

DENTAL LEGAL UPDATE

CareCredit Ordered to Refund Millions Dental Practices will be Impacted by New Requirements

by Jeanine Lehman, Attorney

BREAKING NEWS →→

On December 10, 2013, the United States Consumer Financial Protection Bureau issued a Consent Order against GE Capital Retail Bank and its affiliate CareCredit LLC (collectively, "CareCredit") relating to the health care credit card program operating under the CareCredit name.

Deceptive Credit Card Enrollment

CareCredit was ordered to refund up to \$34.1 million to consumers, who were harmed by deceptive credit card enrollment practices at doctors' and dentists' offices around the country. Additionally, CareCredit was ordered to comply with a remedial monitoring plan and a credit bureau rehabilitation plan.

Patient Complaints

The Consumer Financial Protection Bureau issued the Order after receiving substantial complaints from consumers, including patients. The Bureau's Director, Richard Cordray, in his prepared remarks, noted "When people seek medical care, they are in a particularly vulnerable situation. They are usually filling in and signing multiple forms: insurance forms, HIPAA disclosures, and medical history paperwork. Unlike when they are at a bank or when they receive unsolicited mail, they are not 'on guard' financially. They are not thinking carefully about the terms of a financial contract – fees, penalties, interest rates. Their focus is on getting better. So it is particularly important that a credit card company offer-

ing personal lines of credit to pay for health care is doing everything to the letter of the law – that they are treating people fairly, with dignity, and with the utmost transparency."

Dental Practices

For background, CareCredit issues the CareCredit card, which is marketed primarily for health-care services, including dental, veterinarian, cosmetic, vision, and audiology services. Consumers can use the CareCredit card only with Enrolled Providers. For dentistry, the Enrolled Provider is the dental practice. Enrolled Provider-dental practices offer patients the CareCredit card to finance dentistry costs. The Order indicates that dental practices comprise approximately 55% of CareCredit card business, and that CareCredit has approximately 175,000 Enrolled Providers, and approximately 4,100,000 active CareCredit cardholders.

Interest Rate Trap

From 2009 through December 10, 2013, the Order indicates that CareCredit provided two types of financing options for the CareCredit card, and that 85% of CareCredit cardholders selected the Promotional Option described as "No Interest if Paid in Full Within 6, 12, 18, or 24 months". The Promotional Option is for a defined period. If the consumer does not pay the original balance in full within the promotional period,

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Speaking Requests

For Jeanine Lehman and her colleagues to speak to professional and business groups on legal and practice management topics, please contact Jeanine Lehman at (512) 918-3435 or jeanine@jeanine.com

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Law Offices of Jeanine Lehman P.C.:
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Capital Area Dental Society:
www.capitalareadental.org

Texas State Board of Dental Examiners:
www.tsbde.state.tx.us

Texas Dental Association:
www.tda.org

Texas Academy of General Dentistry: www.tagd.org

U.S. Consumer Financial Protection Bureau:
www.consumerfinance.gov

CareCredit Consent Order (cont.) --

CareCredit charges 26.99% interest on the consumer's declining balance from the date of the consumer's original purchase. A 26.99% interest rate then applies to the account balance going forward. This type of financing arrangement is called a deferred-interest promotion.

Dental Offices Help Open Patient Credit Card Accounts

Consumers may open a CareCredit card directly with CareCredit or through the Provider Channel. When opening the account for dentistry through the Provider Channel, the consumer (either the patient or other responsible party, such as a parent) applies for and enrolls in the card in an Enrolled Provider's office, i.e. the dental office. Enrolled Providers-dental offices give consumers application materials, convey information about the CareCredit card, and facilitate the submission of the application to CareCredit. Patients open the card and are billed for their dental or other health-care services that are typically performed at that time or shortly thereafter. CareCredit promptly issues payment to the Enrolled Provider-dental office for the services charged to the CareCredit card.

Lack of Training & Monitoring

The Order indicates that the investigation determined that in some cases CareCredit insufficiently trained Enrolled Providers on delivering material information to consumers about the Promotional Option's terms and also, failed to sufficiently monitor some Enrolled Providers' compliance with CareCredit's policies and the law. The Order further states that "For example, contrary to CareCredit's policies, some Enrolled Providers: a. told consumers that the CareCredit Card was 'interest free for 12 months,' as opposed to be-

ing a deferred-interest promotion; and b. failed to provide consumers with the proper written disclosures or otherwise inform consumers that the interest rate would be 26.99 percent at the end of the promotional period." The Order included the finding that ". . . CareCredit's failure to adequately train and monitor all Enrolled Providers, and CareCredit's failure to ensure that material disseminated by the Enrolled Providers was capable of counteracting erroneous information given to consumers, caused substantial injury to consumers that was not reasonably avoidable, and was not outweighed by countervailing benefits to consumers or to competition."

Dentist Office Contracts – Lots of Changes Coming

The remedial monitoring plan in the Order requires substantial changes to Enrolled Provider contracts, including for dental offices, to include the incorporation of Transparency Principles, restrictions on charges in advance of treatment, and changes to the application for the CareCredit card for certain charges over \$1,000.

The "Transparency Principles" require the Enrolled Providers to accurately describe the terms of the CareCredit card to consumers. Within 60 days of Consumer Financial Protection Bureau approval, CareCredit will send the approved cover letter with the Transparency Principles to Enrolled Providers.

CareCredit's Enrolled Provider contracts will prohibit charges for services not yet rendered, unless those services (i) include orthodontic services, or are custom products ordered by the consumer, or (ii) are intended to be and are completed, or out-of-pocket costs incurred, within 30 days of the applicable charge. For all services (other than orthodontic services) that are not com-

pleted within 30 days, the consumer is entitled to a refund or account credit for all such services not yet completed. (Presumably, if there is a refund, the Enrolled Provider-dental office will suffer a charge-back to its account for the refund, thus incurring minimally the dollar cost of the refund.)

For any consumer who wishes to submit a new CareCredit application for dental or audiology charges over \$1,000, the Enrolled Provider (including a dental practice) will require the consumer to apply directly with CareCredit. However, the Order indicates that this requirement will not apply to transactions that occur more than three days after an application is completed in the Provider Channel (including with a dental office). The Order does indicate that if an Enrolled Provider-dental office fails to follow the procedure for a newly-enrolled consumer for dental or audiology charges over \$1,000, CareCredit will provide the consumer with an unqualified right to reverse the covered dental or audiology transaction from his or her account, even if services are in fact rendered. (Again, if there is a reversal of charges, the Enrolled Provider-dental office will probably suffer a charge-back to its account for the reversal, thus incurring minimally the dollar cost of the reversal.)

The remedial monitoring plan also has enhancements to disclosures and record keeping requirements for Enrolled Providers-dental practices. Enrolled Provider-dental practices will be required to participate in periodic training and pass a post-training test.

The Order requires that CareCredit not give kick-backs, rebates, compensation, or in-kind services to any Enrolled Provider-dental practice in exchange for an Enrolled Provider's new loan volume. The Order also prohibits CareCredit from using any paid endorsements to professional associations in any consumer-facing marketing or related consumer-facing materials.

The Order requires CareCredit to terminate certain Enrolled Providers-dental practices based on their chargeback rate and to monitor Enrolled Providers and take appropriate actions where warranted. Additionally, CareCredit is to use its best efforts to promptly resolve consumer complaints and the Order includes requirements for account handling dur-

ing the pendency of a complaint. The Order also requires CareCredit to provide notice to consumers before the expiration of the Promotional Option period, to allow consumers to make informed decisions concerning payment.

Consumers, who may have wrongly accrued charges on their CareCredit card account, will be notified about their right to file a claim, which will be assessed by an independent adjudicator. The Consumer Financial Protection Bureau estimates that more than 1.2 million consumers will be eligible for money from the reimbursement fund.

Patient Notices

Dentists need to anticipate that many of their patients will be receiving notices about their right to file a claim under the Order, and will ask their dentists and dental staff questions.

Dental Contract Review

As always, Dentists are prudent to have their contracts and related business practices, and in particular, third party financing arrangements, reviewed by their attorneys prior to agreeing to contracts, amendments to contracts, and third party financing arrangements. ■

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Scams: What a Tangled Web They Weave

Dentists and their staff need to be wary of scams. Here are a few to have on your radar.

Toner Scam

In the toner scam, your office receives a phone call from a “copy repair” company requesting the model and make of your copier. The caller sounds very official, but is not from your copy repair company. If the staff member provides the model and make, shortly thereafter, unordered toner of questionable quality is delivered. The office also receives an invoice for the unordered toner, often at an exorbitant price. Sometimes, the invoice is paid and the scammer gets your money. This scam has been widespread across the country for many years.

Fax Machine Repair Scam

This scam was widespread in San Antonio, some years ago. A uniformed technician shows up at the office to repair the fax machine. He is shown to the fax machine. Shortly thereafter, he exits the back door with the fax machine, which is never seen again.

Directory Listing Scam

In the directory listing scam, the office receives one or more calls to establish the identity and authority of someone in the office and to elicit the word “Yes” or similar indication of approval, which is surreptitiously recorded. For example, the caller may ask for the office manager, acquire the office manager’s name, and ask the office manager if the office is open on Tuesdays or takes a certain credit card. Sometime later,

the office receives an invoice for an advertisement in a directory, which was never ordered. This invoice may be faxed to avoid the enforcement reach of the U.S. Postal Service for mail fraud. The invoice is sometimes paid, and the scammer gets your money.

In this scam, the scammer uses technology to produce a false recording, in which the “Yes” or similar indication of approval is spliced after a question, such as “do you order an ad for the next directory for \$1,500?” That fraudulent recording is played for the office to try to coerce payment and can cause much distress to the innocent staff member or dentist, who was recorded. And yes, it is impossible to never say “Yes” on the phone, and still be customer friendly. At least one variant of this scam (billing for unordered items) was based in Canada and preyed on businesses in the United States.

Prevention

It is important to train staff and dentists about possible scams, so that the dental practice is not a victim.

Reporting

If your office is a victim of a scam, reports should be filed with law enforcement, including but not limited to, the police; your county or district attorney; the Texas Attorney General’s Consumer Protection Division; if the Internet is involved, with the Internet Crime Complaint Center of the FBI; and if the mail is used, with the U.S. Postal Inspection Service. If health information was involved, there may be a breach that will need to be reported to patients and to the federal and state government under HIPAA and state medical privacy laws. If your office is a victim of a scam, it is prudent to consult with your attorney promptly. ■

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About Our Firm ... Call us at (512) 918-3435

Law Offices of Jeanine Lehman P.C. is a Texas law firm headquartered in Austin with a state-wide health law practice, including representation of Texas dentists and physicians. Our health law practice is focused on business law, transactional aspects of individual and group practices, such as contracts and incorporations, office/facility leases, building purchases/condos, and build-to-suits, practice sales/purchases/buy-ins, employment agreements, financing, and consultation concerning the day-to-day legal concerns of running a health care practice. The firm is owned by Texas Attorney **Jeanine Lehman**. Jeanine has been in private practice as the owner of her firm for over 25 years and has over 30 years experience as a Texas attorney. She has had one book and over 70 articles published. She speaks to professional and business groups concerning legal topics. Jeanine is blessed to have one dentist and three dental hygienists in her family. Contact us at **(512) 918-3435**, jeanine@jeanine.com or PO Box 202211, Austin, TX 78720, and visit our website at www.jeanine.com. Suggestions for future newsletter topics and invitations to speak to professional groups are appreciated!