As discussed above, due to the nature of healthcare services and billing, many patient accounts may age more than 90 days as a result of routine operations, rather than from patients' failure to pay invoices or charges on time. FMCNA supports not forcing every healthcare provider, healthcare facility, and hospital to obtain a license under the Debt Collection Licensing Act due to their ordinary course of business and operations. Even so, FMCNA believes this exemption as written does not provide the appropriate protection to healthcare providers, healthcare facilities, and hospitals that the DFPI intended. For a number of legal, corporate, tax, financial, or other reasons, many healthcare providers, healthcare facilities, and hospitals are components of a larger multi-entity corporate structure (e.g., health system). In an effort to reduce costs and improve efficiency, such healthcare providers, healthcare facilities, and hospitals may utilize a centralized, legal entity operating under the same large corporate structure to perform billing and collection services for healthcare services delivered. FMCNA understands that the DFPI may want to ensure entities are not using this sort of affiliate exception as a pretext to perform debt collection in other contexts, outside of the healthcare industry. FMCNA proposes the following revision:

*(e) Notwithstanding subdivision (c), a healthcare provider, healthcare facility, or hospital is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act if the only debt it collects is on its own behalf and is payment for medical or other services or products it provided. A person who acts as a debt collector for another person that is a healthcare provider, healthcare facility, or hospital, 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 healthcare providers, healthcare facilities, or hospitals to whom the person is so related or affiliated with, is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act.*

Thank you for considering these comments. If you have any questions, please contact me at [REDACTED] or [REDACTED].

Sincerely,

[REDACTED]  
[REDACTED]  
Maria Garcia  
Senior Director, State Government Affairs  
Fresenius Medical Care North America