

# Finding the balance: complying with consumer finance legal obligations when offering patient payment plans

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Health care providers often find themselves in the position of collecting direct payments for medical services through patient payment plans. While providers must adhere to a myriad of health care laws when doing so, they sometimes overlook their obligations under consumer financial protection laws — particularly with regard to self-pay balances. These laws are equally critical to consider, as noncompliance can lead to significant civil and even criminal penalties for providers.

In particular, a health care provider offering payment plans may be deemed a creditor subject to the federal Truth in Lending Act (TILA) and applicable state law analogues, which can be a costly endeavor. There are various approaches to avoiding TILA and state law obligations, but it is essential for health care providers to understand the potential pitfalls of these strategies and how they could implicate health care and other applicable state laws.

## Health care providers as creditors

A health care provider can potentially be classified as a creditor subject to TILA. While there are several ways to trigger the definition of a “creditor” under Regulation Z, TILA’s implementing regulation, most health care providers do so when they regularly extend “consumer credit” that is subject to a finance charge or payable by a written agreement in more than four installments.

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“Consumer credit” is the right to defer and/or right to incur and defer the payment of personal, family, or household debt, which generally includes medical debt. Among other requirements, TILA obligates creditors to provide clear and accurate information about credit terms, including the annual percentage rate, the total cost of the credit, and the payment schedule.

In addition, some states have consumer laws that may apply to health care providers offering payment plans, such as retail installment sales acts (RISAs). State RISAs generally apply to “sellers” of goods and services on credit, also known as credit sales, and are legally distinct from a “loan” made by a “lender.” These laws may require licensure and usually require clear and accurate disclosures of pricing and terms and/or incorporate TILA’s requirements. Some RISAs may have specific exceptions for medical practices or medical services, but medical providers must review these laws carefully on a state-by-state basis for applicability.

## Avoiding creditor status under TILA and state law

A health care provider may wish to avoid “creditor” status under TILA due to the significant cost of compliance and additional administrative obligations. And while there are strategies to avoid implicating TILA, applying these strategies in a health care context may prove challenging due to additional state and federal laws applicable to health care providers.

### 1. Four payments or less may avoid TILA but not all state laws

The most straightforward approach to avoid creditor status under TILA is to ensure that patient payment plans do not include a finance charge and do not exceed four installments. This would cause the unpaid medical debt to fall outside the definition of “consumer credit” under the act.

However, this approach could be inflexible for patients seeking to pay off relatively large balances over an extended amount of time. This also may not be an option in states with laws governing medical payment plans. For example, some states require certain health care providers to offer a payment plan to qualifying indigent patients and dictate that the monthly payment cannot exceed a percentage of the patient’s monthly income. In these circumstances, it’s very possible a payment plan will exceed four installments.

In addition, while many states’ RISAs and consumer credit laws track Regulation Z’s definition of “creditor,” others may be triggered by less than five payments or apply broadly to any extension of consumer credit (regardless of whether a finance charge is imposed or the number of payments).

## 2. Offering payment plans post-service may not eliminate TILA obligations

Another strategy to potentially avoid TILA creditor status is to only offer installment plans (even those plans with more than four installments or with a finance charge) *after* the services have been provided, on the basis that the provider has not granted the patient the “right” to defer payment. However, the determination of whether or not a “right” to defer payment has been granted is a fact-based evaluation that can often result in legal uncertainty for health care providers.

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For example, in the health care context, it is not at all unusual for payment alternatives to be deliberated *before* services are delivered, particularly for elective services or when providers are required by the No Surprises Act to provide a good faith estimate. In addition, providers may regularly offer patient payment plans shortly after services are performed or the patient could be entitled to a payment plan under state law (as discussed above). In all these cases, it could be argued the patient had a “right” to defer payment, even if that plan was not expressly offered or reduced to writing prior to service.

Therefore, if a provider is relying on this approach, it should either consider its compliance with TILA and related state laws or

ensure a payment plan is only presented in a collection situation, after it becomes evident that the patient is unable or unwilling to pay the remaining balance of their medical bill. And even in such circumstances, the provider should also ensure a “right” to a payment plan has not already been created by applicable state law.

## 3. Informal payment arrangements create legal risk

Some case law suggests a health care provider can avoid being classified as a creditor under TILA if it only offers patients informal arrangements on a pre-service basis that are not reduced to writing.

That being said, it is not advisable for a health care provider to routinely offer patients informal and undocumented payment plans. Not only could these pre-service offers create risk under state and federal health care fraud and abuse laws, but the failure to provide a written agreement could nonetheless create greater risk exposure under applicable state RISAs or consumer credit laws that do not mirror TILA.

## Conclusion

When arranging for patient payments plans before or after services are rendered, health care providers must carefully consider the intersection of consumer finance and health care laws. Understanding the role of a health care provider as a potential creditor and the implications of various payment options and structures can help health care providers make informed decisions that comply with both sets of laws and mitigate financial costs associated with collections of patient debt.

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## About the authors



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