

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
Informational Statement
LCB FILE NO. R055-21
(NRS 649 Collection Agencies)**

The following statement is submitted for adoption of regulations pertaining to Nevada Administrative Code (“NAC”) Chapter 649 Collection Agencies.

1. A clear and concise explanation of the need for the adopted regulation.

The regulation is required as a result of the passage of Senate Bill 248 (“S.B. 248”) during the 81st Session of the Nevada Legislature. Existing law governs debt collection for all types of debt. S.B. 248 established additional consumer protections specifically for medical debt collection.

This regulation is needed to establish requirements for licensees, define certain terms, and other matters properly relating thereto.

2. A description of how public comment was solicited, a summary of public response, and explanation of how other interested persons may obtain a copy of the summary.

Copies of the proposed regulation, small business impact statement, notice of workshop, and notice of intent to act upon the regulation were emailed to the Financial Institutions Division’s (“Division”) licensees, rulemaking contact list, persons who were known to have an interest in the regulation as well as any persons who had specifically requested such notice. These documents were also made available on the Division’s website at <http://fid.nv.gov/> , the Nevada Public Notice website at <https://notice.nv.gov/> , the Nevada Legislature Website at www.leg.state.nv.us/App/Notice/A/ , and posted at the Division’s Las Vegas and Reno office; Business and Industry’s Carson City Directors Office, the Grant Sawyer Building, and provided to the Nevada State Library and Archives for posting.

On August 31, 2021, the Division notified 467 individuals by email of the proposed regulation, this included its licensees and persons on the Division’s rulemaking contact list. The Division provided a copy of the proposed regulation and solicited written comments concerning whether it would impose a direct and significant economic burden or directly restrict the formation, operation, or expansion of a small business that is subject to NRS 649, and any regulation adopted pursuant thereto.

In response to the August 31, 2021 solicitation, the Division’s record reflects receipt of fifty-five (55) small business impact surveys with comment. Attached summary of comments received from the small business impact survey are attached as “Exhibit A.”

On October 6, 2021, the Division issued and posted a notice of the workshop, and sent to 506 individuals by email, this included its licensees and persons on the Division’s rulemaking contact list. In addition, the proposed regulation was submitted to the Legislative Counsel Bureau (“LCB”) on October 6, 2021. The workshop was held on October 26, 2021, via Webex

videoconference and teleconference. Minutes of the workshop are attached as “Exhibit B.” The minutes reflect receipt of both verbal and written comments.

LCB posted its revised draft of proposed regulation R055-21 on February 11, 2022. On February 16, 2022, the Division issued and posted a notice of intent to act upon regulation based upon LCB’s draft proposed regulation R055-21, along with a notice of public meeting and solicited further written comments on the proposed regulation. On the same day, the Division sent, via email, to 548 individuals, this included its licensees and persons on the rulemaking contact list. The adoption hearing was held on March 23, 2022, via Webex videoconference and teleconference. Minutes of the hearing are attached as “Exhibit C”. The minutes reflect receipt of both verbal and written comments.

3. The number of persons who:

Attended October 26, 2021 workshop: 95

Testified at the workshop: 9

Submitted written comments: 6

Attended March 23, 2022 hearing: 64

Testified at the hearing: 4

Submitted written comments: 2

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified in #3, above, as provided to the agency.

Those who attended the October 26, 2021 workshop and signed in:

Name	Company or Organization	Email Address
Dave Rioux	Credit Solutions	drioux@cs-llc.com
Mary Brennan	Clark County Collection Service, LLC	mbrennan@thebrennanentities.com
Duane Christy	Aargon Agency Inc	duane@aaragon.com
Lisa Vijayakumar	Americollect	lisav@americollect.com
Victoria A Lammers	United Resource Systems, Inc.	vlammers@uniteability.com
Donald Maurice	Maurice Wutscher LLP for RMAI	dmaurice@mauricewutscher.com
Corbin Hernandez	North American Recovery	corbinhernandez@north-american-recovery.com
Noni Ross	Grant Mercantile Agency, Inc.	noni-gma@stj.net
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Jilenna Cloys	Meduit	jill.cloys@meduitrcm.com
Richard Bennett	PlusFour, Inc	rbennett@plusfourinc.com
Paige Barnes	Crowley & Ferrato Public Affairs	paige@crowleyandferrato.com
Colin Winkler	ACA International	winkler@acainternational.org
Lydia Gonzalez	RM Galicia Inc	lgonzalez@pmscollects.com
Mackenzie Gonzales	Carlson & Messer LLP	gonzalesm@cmtlaw.com
Lisa Eastman	Armada Corp of Nevada	leastman@armadacorp.com
Christina Rioux	Credit Solutions	crioux@cs-llc.com
Lindsey Carlston	Professional Service Bureau, Inc.	lindsey.carlston@psbmars.com
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Patrick Reilly	Brownstein Hyatt Farber Schreck	preilly@bhfs.com
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Nolan Young	Business and Professional Collection Service, Inc.	nyoung@bpcollect.com
Keith Kettelkamp	Remex, Inc.	keithk@remexinc.com
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Those who attended and did not sign-in (list exported from Webex):

Name	Attendee Email
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Those who attending the adoption hearing on March 23, 2022 and signed in:

Name	Company or Organization	Email Address
Tyler Shaw	Ferrari Public Affairs	tyler@ferraripa.com
Lisa Eastman	Armada Corp of Nevada	leastman@armadacorp.com
Peter Aldous	Legal Aid Center of Southern Nevada	paldous@lacs.org
Nichole Clemons	L J Ross Associates, Inc.	nikki@ljross.com
Stephanie Lee	Revco Solutions, Inc.	stephanie.lee@revcosolutions.com
Jenna Leigh Guyton	Americollect, Inc.	jennag@americollect.com
Jay Young	Business and Professional Collection Service, Inc	jyoung@bpcollect.com
Tamar Yudenfreund	Encore Capital Group	tamar.yudenfreund@encorecapital.com
Katy Zillmer	ACA International	zillmer@acainternational.org
Sara Woggerman	ARM Compliance Business Solutions LLC	sara@armcbs.com
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Peter Goatz	Legal Aid Center of Southern Nevada, Inc.	pgoatz@lacs.org
Dacy Newman	Helvey & Associates, Inc.	dnewman@hlv.com
Jonathan Norman	NV Coalition of Legal Service Providers	jcnorman@lacs.org

Those who attended and did not sign-in (list exported from Webex):

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5. **A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public (see item 2 above). A summary of responses can be found in the minutes to the workshops and the hearing (Exhibits B and C) and the small business impact statement (Exhibit A). Copies of these materials can be obtained by contacting Mary Young, Financial Institutions Division at fidmaster@fid.state.nv.us or mmyoung@fid.state.nv.us or 702-486-4120 or by visit the Division's website: www.fid.nv.gov.

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The initial agency draft regulation was submitted to LCB on October 6, 2021 (see "Exhibit D") and revisions in consideration of industry comments were submitted on November 10, 2021 (see "Exhibit E") to LCB for their review to determine that the regulation conformed to legislative authority and intent. LCB completed the review and provided the revised proposed regulation dated February 11, 2022.

At the conclusion of the public hearing on March 23, 2022, the permanent regulation was adopted in the form proposed and reflected in the LCB Revised Proposed Regulation R055-21 dated February 11, 2022.

The Division made any changes it could in consideration of public comments throughout the rulemaking process, if it did not impact the consumer protect responsibility of the Division or the spirit and intent of the law, S.B. 248.

7. **The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.**

(a) Both adverse and beneficial effects.

Adverse effects. Medical debt collectors are concerned of the adverse effects that S.B.248 will impose on the industry, including their medical clients and medical debtors. The comments were more directed towards S.B.248 and not the proposed regulations.

Beneficial effects. S.B. 248 provides additional time for a Nevada medical debtor, or their medical insurer, to pay the medical debt and additional time before the medical debt is reported to credit reporting agencies. A medical debt collector must send out a 60-day notification before taking any action to collect a medical debt. The adopted regulations provide clarification on what does or does not constitute "taking any action to collect a medical debt" and specifies the information in the 60-day notification letter and how the letter should be formatted for a medical debt collector to understand, and other matters properly relating to S.B.248.

(b) Both immediate and long-term effects.

The immediate effect or long-term economic effect on regulated entities and to the public is the adopted regulations will support licensees for compliance with NRS 649 and S.B.248 and provide additional consumer protections. The adopted regulations do not impose any additional fees or costs.

Nevada medical debtors will have additional time to pay their medical debts without negatively impacting their credit.

8. The estimated cost to the agency for the enforcement of the adopted regulation.

The Division anticipates the cost of enforcement of the proposed regulation to be absorbed into the workloads of existing staff and will not need any additional funding or a budget increase.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

To our knowledge, the proposed regulation does not duplicate any existing federal, state, or local standards regulating the same activity.

10. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The proposed regulation does not duplicate any existing federal, state, or local standards regulating the same activity. The proposed regulation and S.B. 248 work in conjunction with existing federal and state laws.

11. If the regulation provides a new fee or increase an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed regulation does not establish new fees.

Enclosed:

Exhibit A – Small Business Impact Statement

Exhibit B – Minutes of October 26, 2021 Workshop on R055-21

Exhibit C – Minutes of March 23, 2022 Adoption Hearing on R055-21

Exhibit D – Initial Draft of Proposed Regulation Submitted to LCB on October 6, 2021

Exhibit E - Second Draft of Proposed Regulation Submitted to LCB on November 10, 2021

“EXHIBIT A”

**SMALL BUSINESS IMPACT STATEMENT FOR PROPOSED REGULATIONS BY
THE FINANCIAL INSTITUTIONS DIVISION (Division)
TO SENATE BILL (SB) 248 (Chapter 649)
MEDICAL DEBT COLLECTION**

September 29, 2021

1. Small Business Impact Statement pursuant to NRS 233B.0609:

(a) A description of the manner in which comment was solicited from affected small businesses, a summary of their responses, and an explanation of the manner in which other interested persons may obtain a copy of the summary.

(I) Solicitation of affected small businesses.

The Division sought comments in accordance with NRS 233B.0608 for the purpose of considering whether as a result of the proposed regulations, there may be a direct and significant economic burden upon small business (defined as fewer than 150 employees) or if the regulations will directly restrict the formation, operation or expansion of a small business seeking to those engaged in or who desire to engage in the business of extending credit to ensure that there is established in this State an adequate, efficient and competitive service available to the general public.

The Division composed the solicitation list from current licensees under Nevada Revised Statutes Chapter 649 and known interested parties. In turn, the Division solicited comments on the proposed regulations for SB 248 from the above lists by emailing a notice and questionnaire. Additionally, a copy of the full text of the proposed regulations was emailed and posted to the Division’s website. The solicited comments were used to formulate this Small Business Impact Statement.

(II) Summary of responses.

See attached spreadsheet.

(III) Obtain a copy of the summary.

This Small Business Impact Statement was posted on the NFID website dated October 6, 2021 along with a Notice of Workshop for October 26, 2021. Interested persons may also obtain a copy of the Small Business Impact Statement by contacting the:

**Office of the Commissioner
Financial Institutions Division
3300 W. Sahara Avenue, Suite 250
Las Vegas, NV 89102
Email: FIDMaster@fid.state.nv.us
Telephone: (702) 486-4120
Fax: (702) 486-4563
Website: <http://fid.nv.gov>**

(b) The manner in which the analysis was conducted.

Pursuant to NRS 233B.0608(1), the Division made a concerted effort to determine whether the proposed regulations are likely to impose a direct and significant economic burden upon a small business; or directly restrict the formation, operation or expansion of a small business. For this effort, the Division sent a copy of the draft regulations and a Small Business Impact Questionnaire to all known interested parties for review and invited written comment regarding the impact to the entities, NFID took all comments submitted into consideration.

Following review and analysis of the authorizing statutory language (Senate Bill 248) and written comment from the industry, the Division has determined that the proposed regulation is unlikely to impose a direct and significant economic burden upon a small business; result in any direct or indirect adverse effects on small business; or directly restrict the formation, operation, or expansion of a small business. Majority of the comments received were directed towards S.B.248 and not the proposed regulation.

(c) The estimated economic effect of the proposed regulation on the small businesses which it is to regulate including, without limitation:

(1) Both Adverse and Beneficial effects:

(I) ADVERSE EFFECTS:

Medical debt collectors are concerned of the adverse effects that S.B.248 will impose on the industry, including their medical clients and medical debtors. The comments were more directed towards S.B.248 and not the proposed regulations.

(II) BENEFICIAL EFFECTS:

Medical debt collectors did not provide beneficial comments regarding the proposed regulations.

(2) Both Direct and Indirect effects:

(I) DIRECT EFFECTS:

Medical debt collectors are concerned of the adverse effects that S.B.248 will impose on the industry, including their medical clients and medical debtors. The comments were more directed towards S.B.248 and not the proposed regulations.

(II) INDIRECT EFFECTS:

Medical debt collectors are concerned of the adverse effects that S.B.248 will impose on the industry, including their medical clients and medical debtors. The loss in revenue may impact medical facilities. The comments were more directed towards S.B.248 and not the proposed regulations.

(d) A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

The Division has received a total of fifty-five (55) responses to the solicitation sent to all interested parties. The Division has considered and analyzed all submitted comments and addressed those comment in the attached summary of response spreadsheet. The majority of the comments were more directed towards S.B. 248 and not the proposed regulation, the Division cannot change current law but has drafted the proposed regulation to mitigate concerns from the industry and provide clarification.

(e) The estimated cost to the agency for enforcement of the proposed regulation.

The Division does not foresee the need for any additional funding or budget increase.

(f) If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect, and the manner in which the money will be used.

The proposed regulation does not provide for a new fee or increase to an existing fee.

(g) If the proposed regulation includes provisions which duplicate or are more stringent than federal, state, or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

The proposed regulations do not duplicate any existing federal, state, or local standards regulating the same activity. The proposed regulation and S.B. 248 work in conjunction with existing federal and state laws.

(h) The reasons for the conclusions of the agency regarding the impact of the regulation on small businesses.

This is a result of the passage of new legislation, SB 248. The Division can only lessen the impact on small business by proposing regulation that provides clarification to the industry. The regulation itself does not impose an economy burden to small business.

To the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in this Small Business Impact Statement was prepared properly and accurate.



Sandy O'Laughlin
Commissioner
Financial Institutions Division
State of Nevada, Department of Business and Industry

<u>Medical Debt Collection- Direct or Indirect Impact Item From Small Businesses</u>	<u>Number/ and %</u>	<u>Direct or Indirect</u>	<u>Adverse or Beneficial</u>	<u>NFID Answer/Mitigation</u>
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S.B.248 requires the notice to be mailed via certified letter. The cost and added burden of this process is cost prohibitive. Increased cost to prepare and mail letters, and to maintain copies of all mail returns.	31 (56.4%)	Direct	Adverse	The Nevada Legislature enacted the law, S.B.248, which requires the 60-day notice to be sent by certified mail. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.
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Agencies foresee a decrease in collection rates and revenue due to the 60-day delay and certified mailing. The cost to mail the letters nullifies the ability for the accounts to be profitable.	15 (27.3%)	Direct	Adverse	The Nevada Legislature enacted the law, S.B.248, which requires the 60-day notice to be sent by certified mail. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.
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The requirement of sending communication via registered or certified mail decreases the likelihood of actual notice arriving to consumers. First class mail is sufficient.	1 (1.8%)	Direct	Adverse	The Nevada Legislature enacted the law, S.B.248, which requires the 60-day notice to be sent by certified mail. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.
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<p>S.B. 248 will have a damaging impact to agency employees. Offering employee raises will be become difficult, if not impossible, as will offering benefits (health insurance, life, dental, vision and paid time off).</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>This would be a business decision made by a collection agency. The Nevada Legislature enacted the law, S.B.248. NFID cannot change a current law but can promulgate regulations to support the law. This comment is more directed towards S.B.248 and not the proposed regulations.</p>
<p>Negative impact on the creditor and potentially the consumer.</p>	<p>4 (7.3%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>This comment refers to creditors and consumers and not a collection agency identifying as a small business nor is the comment received from a specific creditor to determine if the creditor is a small business as defined in NRS 233B.0382. Therefore, NFID does not provide a response since this a survey to determine how the proposed regulations will impact small businesses.</p>
<p>Agencies anticipate they will be forced to halt collection activity in Nevada.</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>This would be a business decision made by a collection agency. The Nevada Legislature enacted the law, S.B.248. NFID cannot change a current law but can promulgate regulations to support the law. This comment is more directed towards S.B.248 and not the proposed regulations.</p>

<p>The mandated delay in contacting the consumer will result in less revenue collected for clients and less revenue for the collection agency. Anticipate losing clients due to the inability to absorb these costs and losses created by S.B. 248.</p>	<p>5 (9.1%)</p>	<p>Indirect</p>	<p>Adverse</p>	<p>The Nevada Legislature enacted the law, S.B.248, which requires the 60-day waiting period. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.</p>
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<p>Delayed consumer communications: The 60 day waiting period effects the flow of consumer communications because the initial 60 days of an account cycle is the most impactful time. This period allows for an uninterrupted account flow from creditor to agency to consumer. Enacting a 60 day wait disrupts the flow unnecessarily that creates a break in communication and causes more confusion for a consumer.</p>	<p>3 (5.5%)</p>	<p>Indirect</p>	<p>Adverse</p>	<p>The Nevada Legislature enacted the law, S.B.248, which requires the 60-day waiting period. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.</p>
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<p>Th 60-day limitation on communication adversely impacts business because not only does it hurt the consumer as an account cannot be resolved early, before credit reporting, but the consumer is unaware of the obligations for that 60-day period.</p>	<p>1 (1.8%)</p>	<p>Indirect</p>	<p>Adverse</p>	<p>This comment refers to consumers and not a collection agency identifying as a small business, therefore, NFID does not provide a response since this a survey to determine how the proposed regulations will impact small businesses.</p>
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<p>Limiting this proposed language to medical debt only: This wrongly applies a restriction to one subsection of the debt collection industry, therefore impacts one group of business more than others. To delay revenue recoveries and add more</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>The Nevada Legislature enacted the law, S.B. 248, which applies to medical debt collection. NFID cannot apply S.B.248 to any other type of debt.</p>
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cost burdens for healthcare facilities who undoubtedly suffered, and continue to suffer, financially during COVID seems discriminatory.				
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The obvious increase in cost S.B. 248 provides, to do the same job as an agency does in other states.	1 (1.8%)	Indirect	Adverse	The Nevada Legislature enacted the law, S.B.248, which requires the 60-day notice to be sent by certified mail. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.
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The proposed regulations do not address most of the issues regarding vagueness of the underlying statute. In fact, instead of clarifying the numerous vague points in the statute, the proposed regulations create additional requirements not authorized by the statute. The regulations add time and hours to prepare and save data in addition to the expenses already imposed. Also, because the proposed regulations do not fix the many vague and ambiguous parts of the statute, licensees will be subjected to numerous lawsuits.	1 (1.8%)	Direct	Adverse	This comment did not provide a specific section of the regulation nor was it specific enough for NFID to formulate a response.
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Loss of clients, loss of revenue, added overhead costs, labor costs, delayed recovery, and income.	3 (5.5%)	Indirect	Adverse	The Nevada Legislature enacted the law, S.B.248, which requires the 60-day notice to be sent by certified mail. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.
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Not being able to take any action to collect a debt, an increase in customer service-related complaints since cannot commute information.	1 (1.8%)	Indirect	Adverse	The Nevada State Legislature enacted the law, S.B.248, which requires no action to be taken on medical debt less than 60 days. NFID cannot remove this requirement but can promulgate regulations to support the law.
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Confusion created between S.B.248 and federal law	1 (1.8%)	Indirect	Adverse	The Nevada State Legislature enacted the law, S.B.248, which requires no action to be taken on medical debt less than 60 days. NFID cannot change current law but can promulgate regulations to support the law.
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S.B. 248 will force a reduction in staff of collection agencies.	4 (7.3%)	Direct	Adverse	This would be a business decision made by a collection agency. The Nevada State Legislature enacted the law, S.B. 248. NFID cannot change a current law but can promulgate regulations to support the law. This comment is more directed towards S.B.248 and not the proposed regulations.
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The 60-day letter will cause confusion and false sense of urgency for medical debtors. The 60-day letter will be considered as a communication to the medical debtor because it is a notice from a collection agency.	2 (3.6%)	Indirect	Adverse	The Nevada State Legislature enacted the law, S.B.248, which requires no action to be taken on medical debt less than 60 days. NFID cannot remove this requirement, however, the proposed regulations provides clarification through sections 3, 4 and 6. Section 3 defines "action to collect a medical debt" and section 4 states "...such written notification to a medical debtor is not intended to be a communication under the Fair Debt Collection Practices Act." In addition, section 6 also requires a 60-day letter to have the disclosure: This is not intended to be a communication under the Fair Debt Collection Practices Act.
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<p>The certified mail bold text that is required is deceptive and misleading because it creates a false sense of urgency when the letter is received by the medical debtor.</p>	<p>1 (1.8%)</p>	<p>Indirect</p>	<p>Adverse</p>	<p>The verbiage required to be in at least 12-point bold type clearly explains to a medical debtor that the 60-day notice is not a demand for payment, no action will be taken to collect the debt within 60 days of the letter, the debt will not be reported to any credit reporting agency during the 60-day notification period, a voluntary payment may be made and will not extend the applicable statute of limitation and is not an admission of liability, and is not intended to be a communication under FDCPA. It's required to be in bold so a medical debtor can easily see the important information.</p> <p>The verbiage in bold text should not create a sense of urgency since it's a consumer protection law being explained in a conspicuous manner.</p>
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<p>Increase costs and reduction in staff will impact medical clients because agencies will not be able to accept small balance accounts and will have to increase rates.</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>This comment refers to medical clients and not a collection agency identifying as a small business nor is the comment received from a specific creditor to determine if the creditor is a small business as defined in NRS 233B.0382. Therefore, NFID does not provide a response since this a survey to determine how the proposed regulations will impact small businesses.</p>
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<p>The inability to communicate with a debtor in the 60-day period and the confusion the S.B. 248 letter will cause debtors will hinder an agency' reputation with debtors.</p>	<p>1 (1.8%)</p>	<p>Indirect</p>	<p>Adverse</p>	<p>The Nevada State Legislature enacted the law, S.B.248, which requires no action to be taken on medical debt less than 60 days.. NFID cannot remove this requirement, however, the proposed regulations provide clarification through sections 3, 4 and 6. Section 3 defines "action to collect a medical debt" and section 4 states "...such written notification to a medical debtor is not intended to be a communication under the Fair Debt Collection Practices Act." In addition, section 6 also requires a 60-day letter to have the disclosure: This is not intended to be a communication under the Fair Debt Collection Practices Act.</p>
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<p>Since cannot communicate within 60 days, instead of seeking telephone communication, will report to credit agency on 61st day harming a consumer.</p>	<p>1 (1.8%)</p>	<p>Indirect</p>	<p>Adverse</p>	<p>This comment refers to consumers and not a collection agency identifying as a small business, therefore, NFID does not provide a response since this a survey to determine how the proposed regulations will impact small businesses.</p>
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<p>Will force an agency to not collect medical debt from those located in Nevada.</p>	<p>6 (10.9%)</p>	<p>Indirect</p>	<p>Adverse</p>	<p>This would be a business decision made by a collection agency. The Nevada State Legislature enacted the law, S.B. 248. NFID cannot change a current law but can promulgate regulations to support the law. This comment is more directed towards S.B.248 and not the proposed regulations.</p>
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<p>Section 3 of the draft proposed regulation purports to allow medical debt collectors to respond to inquiries from medical debtors during the 60-day notice period; however, it does not define the parameters of what is and is not permitted during such responsive conversations or letters. Specifically, while section 3(e) prohibits debt collectors from “demanding payment,” it does not specify what “demanding payment” actually means. For instance, if a debtor asks how they might clear the balance and what options they may have, is a collector permitted to provide the different payment options, to set up a payment plan, or offer a settlement? Must they wait to do that until after the 60 days have passed, even though the debtor wants to discuss the matter much sooner? Thus, if a consumer contacts a debt collector in response to the 60-day letter, although the debt collector may respond as authorized by draft regulation Section 3(2)(a), there is no guidance as to how a debt collector should respond if the consumer questions the balance since any potential answer the debt collector gives could be considered a “demand for payment.” Out of an abundance of caution, collectors are likely to respond by saying that they are not permitted to discuss the balance until after the 60-day notice period has expired.</p>	<p>16 (29.1%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>Section 3 of the draft proposed regulation defines "action to collect a medical debt" which list activities that are and are not included in the action of collecting a medical debt for the purpose of S.B.248. To answer the specific subsection in question 3(e) Demanding payment and the specific scenario provided, as stated in S.B. 248 and the proposed regulations, if a medical debtor initiates the contact and wants to make a voluntary payment, a collection agency may accept a payment, provide payment options and arrangements and send a receipt for the voluntary payment. Answering questions about the debt posed by a medical debtor is not considered demanding payment. If a consumer questions the balance, a verification of the debt can be sent pursuant to section 3(2)(c).</p>
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<p>Section 4 of the draft proposed regulation harms consumers by depriving them of their federal rights under the Fair Debt Collection Practices Act (FDCPA). As currently phrased, the regulations now prohibit a debt collector from including FDCPA disclosures. Prohibiting collection agencies from providing consumers notice of their federal rights will harm consumers because it will deprive them of 60 days in which they could have exercised those rights. More importantly, in response to the 60-day notice, some may choose to voluntarily pay the medical debt without knowing they had any federal rights at all. While officials in Nevada may believe that this correspondence would not be considered a communication in connection with a debt, thus sidestepping federal law disclosure requirements, it is not clear that Nevada officials have the ability to make such a determination regarding federal law – that would be left to the federal regulators and the courts.</p>	<p>16 (29.1%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>This comment refers to consumers and not a collection agency identifying as a small business, this is a survey to determine how the proposed regulations will impact small businesses. However, please note S.B.248 nor the proposed regulation does not replace any federal law concerning medical debt.</p>
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<p>The certified mail requirement harms consumers. The draft proposed regulations continue to require the first collection agency to forward its 60-day notice by certified mail. However, certified mail creates several problems for debtors. First, it creates a false sense of urgency. Next, it makes it less likely that the debtor will actually receive the notice.</p>	<p>16 (29.1%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>This comment refers to consumers and not a collection agency identifying as a small business, therefore, NFID does not provide a response since this is a survey to determine how the proposed regulations will impact small businesses.</p>
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<p>Certified mail is typically used for urgent communications where proof of delivery is paramount. Debtors, particularly those who are having difficulty paying their bills, will likely consider a certified notice to be a precursor to litigation, garnishment, or other serious action against them. Debtors receiving such notices will feel more compelled to address the outstanding balance, which is seemingly opposite of what SB248 and the regulations intend. Further, oftentimes the recipient of certified mail will not receive the mailing. If the debtor is not home, which is often the case when mail is delivered, the delivery person must leave an attempted delivery (“pink”) slip advising that there is mail that needs to be picked up at the post office. This creates an added stress and burden on a consumer to travel to the post office during regular business hours to retrieve the piece of mail. If they work, that may be difficult or impossible. Given that these types of mail often contain bad news, many debtors simply choose not to accept delivery of certified mail even if they could get to the post office. Thus, the certified requirement will make it less likely that the debtor will be notified of the outstanding debt.</p>				
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<p>The draft proposed regulations do not address the harm to consumers who attempt to pay via mail during the 60-day period. The mandated disclosures of Section 7.5 appear to apply to voluntary payments made over the phone, where a collection representative can provide the disclosures verbally. Section 7.5 fails to address parameters regarding mailed-in payments. Assuming Section 7.5 contemplates these disclosures being sent to the medical debtor via a letter, Section 7.5 fails to address how long a collection agency must wait before depositing the payment. Without additional guidance, a collection agency can only comply with Section 7.5 for mailed-in payments by (a) sending a letter with the disclosures and waiting until the expiration of the 60-day notice period to deposit the payment; or (b) returning the payment to the medical debtor with the disclosures asking the medical debtor to remail the payment. Since the debtor has clearly attempted to make the payment and clear the balance, this will both frustrate the debtor and harm them by not accepting a payment when that is what both the creditor and the debtor desire. Any medical debtor paying by check who does not routinely balance their checkbook may have the payment withdrawn well after they sent it, causing overdraft fees or other penalties; or simply the frustration of having an</p>	<p>16 (29.1%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>A medical debtor may make a voluntary payment. SB248 must be complied with regarding the disclosures. An agency can add the language for voluntary payment on their website and mail a payment receipt to the debtor confirming the voluntary payment was received with the required language and the required disclosures.</p>
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<p>unexpected withdrawal. Further, asking medical debtors to remail a payment to ensure they received the disclosures will cause medical debtors to incur the cost of mailing twice and the frustration of making the payment twice.</p>				
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<p>The draft proposed regulations do not cure the undue stress consumers will suffer caused by requiring medical debt collectors who do not credit report to provide the credit reporting disclosure. Section 7.5 requires collection agencies to notify a medical debtor who wishes to make a voluntary payment that “the medical debt will not be reported to any credit reporting agency during the 60-day notification period.” This statement leaves the impression that after the 60-day notice period, the debt will be reported to the credit reporting agencies. For a variety of reasons, many collection agencies do not report medical debt to credit reporting agencies. Requiring collection agencies to make this disclosure, phrased in this manner, even where the debt will not be reported to a credit bureau, will cause undue stress and confusion to consumers concerned about maintaining their credit. Further, by requiring this disclosure phrased in this manner, a consumer may choose to pay a medical bill to prevent it from being reported on their credit, even where the</p>	<p>16 (29.1%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>Pursuant to S.B. 248 section 8.5, the protections set forth in sections 7, 7.5 and 8 of S.B. 248 are for the benefit of medical debtors and cannot be waived. The disclosure must be made to the debtor. Suggested language:</p> <p><i>Pursuant to NRS 649, medical debt cannot be reported until 60 days from the date of the letter. However, ABC Collection Agency does not report to credit reporting agencies.</i></p>
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collection agency will never report the debt.				
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Defining “Action to collect a debt” may have an adverse effect if 1) defined in a manner inconsistent with FDCPA definitions, both for training and compliance purposes 2) defined in a manner that is broader than FDCPA definitions 3) defined in a way that would prevent communication to accept voluntary payments from consumers or complicate the training that collectors receive as part of their FDCPA training (in that, every employee would need to be re-trained to follow another set of rules that is the exact opposite of the debt collection warnings they are currently trained to give when communicating with a consumer).	1 (1.8%)	Direct	Adverse	S.B.248 nor the proposed regulation does not replace any federal law concerning medical debt, therefore, an adverse effect should not occur.
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<p>In the event that a consumer chooses to ignore the letter, not be honest regarding receipt of the letter, does not claim or is not available for delivery of the letter, it causes a risk of suit or threatened suit to agency that can end up costing the agency in both attorney fees and settlement/payout for damages or violation.</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>The 60-days starts from the date of mailing (the next day is day 1). The process is: an agency is assigned a debt, mails out the required notice, an agency must wait 60 days, when the 60-days has ended then an agency may proceed to attempt to collect the debt as normal and in compliance with all other provisions in S.B. 248, NRS and NAC 649, and FDCPA, no matter what the debtor does on their end.</p> <p>All documentation, including proof of mailing of the certified/registered letter(s) must be retained per the record retention policy in NRS 649.335. If a return receipt/certified card is not retained or received, the online tracking print-out and the tracking number must be retained for NFID to review during an examination.</p>
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<p>If the content required in the letter is too detailed as to account information, this will cause a delay in sending the letter (in addition to the 60-day notice period) because the agency will need to not only enter the account into its debt collection software system, but it will then need to be sure that its software system is capable of reproducing the information needed for the production of the letter.</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>The content of the letter is required by S.B.248 and by future approved regulations.</p>
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<p>The more detailed the letter the more room for error there is, which then is a potential risk to the agency for legal action. For example: If the balance assigned for collection is \$100 and a voluntary payment was made to either the agency or the client the day the letter is printed resulting in a lesser balance, will the higher balance in the 60-day notice letter result in a violation? If the letter must include the date of service but the client assigned a charge that included multiple dates of service (client error, not agency) and the letter is sent out with a single date of service. Will this will be viewed as agency's violation? It is inherently risky to put something in writing that is capable of being out dated by the time it is sent. Collection agencies already assume this risk when sending the required 1692g debt notice, and sending a second letter increases the risk for error and cost for legal action to the agency. The agency and client will need to basically "double check" the debt information for accuracy prior to the expiration of the 60-day waiting period because in that time if the account was paid or adjusted in any way, agencies attempt may be an FDCPA violation, resulting in a review of the accounts upon placement and upon expiration of the 60-day period/1692g notice.</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>An agency sends out the notice with the information and validation of debt it is provided by the client on day 1. Any factors outside the control of an agency should not impact this normal collection practice. An agency must still comply with all state and federal laws and regulations.</p>
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Timing of when the 60-day notification letter shall be sent, will may make medical clients less likely to place any accounts for collection given that they can directly collect past due balances without the same restrictions that an agency faces. This could result in a down turn of business especially for those that have medical clients as a large portion of their clientele.	1 (1.8%)	Direct	Adverse	The Nevada Legislature enacted the law, S.B.248, which requires the 60-day notice to be sent by certified mail. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.
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Clients will lose confidence in our ability to generate revenue and stop using our service. Employment cuts if our business diminishes. As revenues decrease, there is a possibility of closing our branch office. In turn, that would put our Nevada employees out of work, rent space revenue for our property owner gone.	1 (1.8%)	Indirect	Adverse	This would be a business decision made by a collection agency. The Nevada State Legislature enacted the law, S.B. 248. NFID cannot change a current law but can promulgate regulations to support the law. This comment is more directed towards S.B.248 and not the proposed regulations.
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Healthcare systems must increase price to compensate for reduction in revenue.	1 (1.8%)	Indirect	Adverse	This comment refers to the healthcare system and not a collection agency identifying as a small business, therefore, NFID does not provide a response since this a survey to determine how the proposed regulations will impact small businesses.
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The 60-day requirement will cost agencies more money with no return.	2 (3.6%)	Indirect	Adverse	The Nevada Legislature enacted the law, S.B.248, which requires the 60-day waiting period. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.
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Decrease in staff and office rental space as earnings from commission deteriorate.	1 (1.8%)	Indirect	Adverse	This would be a business decision made by a collection agency. The Nevada State Legislature enacted the law, S.B. 248. NFID cannot change a current law but can promulgate regulations to support the law. This comment is more directed towards S.B.248 and not the proposed regulations.
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Addition costs for programming and staff hours due to the mail requirements since currently done through a third-party corresponding with the postal service. Would need to purchase equipment, hire staff to sort, collate and recordkeeping.	1 (1.8%)	Direct	Adverse	The Nevada Legislature enacted the law, S.B.248, which requires the 60-day notice to be sent by certified mail. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.
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System changes and configurations will be required to ensure the FDCPA required validation notice and/or S.B.248 letter is sent timely.	2 (3.6%)	Direct	Adverse	It is an agency's business decision to determine what software programming is needed to ensure compliance with all laws and regulations.
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Delayed payments due to the 60-day pause.	2 (3.6%)	Indirect	Adverse	The Nevada Legislature enacted the law, S.B.248, which requires the 60-day waiting period. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.
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Unnecessary litigation due to conflicting information in S.B. 248 and the FDCPA.	4 (7.3%)	Indirect	Adverse	S.B. 248 does not replace FDCPA. An agency can comply with both laws without conflict. CFPB Reg F Section 1006-104 states, in part, "A disclosure required by State law is not inconsistent with the FDCPA or Regulation F if the disclosure describes a protection that such law affords any consumer that is greater than the protection provided by the FDCPA or Regulation F."
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Medical providers will have to sue consumers to recover costs.	1 (1.8%)	Indirect	Adverse	This comment refers to consumers and medical clients and not a collection agency identifying as a small business nor is the comment received from a specific client to determine if the client is a small business as defined in NRS 233B.0382. Therefore, NFID does not provide a response since this a survey to determine how the proposed regulations will impact small businesses.
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Providers will be forced to assign accounts to collections sooner than the general 120 days from date of service.	1 (1.8%)	Indirect	Adverse	This comment refers to medical providers and not a collection agency identifying as a small business nor is the comment received from a specific medical provider to determine if the medical provider is a small business as defined in NRS 233B.0382. Therefore, NFID does not provide a response since this a survey to determine how the proposed regulations will impact small businesses.
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Increased risk of lawsuits due to conflict between state and federal laws.	3 (5.5%)	Direct	Adverse	S.B. 248 does not replace FDCPA. An agency can comply with both laws without conflict. CFPB Reg F Section 1006-104 states, in part, "A disclosure required by State law is not inconsistent with the FDCPA or Regulation F if the disclosure describes a protection that such law affords any consumer that is greater than the protection provided by the FDCPA or Regulation F."
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Will no longer be able to perform recovery work for healthcare clients in Nevada. Will negatively impact healthcare providers.	1 (1.8%)	Direct	Adverse	This comment refers to healthcare clients and not a collection agency identifying as a small business nor is the comment received from a specific healthcare client to determine if the medical provider is a small business as defined in NRS 233B.0382. Therefore, NFID does not provide a response since this a survey to determine how the proposed regulations will impact small businesses.
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Potential lawsuits on accounts placed prior to the effective date could negatively impact business	1 (1.8%)	Indirect	Adverse	S.B. 248 became effective July 1, 2021. NFID cannot provide legal advice, however, NFID will not enforce S.B. 248 on accounts that existed prior to the effective date.
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Loss of business in the State of Nevada due to onerous requirements.	1 (1.8%)	Indirect	Adverse	The Nevada Legislature enacted the law, S.B.248, which requires the 60-day notice to be sent by certified mail. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.
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60 day period is too long. Delays ability to collect for the client	1 (1.8%)	Direct	Adverse	The Nevada Legislature enacted the law, S.B.248, which requires the 60-day waiting period. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.
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<p>The 60-day delay may negatively impact the number of patients willing to make a payment.</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>The Nevada Legislature enacted the law, S.B.248, which requires the 60-day waiting period. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.</p>
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<p>Increase expense of letter development, and the necessary man-hours necessary for new strategy implementation.</p>	<p>1 (1.8%)</p>	<p>Indirect</p>	<p>Adverse</p>	<p>The Nevada Legislature enacted the law, S.B.248, which requires the 60-day notice to be sent by certified mail. NFID cannot remove this requirement from the law but can promulgate regulations to support the law.</p>
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<p>Probable loss of Nevada-based medical providers due to small businesses inability to comply with NRS 649.332(2).</p>	<p>1 (1.8%)</p>	<p>Indirect</p>	<p>Adverse</p>	<p>This comment refers to healthcare clients and not a collection agency identifying as a small business nor is the comment received from a specific healthcare client to determine if the medical provider is a small business as defined in NRS 233B.0382. Therefore, NFID does not provide a response since this a survey to determine how the proposed regulations will impact small businesses.</p>
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<p>Small business medical providers depend on a collection agency to support the credit-based business model. Without a cost effective way to collect past due accounts, small business healthcare provider partners will, out of necessity, restrict credit to those who need it most.</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>This comment refers to healthcare clients and not a collection agency identifying as a small business nor is the comment received from a specific healthcare client to determine if the medical provider is a small business as defined in NRS 233B.0382. Therefore, NFID does not provide a response since this a survey to determine how the proposed regulations will impact small businesses.</p>
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<p>Section 4 of the proposed regulations contains language that suggests written notification is required at the time a medical debt is placed with a collection agency, regardless of whether the agency intends to engage in any collection efforts on that account in the future. We would note that some agencies may collect small balance healthcare accounts where the commission received on an account would be less than the cost of sending a notice via certified mail. An agency should have the flexibility to decide that account isn't worth pursuing or wait until additional accounts may be referred (to increase the balance to justify the cost of mailing), so long as the agency doesn't engage in collection efforts on the account.</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>The Nevada Legislature enacted the law, S.B.248, which requires the 60-day waiting period. NFID cannot remove this requirement from the law. In order for an agency to collect on the date, they must wait the 60-days. The 60-days starts from the date of mailing (the next day is day 1). The process is: an agency is assigned a debt, mails out the required notice, an agency must wait 60 days, when the 60-days has ended then an agency may proceed to attempt to collect the debt as normal and in compliance with all other provisions in S.B. 248, NRS and NAC 649, and FDCPA.</p>
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<p>Sending a 60-day notice that conveys information about the debt and then waiting 60 days to send the notice required by 15 USC 1692g will almost certainly subject the company to increased litigation. While the proposed regulations state that the 60-day notice is not intended to be a communication under the FDCPA, a state agency's opinion is not typically binding on a federal court when analyzing compliance with a federal statute. Further, even if there would be a meritorious</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>The Nevada Legislature enacted the law, S.B.248. NFID cannot remove this requirement from the law. S.B. 248 does not replace FDCPA. An agency can comply with both laws without conflict. CFPB Reg F Section 1006-104 states, in part, "A disclosure required by State law is not inconsistent with the FDCPA or Regulation F if the disclosure describes a protection that such law affords any consumer that is greater than the protection provided by the FDCPA or Regulation F."</p>
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<p>defense to the lawsuit based on our company's reliance, it will not stop the lawsuit from being filed and it likely subjects the company to tens of thousands of dollars in defense costs for each lawsuit. Similarly, the proposed regulations seem to contemplate that a consumer might respond to the notice by trying to make a voluntary payment on the account. However, if that contact occurs shortly after the 60-day period begins, there is yet another violation of 15 USC 1692g, where the agency provides information about a debt (i.e. the amount owed) and then cannot send the 1692g notice within five days of that communication without violating the proposed regulations. While expenses related to defending frivolous litigation are often a part of the budget for a collection agency, one such lawsuit now stands to eliminate any remaining revenue that our company could expect to recover on NV healthcare debt (after factoring in the increased mailing costs).</p>				
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<p>The cost of ensuring compliance by paying external counsel to assist in implementing a new notice requirement adds to overhead costs.</p>	<p>1 (1.8%)</p>	<p>Indirect</p>	<p>Adverse</p>	<p>It is an agency's business decision to determine if external counsel is needed to ensure compliance with law and regulation.</p>
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The change to the letter approval process being part of the annual examination vs. upon creation or as needed decreases the cost in implementing a new or revised letter.	1 (1.8%)	Direct	Beneficial	No response is required since this comment does not have an adverse effect.
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Consumers will not be engaged or responded to in the first 60 days of the certified letter, leaving them confused and angered, if they call or write the agency with questions.	1 (1.8%)	Indirect	Adverse	Section 3 of the draft proposed regulation defines "action to collect a medical debt" which lists activities that are and are not included in the action of collecting a medical debt for the purpose of S.B.248. If a medical debtor initiates the contact and wants to make a voluntary payment, a collection agency may accept a payment, answer questions about the debt posed by a medical debtor and send verification of the debt.
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Consumers who receive certified letters will likely respond in kind with certified mail to pay or dispute the debt, leaving an undue hardship on the consumer.	1 (1.8%)	Indirect	Adverse	This comment refers to consumers and not a collection agency identifying as a small business, therefore, NFID does not provide a response since this a survey to determine how the proposed regulations will impact small businesses under NFID's jurisdiction.
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May create confusion and become overwhelming for consumer when combined the new Regulation F requirements. Reg F language would refer to a specific validation date and the proposed language of the 60 days. Also, the language states the disclosure must be on the front side of the letter. When using the model CFBP Reg F validation letter, state	1 (1.8%)	Direct	Adverse	The disclosures to consumers should not create confusion. CFPB Reg F Section 1006-104 states, in part, "A disclosure required by State law is not inconsistent with the FDCPA or Regulation F if the disclosure describes a protection that such law affords any consumer that is greater than the protection provided by the FDCPA or Regulation F."
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<p>disclosures must be on the back side to receive the “safe harbor” protection. The proposed change to SB248 would not allow the protection for agencies.</p>				
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<p>The 60-day timeframe coupled with the fact the average delinquent account is not assigned to collections until at least 90 days have passed, some at 180 days, since statement date. This creates a total of 150 days-5 months until permitted a consumer to take the initiative to contact the agency. It will also prevent an agency from reaching out to offer assistance.</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>Section 3 of the draft proposed regulation defines "action to collect a medical debt" which lists activities that are and are not included in the action of collecting a medical debt for the purpose of S.B.248. If a medical debtor initiates the contact and wants to make a voluntary payment, a collection agency may accept a payment, answer questions about the debt posed by a medical debtor and send verification of the debt.</p>
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<p>Requirement to save an image of USPS responses would create most cost resulting from staff time, storage, processes to retain images. A response such as ‘undeliverable’ only works in the consumers benefit. If an agency is documenting the undeliverable, no other documentation or proof is needed as there would be no reason to prove otherwise. Usually, it’s collection agencies attempting to prove we did not receive an “undeliverable”.</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>All documentation, including proof of mailing of the certified/registered letter(s) must be retained per the record retention policy in NRS 649.335. If a return receipt/certified card is not retained or received, the online tracking print-out and the tracking number must be retained for NFID to review during an examination. This requirement aligns with current NRS 649.</p>
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Potentially provide clarification to consumers. Doing so would minimize the time and documents needed therefore saving on cost.	1 (1.8%)	Direct	Beneficial	No response is required since this comment does not have an adverse effect on small
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For companies to remain viable, they must be able to attempt to assist the consumer in different ways. The collection industry is contingency based, controlled by an enormous amount of regulation. Collection agencies have many policies and procedures in place to protect the consumer during the collection process. Implementing the proposed language only creates confusion for the consumer and barriers for the agencies.	1 (1.8%)	Indirect	Adverse	Section 3 of the draft proposed regulation defines "action to collect a medical debt" which lists activities that are and are not included in the action of collecting a medical debt for the purpose of S.B.248. If a medical debtor initiates the contact and wants to make a voluntary payment, a collection agency may accept a payment, answer questions about the debt posed by a medical debtor and send verification of the debt. An agency can assist a consumer within the current law and regulation.
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This law makes sense when applied to consumers who are alive but some agencies engage in almost entirely in the collection of debts from probate estates. As written, it would be virtually impossible to comply with this law, while also adhering to other NV laws, most notably, NV probate laws. SB 248 also presents conflicts with Federal law, namely the FDCPA.	1 (1.8%)	Direct	Adverse	S.B.248 and the proposed regulation does not replace any federal law or other state law concerning medical debt.
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<p>Many surviving family members make voluntary payments to resolve their deceased family members' debts, despite a specific disclosure that they are not personally liable for the debt in question. However, under SB 248, one of the conditions for accepting voluntary payment during the 60-day period is that the consumer initiates contact with the agency. In instances as described below, an agency would not be able to accept such payments, if the offer was extended with the 60-day window. This would provide terrible customer service and cause a grieving loved one to extend the time for resolving a debt that they want to resolve and to move toward closure.</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>Section 3 of the draft proposed regulation defines "action to collect a medical debt" which lists activities that are and are not included in the action of collecting a medical debt for the purpose of S.B.248. If a deceased medical debtor's family member initiates the contact and wants to make a voluntary payment, a collection agency may accept a payment, answer questions about the debt posed by a deceased medical debtor's family member, including- sending the verification of the debt.</p>
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<p>Subsection 5 of NRS 155.020 must file a claim with the clerk within 30 days after the mailing or 90 days after the first publication of notice to creditors pursuant to NRS 155.020, whichever is later." If a probate collection agency receives such notice within the 60-day restriction under SB 248, then an agency must either violate SB 248 and file the claim accordingly to preserve its rights under the probate statutes, or not file the claim, and forever lose its rights to collect the debt, thus causing financial harm. We do not believe that the drafters of SB 248 intended this outcome, but nonetheless, agencies are faced with it if SB 248 remains in its present form.</p>	<p>1 (1.8%)</p>	<p>Direct</p>	<p>Adverse</p>	<p>NRS 155.020 states 90 days after publication, which provides 30-days after the 60-day pause to file a claim.</p> <p>S.B. 248 was enacted into law by Nevada State Legislature, which requires a 60-day notice to be sent certified mail. NFID cannot remove this requirement.</p>
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SBI Response Summary:

Total Known Interested Parties
Solicited: 467

Total Responded with
Comments: 55

Total Responded with N/A: 11
Total Responded with over 150
Employees (outside the small
business threshold): 11

Total Comments Impacting the
SBI % (Total Known Interested
Parties Solicited - N/A - over
150 Employees=): **445**

% Responded/Total Solicited:
11.8%

% Responded with
Comments/Total Comments
Impacting SBI: **12.4%**

STATE OF NEVADA



STEVE SISOLAK
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

TERRY REYNOLDS
Director

FINANCIAL INSTITUTIONS DIVISION

SANDY O'LAUGHLIN
Commissioner

**Minutes of Workshop to Solicit Comments on
Proposed Regulations S.B.248- NRS/NAC 649**

Date: Tuesday, October 26, 2021

Time: 10:00 a.m.

Location: Webex meeting- videoconference and teleconference

Agenda Item 1. Call to Order:

The workshop to consider S.B.248 was called to order Tuesday, October 26 at 10:03 a.m. The purpose of the workshop was to receive input with respect to the proposed regulations pertaining to Chapter 649 of the Nevada Administrative Code ("NAC"), as provided by Senate Bill No. 248, requiring collection agencies to notify debtors before taking any action to collect a medical debt; providing certain protections to a medical debtor who initiates contact with or makes a voluntary payment to a collection agency; prohibiting certain practices relating to the collection of medical debt; prohibiting the waiver of certain protections provided to medical debtors; and providing other matters properly relating thereto, as described by the Notice of Workshop dated and posted on October 6, 2021.

Financial Institutions Division Staff Present at the Hearing:

Commissioner Sandy O'Laughlin
Deputy Commissioner Mary Young
Senior Deputy Attorney General Michelle Briggs
Examiner Jennifer Ramsay

Agenda Item 2. Comments by General Public:

There was one (1) commenter during this general public comment period.

- Peter Goatz, Consumer Rights Project of Legal Aid of Southern Nevada. Want to thank FID for acting quickly on the proposed regulations and the regulations appropriately implement SB248. This is important for consumers as it has a great impact on many Nevadans lives. The small business impact survey listed good feedback from the industry and FID's proposed regulations address those concerns.

Agenda Item 3. Presentation and Discussion of Proposed Regulation:

Each section of the proposed regulations was read during the workshop.

Regulation Comments per Section:

Sections 1, 2, and 3

There were no comments received on Sections 1, 2, or 3.

Section. 4.

Comments received on Section 4:

- Jonathan Pattillo, Wilson Elser Moskowitz Edelman & Dicker LLP. The regulation states the 60-day letter is not a communication for FDCPA but is vague how this will work with the new CFPB Regulation F, how it will work together.

Mary Young, FID. The proposed regulations have no conflict with federal law.

- Duane Christy, Aargon Agency. If not a conflict with FDCPA, is the state prepared to give safe harbor to all agencies for any lawsuits that may occur? This is our biggest concern.

Mary Young, FID. Thank you for your comment. We will take your comment into consideration, but this is a state law we are speaking about at this time.

- Lori Peet, Vegas Valley Collection Service. The new safe haven letter that agencies will be using, and the state says the disclosures need to be on the front of the letter, but federal law is different. I have a lot of questions surrounding this. Don't think it's possible to have all disclosures. Have you reviewed the Regulation F?

Mary Young, FID. You said you had a lot of questions surrounding that, please provide us your questions in writing so we can answer each question. We have reviewed regulation F and state law offers more protection than federal law, but we will re-review the letter and review your written questions once submitted.

- Jonathan Pattillo, Wilson Wilson Elser Moskowitz Edelman & Dicker LLP. You said that you do not view any conflict with new federal regulation. Would the state consider the requirements of SB248 could be accomplished with the same letter that satisfies Regulation F letter?

Mary Young, FID. We will consider that and discuss internally to see if we can accomplish that or not.

- Lori Peet, Vegas Valley Collection Service. Can the first letter and SB248 be together, how does that work?

Mary Young, FID. Must be separate. Once a debt is assigned, the 60-day notification letter is sent, after the 60-day waiting period, an agency may proceed with normal collection, which includes the initial letter.

Lori Peet. If giving 60-days for state and the normal initial letter of 30 days (federal) so we have to wait?

Mary Young. SB248 does not replace any federal or other state law. You have the 60-day letter then the FDCPA letter gets sent and all laws will need to be complied with.

Lori Peet. We are giving 90-day?

Mary Young. Yes, that is correct. We have the 60-days state law which does not override federal law of 30-days.

- Mitchell Guthrie, Plus Four Collections. What makes you think this is not in conflict with federal law and why do you think it's not? When will you notify us?

Mary Young, FID. Our state law offers more consumer protection and not in conflict, this state law comes before federal law. We will notify the whole industry, keep the industry in the loop during this whole regulation process. If we need to revise these regulations, the industry will be notified.

Mitchell Guthrie. You said no impact in the small business impact survey, this will impact agencies, some are small businesses.

Mary Young. We did not write the law only the regulations to help clarify, we are discussing the proposed regulation today. Our job is to promulgate the regulations to clarify the law.

- Jennifer Saltzman, Aargon Agency. The language of not intended to be a communication under FDCPA but any communication, any letter by any medium is communication under federal law. How about medical debt outside of Nevada?

Mary Young, FID. This law was written for Nevada consumers and/or Nevada clients/businesses. Our jurisdiction is only for Nevada. We will take that comment into consideration about the communication under law. Please provide suggestions to us in writing.

- Cary Geil, Collection Services of Nevada. Are dental practices excluded from this?

Mary Young, FID. We do not have jurisdiction over NRS 449 but can point you to the definition of Hospital NRS 449.012 and medical facility NRS 449.0151. That may answer

your question, but we don't have direct jurisdiction over NRS 449 and cannot comment on that.

Gary Geil. Any chance of not having to send the 60-day letter by certified mail? It's a hardship on small business and clients, and consumers may feel like they are being sued.

Mary Young. The certified and/or registered mail was put in by the legislators under SB248. We cannot change the law as written; we can only write regulations to support law and this law does not give us any discretion at all. We cannot change SB248 as written and that covers certified mailing

- Jonathan Pattillo, Wilson Elser Moskowitz Edelman & Dicker LLP. Does registered mail satisfy the regulation?

Mary Young, FID. SB248 says certified or registered mail.

Jonathan Pattillo. Can that include certification of mailing?

Mary Young. No, it must be sent exactly what is in law. Current law does not offer us any discretion.

- Lori Peet, Vegas Valley Collections. If we send the state letter via email, can that be considered in lieu of certified mailing?

Mary Young. The law says certified or registered mailing and current law does not give us any discretion to change that.

- Keith Kettlekamp, Remex Incorporated. Follow-up to the comment of registered or certified mail. I believe you said and if I understand that you said you implement the law or regulation but if there is a financial burden on small agencies, clients and every medical debt consumer, can you or have you in the past or are you in the position to make suggestions to the legislators, can you do that in Nevada and consider doing so for this excessive cost?

Mary Young, FID. We do not make the law, SB248 was put in place by the legislators. Our job is to regulate the law and write regulations to support current law. We cannot make changes to the law. SB248 does not give us discretion to do so, it clearly states certified or registered mail. Section 8.5 states the protections set forth in sections 7, 7.5 and 8 of this act are for the benefit of medical debtors and cannot be waived. Even if we wrote regulations contradicting that by saying you didn't need a certified letter, I doubt LCB would approve it since that is a clear contradiction of law. As an agency we have to wait for the legislators to make those changes to law. We cannot suggest legislators to change it.

Section. 5.

There were no comments received on Section 5.

Section. 6.

Comments received on Section 6:

Lori Peet, Vegas Valley Collections. Does the mini miranda need to be on this letter?

Mary Young, FID. This is the 60-day letter required by state law, this is not the FDCPA initial letter that comes after the 60-day letter.

Section.7.

Comments received on Section 7:

- Arnold Maurice, Receivables Management Association International. Opposing the proposed regulations. Specifically, section 7, the stated purpose of the rules is to implement SB248 by adding provisions related to medical debt, but this is regarding all past due debt. These changes must be confined to SB248. Referencing past due debt is problematic. Section 7 is burdensome and makes agencies keep returned mail which has no purpose.

Mary Young, FID. We approve all letters that have to do with past due debt, which requires prior approval. With the addition of the new notification letter on top of all other letters, we thought we would save time for agencies and ease the burden for everyone by removing the pre-approval requirement. The past due debt language is already in NRS 649 and we took this to the regulation to make sure it was clear, even without this in regulation, it would still apply to anyone licensed under NRS 649. This is our current practice now and is nothing new. We consider the return mail as part of the collection record, we just tried to make it clearer. We do look at this during an examination and this change was triggered by the new medical debt 60-day letter under SB248.

- Tamar Yudenfrund, Encore Capital Group. Wants to address subsection 3 of section 7, agrees with other subsections of section 7 that it will streamline and make life easier but subsection 3, will make it harder because they do not receive all letter because they use a third-party mail vendor, and the third-party notifies the agency that it is undeliverable and shred it. If they have their third party open the letter that can be violating federal law by allowing them access to mail.

Mary Young, FID. What you explained makes sense, but we require this now, it's part of the collection record and part of our examination, but I will read your letter and maybe that will provide further clarification of your concerns.

Section. 8.

Comments received on Section 8.

Lori Peet, Vegas Valley Collections. What is collection costs in section 8?

Mary Young, FID. In SB248? Please provide that in writing because we are staying to the proposed regulation at this time.

| Agenda Item 4. Public Comments:

There were no comments during this general public comment period.

Agenda Item 5. Close Workshop (Adjournment):

The workshop pertaining to Senate Bill 248 and Chapter 649 of the Nevada Administrative Code was closed and adjourned on October 26, 2021, at 11:00 a.m.

To review and/or listen to comments in their entirety, please refer to the attached written comments and/or the audio recording. The recording can be found at: www.fid.nv.gov

November 12, 2021

VIA E-MAIL TO fidmaster@fid.state.nv.us
State of Nevada
Financial Institutions Division
3300 W. Sahara Avenue, Suite 250
Las Vegas, Nevada 89102

Re: Americollect, Inc. Comment to Proposed Regulations S.B.248 Medical Debt Collection (NRS 649)

Dear Commissioner Young:

Americollect appreciates the opportunity to provide its comments on Proposed Regulations Pertaining to NRS 649 as amended by Senate Bill 248 (S.B.248) (2021) - Medical Debt Collection (“Proposed Regulations”). The Proposed Regulations resolve many of the ambiguities created by SB 248, however, they also unnecessarily increase costs for agencies and medical creditors, which will ultimately be passed onto and harm consumers. Thus, Americollect urges the State of Nevada, Financial Institutions Division (“Division”) to adopt a permanent rule that allows the 60-day notice to be included with the validation notice required by FDCPA Section 809 (15 U.S.C. Section 1692g).

Section 6 of the Proposed Regulations would not allow an agency to combine the 60-day notice with the B-1 Model Form for Validation Notice. This would lead to increased costs because it forces collection agencies to send the 60-day notice, followed by a separate validation notice. The Proposed Rules should, in accordance with the informal answers that you provided prior to publishing to Missy Meggison, general counsel at the Consumer Relations Consortium, allow collection agencies to combine the 60-day notice with the validation notice. Not only would combining the two letters reduce the costs associated with implementing SB 248, but it would also be more in line with federal law.

While the 60-day notice is not intended to be a communication under the FDCPA, the FDCPA defines communication as “the conveying of information regarding a debt directly or indirectly to any person through any medium.”¹ Since the 60-day notice does convey information about a debt, a collection agency could be sued if it does not treat the 60-day notice as a communication and include the disclosures required by the FDCPA. Thus, the Division should adopt a rule that permits collection agencies to avoid this risk by combining the 60-day notice with the validation notice.

Respectfully submitted,



Jenna Leigh Guyton
General Counsel
jennag@americollect.com



October 26, 2021

Department of Business and Industry
Financial Institutions Division
3300 W. Sahara Avenue, Suite 250
Las Vegas, Nevada 89102

Submitted via email to: fidmaster@fid.state.nv.us

Re: Notice of Workshop to Solicit Comments on Proposed Regulations Pertaining to NRS 649 as amended by Senate Bill 248 (S.B.248) (2021) - Medical Debt Collection

Dear Deputy Commissioner Young:

On behalf of Encore Capital Group and its subsidiaries (collectively, "Encore"), we appreciate the opportunity to submit testimony on the Division's proposed regulations to implement Senate Bill 248. By way of background, Encore is the largest purchaser of charged off consumer credit card debt in the country, and we have an account with over 432,000 Nevada consumers. We do not collect medical debt.

In our collection efforts, we take a consumer-centric approach to partnering with our consumers to help them repay their financial obligations and regain their financial footing. That means that we don't charge fees or pre-judgment interest, we stop all collections from active duty servicemembers, and last year we forgave over \$3.1 million in debt for our Nevada consumers.

Overall, we are supportive and appreciative of the regulations the Division is proposing to implement SB 248. What we would like to address and seek clarification on is proposed Section 7.

First, we ask that the Division clarify that Section 7 applies only to medical debt collectors. If that is not the case, and Section 7 applies to other types of debt collectors as well, we have concerns with the language in Section 7, paragraph 3 defining as a record to be maintained, under NRS 639.335, any machine-derived form letter that has been returned undeliverable, along with the returned envelope. As a large company processing tens of thousands of letters to and from Nevada consumers each year, we use a third-party mail vendor to intake mail returned as undeliverable. We maintain copies in our system of all letters mailed out, and when a letter is returned as undeliverable, our mail vendor notifies us and we mark in our computerized account file that the letter has been returned as undeliverable. The mail vendor then destroys the letters, never opening the envelopes up and therefore never has the possibility of seeing our consumers' personal information. We, in turn, have processes in place to ensure that we no longer contact the consumer at the address the letter was returned from, and take steps to locate the consumer's correct address or otherwise stop collections.



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The proposed language, however, would require that we have our mail vendor open envelopes which are returned as undeliverable, and maintain a stack of letters and envelopes sent to our consumers. This means that a significant amount of our consumer's Personally Identifiable Information would potentially be exposed to a third-party mail vendor – including sensitive account information such as account balances, account numbers, and the very fact that the consumer owes an outstanding credit card debt.

Earlier this year, the 11th Circuit Court of Appeals ruled in Hunstein v. Preferred Collection and Management Services, Inc. that sharing a consumer's personal information with a third-party letter vendor constitutes a prohibited third-party communication about a debt, in violation of Section 1692c(b) of the Fair Debt Collection Practices Act. The Hunstein ruling is currently subject to a petition for rehearing *en banc*, and it has created follow-on litigation throughout the nation. And while we disagree with Hunstein – we do not agree that when a vendor merely processes information in an automated fashion there is any risk of disclosure whatsoever – the Division's proposed rule is asking companies like us that use third-party mail vendors to engage in a practice that dramatically increases the risk of third-party disclosure. That is, if a third-party vendor is required to interact with undeliverable mail on a manual, non-automated, basis, the risk of disclosure is increased. Whether Hunstein stands or not, a rule that increases these risks is unnecessary. If the Division is interested in entities like ours maintaining information that a piece of mail was returned undeliverable, there are far less burdensome, cumbersome, and risky ways to proceed. For example, we would (and already do) maintain electronic records related to all letters that are undeliverable, including information about the date the letter was sent, the consumer the letter was sent to, the address to which it was sent, and the fact that it was returned undeliverable.

In light of these serious concerns, if the Division states that Section 7 applies to all debt collectors -- not just medical debt collectors -- we respectfully ask that the Division amend the proposed language in Section 7 so that we can avoid our having a mail vendor open up and view letters returned as undeliverable. At the same time, we will continue to ensure that we maintain copies of letters sent to consumers and maintain a record whenever a letter is returned as undeliverable, so that we stop collecting from the consumer unless and until we have a correct updated address. To achieve this, we ask for this commonsense change in Section 7, paragraph 3 as follows:

All machine-derived form letters, including a copy of any letter that has been returned undeliverable along with the returned envelope or a record showing the return, proof of mailing or proof of delivery are considered a record for purposes of NRS 649.335.



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Thank you for your attention to this important matter. Please feel free to contact me directly at Tamar.Yudenfreund@encorecapital.com for any further information.

Sincerely,

A handwritten signature in blue ink that reads 'Tamar Yudenfreund'.

Tamar Yudenfreund
Senior Director, Public Policy



TESTIMONY OF DON MAURICE Outside Counsel to RMAI Proposed Regulations Pertaining to NRS 649 as amended by Senate Bill 248 (S.B.248) (2021) - Medical Debt Collection (October 15, 2021)

My name is Don Maurice, and I am Outside Counsel to Receivables Management Association International. RMAI is a national nonprofit trade association representing over 570 businesses that purchase or support the purchase, sale, and collection of performing and nonperforming receivables on the secondary market. Our membership includes banks, nonbank lenders, debt buying companies, collection agencies, and collection law firms. RMAI respectfully opposes the Proposed Regulations Pertaining to NRS 649 as amended by Senate Bill 248 (S.B.248) (2021) - Medical Debt Collection (October 15, 2021) as currently drafted. Although the stated purpose of the proposed rule is to “adopt regulations under the Nevada Administrative Code to implement Senate Bill No. 248 (2021) . . . by adding provisions related to *medical debt collections*,” (emphasis added), the scope of the Proposed Rule could be construed to impact debt collection other than “medical debt collections” and in doing so, imposes significant operational burdens on industry.

- **Proposed Amendments to NAC 649.280 Exceed the Scope of S.B. 248 and the Notice of Proposed Rulemaking** – None of the proposed amendments are limited to “medical debt” or medical debt collections and, insofar as the Division’s October 6, 2021 “Notice of Workshop to Solicit Comments on Proposed Regulations” (the “October 6 Notice”) states that the “proposed regulations are required as a result of the passage of Senate Bill 248 (S.B.248),” the proposed amendment does not limit its scope to “medical debt” as defined by S.B. 248. Instead, it proposes to regulate “[a]ll machine derived for letters *relating to past due debt* . . .” (emphasis in original). And while RMAI could support some of these amendments, the October 6 Notice is defective if the intent of the proposed regulations is to promulgate regulations “required as a result of . . . S.B. 248.” To cure the defect, the proposed amendments to NAC 649.280 must be confined to “medical debt” as defined by S.B. 248. After all, S.B. 248, sec 2, subsec. 3 expressly excludes all other debt:

The term does not include an open-end or closed-end extension of credit made by a financial institution to a borrower that may be used by the borrower, at his or her own discretion, for any purpose other than the purchase of goods or services provided by a medical facility, a provider of health care or a provider of emergency medical services.

- **Proposed Amendment 3 to NAC 649.280 Promotes No Salutory Purpose of NRS 649 and is Unduly Burdensome** – In addition to the objection stated above, RMAI opposes requiring collection agencies to retain as part of their account records “any letter that has been returned undeliverable along with the returned envelope . . .” In the first instance, the sending of debt collection mail and its non-delivery

is routinely recorded by our members. Most, if not all, retain a copy of the mailed letter making proposed retention of the “letter that has been returned undeliverable” redundant. The returned envelope has no useful purpose in the context of regular mail. The United States Postal Service (USPS) only provides “on-envelope” endorsements for “undeliverable-as-addressed mail”¹ and our members routinely record this as part of their account records. Thus, any returned envelope will only have an undeliverable as addressed endorsement. However, our members anticipate increased costs to retain both the returned letter and the returned envelope. These costs are real as most members engage third-party vendors to perform mailing services that will charge for the added service.

RMAI takes consumer debt collection seriously. Our Receivables Management Certification Program (<https://rmaintl.org/certification/>) certifies collection agencies, debt buying companies, collection law firms, and brokers in the United States and requires certified companies to demonstrate standards that meet and often exceed existing law. RMAI welcomes the opportunity to work with the Division and other stakeholders to develop modest amendments to address our concerns.

Thank you for your time.

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For further information, contact David Reid, RMAI General Counsel, at dreid@rmaintl.org or (916) 482-2462 or Don Maurice, RMAI’s outside counsel, at dmaurice@mauricewutscher.com or 908-237-4570.

ABOUT DON MAURICE

Don Maurice is a partner at Maurice Wutscher LLP, a law firm with offices throughout the United States. Don has practiced in consumer financial services law for over four decades. He is a fellow of the American College of Consumer Financial Services Lawyers, a fellow of the American Bar Foundation and serves on the Governing Committee of the Conference on Consumer Finance Law. He formerly chaired the Debt Collection Practices and Bankruptcy Subcommittee of the American Bar Association. He is admitted to the Bars of Massachusetts, New York, New Jersey, and the District of Columbia. He is editor of the Consumer Financial Services Blog (cfsblog.com).

¹ See *Mailing Standards of the United States Postal Service Domestic Mail Manual*, Sec. 500 Additional Services, Subsec. 507 Mailer Services, 1.4 Basic Treatment, 1.4.1 General, “Mail that is undeliverable as addressed is forwarded, returned to the sender, or treated as dead mail, as authorized for the particular class of mail. Undeliverable-as-addressed mail is endorsed by the USPS with the reason for nondelivery as shown in Exhibit 1.4.1. All nonmailable pieces are returned to the sender.” Publicly available at <https://perma.cc/A994-CZG3>.

STATE OF NEVADA



STEVE SISOLAK
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

TERRY REYNOLDS
Director

FINANCIAL INSTITUTIONS DIVISION

SANDY O'LAUGHLIN
Commissioner

**Minutes of Adoption Hearing to Solicit Comments
On Proposed Regulations S.B.248- NRS/NAC 649**

Date: Wednesday, March 23, 2023

Time: 10:00 a.m.

Location: Webex meeting- videoconference and teleconference

Agenda Item 1. Call to Order:

The adoption hearing to consider S.B.248 was called to order Wednesday, March 23, 2022, at 10:02 a.m. The purpose of the adoption hearing was to receive input with respect to the proposed regulations pertaining to Chapter 649 of the Nevada Administrative Code ("NAC"), as provided by Senate Bill No. 248, requiring collection agencies to notify debtors before taking any action to collect a medical debt; providing certain protections to a medical debtor who initiates contact with or makes a voluntary payment to a collection agency; prohibiting certain practices relating to the collection of medical debt; prohibiting the waiver of certain protections provided to medical debtors; and providing other matters properly relating thereto, as described by the Notice of Hearing for the Adoption of Regulations dated and posted on February 16, 2022.

Financial Institutions Division Staff Present at the Hearing:

Commissioner Sandy O'Laughlin
Deputy Commissioner Mary Young
Senior Deputy Attorney General Michelle Briggs
Examiner Jennifer Ramsay

Agenda Item 2. Comments by General Public:

There were three (3) commenters during this general public comment period.

- Peter Goatz, Consumer Rights Department of Legal Aid of Southern Nevada. Appreciate the Division's work on the regulations and the comments the Division provided in the workshop. He fully supports the adoption of the regulations.
- Tamar Yudenfreund, Encore Capital Group. Encore does not collect on medical debt but partners with consumers to settle debt. Encore overall supports the regulation and appreciates the change in section 9. However, would like additional changes to section 9 subsection 3. Wants this section to change from "third-party delivery service" to "a third-party" and to add language to require a collection agency to have processes in place for returned mail. Submitted written comment.
- Patrick Reilly, Brownstein Hyatt Farber Schreck, LLP. Objects to S.B.248 and proposed regulations as already made in pending litigation currently at Federal court, no need to restate those objections but wants to not that the proposed regulations do not resolve the issues.

Section 9 subsection 1- Thinks the removal of form letter review during an examination is not consumer friendly and will cost the licensee during an examination.

Sec 9 subsection 3- Keep and store return mail is costly. Objects to proposed regulations.

Wants FID to define Nevada medical debtor in regulation.

Agenda Item 3. Presentation of Proposed Regulation and Consideration of Written Comments:

The Division received numerous comments and questions during the workshop held on October 26, 2021, and written comments received by the deadline of March 8th for this adoption hearing. Some of these concerns and questions were already addressed, however, the Division will readdress those and comment on those that were not already addressed.

Q. The industry is concerned S.B. 248 and the proposed regulations conflict with federal law.

A. S.B. 248 and the proposed regulations do not conflict with federal law. The 60-day notification letter is sent prior to any required communication under federal law. S.B. 248 is a state law that offers more consumer protection by allowing the consumer more time to pay the debt.

Q. Industry wants the Division to offer licensees safe harbor for any lawsuits that may occur.

A. The Division does not have the authority to grant licensees safe harbor for any lawsuits that occur due to S.B. 248 or the proposed regulation.

Q. Industry asked if the Division would consider if the requirements of S.B. 248 could be accomplished with the same letter that satisfies the Regulation F letter and if the FDCPA initial letter and the 60-day notification letter could be combined.

A. No, the letters must be separate. Once a debt is assigned, the 60-day notification letter is sent, after the 60-day waiting period, an agency may proceed with the normal collection process, which includes the FDCPA-Regulation F letter.

Q. There was a comment that the Division finds in its small business impact study that there is no adverse economic impact on small business. The concern is regarding the certified mailing cost.
A. The certified mailing requirement is not contained in the proposed regulations. It is part of S.B. 248. The small business impact study applies to the regulations under NRS 233B.0608. The Division does not have authority to change the certified mailing requirement in S.B. 248 enacted by the Nevada legislature.

Q. Industry asked if this bill extend to medical debt outside of Nevada.
A. If the medical debt meets the definition in S.B. 248, the law applies.

Q. Industry asked if dental practices excluded from S.B. 248.
A. No. Medical debt is defined in S.B. 248 as goods or services provided by (1) a medical facility (defined by NRS 449.0151), (2) a provider of health care (defined by NRS 629.031), and (3) a provider of emergency medical services (defined in SB 248 Sec. 5). Dentists are a provider of health care under NRS 629.031.

Q. Industry asked if the 60-day notification letter can be sent via email.
A. No, pursuant to S.B. 248, it must be sent by certified or registered mail.

Q. Comments that the Division is taking away the ability to file lawsuits against consumers who refuse to pay.
A. The regulations do not address civil actions against the medical debtor. S.B. 248 was adopted by the Nevada Legislature and the Division cannot change the requirements of S.B. 248. Under S.B. 248, Section 8 Subsection 2 medical debt may be pursued in a small claims matter in justice court if the amount of the medical debt is less than the small claim's court jurisdiction under NRS 73.010 (currently set at \$10,000). SB248 does not restrict a licensee's ability to file a civil action where the debt exceeds the maximum jurisdiction provided in NRS 73.010.

Q. Concerns the proposed regulation requires an agency to retain any letter that has been returned undeliverable along with the returned envelope can be burdensome on an agency.
A. The Division revised the language presented at the workshop to make complying with this section easier. The new language allows for a copy of the returned letter instead of the original or a record from a third-party vendor showing the return. LCB revised the Division's language to a third-party delivery service evidencing the return. The full language will be read into the record later in the hearing.

The Division considered all written comments received from the small business impact survey, all written and verbal comments received prior to and during the first workshop as well as written comments received prior to this adoption hearing.

Each section of the proposed regulations was read during the hearing.

Regulation Comments per Section:

Sections 1, 2 and 3 were read.

There were no comments received on Sections 1, 2, and 3

Sections 4, 5 and 6 were read.

There was one comment.

Lori Peet, Vegas Valley Collection Service. The credit reporting agencies are now saying medical debt will not be reported for a year on a debtor's credit report. Not reporting for a year from collection bureau causes another conflict. Confusion with consumer.

Mary Young, FID. FID cannot change S.B. 248 regarding not reporting during the 60-day waiting period. FID does not see the confusion. The law does not say you must report to credit reporting agencies at 60-days, but that you cannot until after those 60-days have passed. The credit agencies are allowing more time.

Sections 7, 8 and 9 were read.

There were no comments received on Sections 7, 8 and 9.

Agenda Item 4. Adoption of Proposed Regulations:

The Financial Institutions Division adopted revised regulation R055-21, which pertains to Chapter 649 of the Nevada Administrative Code, as that regulation is described in the Legislative Counsel Bureau version dated February 11, 2022.

Agenda Item 5. Public Comments:

There were no comments during this general public comment period.

Agenda Item 6. Close Adoption Hearing (Adjournment):

The adoption hearing for R055-21 pertaining to Senate Bill 248 and Chapter 649 of the Nevada Administrative Code was closed and adjourned on March 23, 2022 at 10:40 a.m.

To review and/or listen to comments in their entirety, please refer to the attached written comments and/or the audio recording. The recording can be found at: www.fid.nv.gov



March 7, 2022

Department of Business and Industry
Financial Institutions Division
3300 W. Sahara Avenue, Suite 250
Las Vegas, Nevada 89102

Submitted via email to: fidmaster@fid.state.nv.us

Re: Notice of Intent to Act Upon a Regulation and Hearing Agenda Regarding Chapter 649 of the Nevada Administrative Code – Collection Agencies

Dear Deputy Commissioner Young:

On behalf of Encore Capital Group and its subsidiaries (collectively, “Encore”), we appreciate your work updating the above-referenced proposed regulations pertaining to Nevada Revised Statutes (NRS) 649. While our company does not collect medical debt, we have had significant concerns regarding Section 9, Paragraph 3 (formerly Section 7, Paragraph 3), relating to storing and documenting machine-derived form letters, and we applaud your thoughtful changes to date. We have one remaining concern with that section, however, that we seek to respectfully address.

Encore Background

By way of background, and as we had shared in our October 26, 2021 letter on the proposed regulations, Encore is the country’s largest purchaser of charged off consumer credit card debt. In Nevada, we have an account with over 450,000 consumers. In our collection efforts, we take a consumer-centric approach to partnering with our consumers to help them repay their financial obligations and regain their financial footing. That means that we don’t charge fees or pre-judgment interest, we stop all collections from active duty servicemembers, and in 2021 we forgave over \$4 million in debt for our Nevada consumers.

We Use a Third-Party Mail Vendor to Send and Receive Mail

As a large company processing tens of thousands of letters to and from Nevada consumers each year, we use a third-party mail vendor to intake mail returned as undeliverable. We use the third-party mail vendor to exchange mail not just with our Nevada consumers, but for our tens of millions of consumers across all 50 states. Each year nationwide, we receive between four and five million pieces of returned mail.

The main functions of our mail vendor are to send out letters and receive returned mail. From a data security and privacy perspective, however, it is critical that our mail vendor



is restricted from seeing our consumers' Personally Identifiable Information. We therefore have multiple measures in place to prevent unnecessary disclosure of consumer information to our mail vendor. With regard to returned mail, this includes policies that our mail vendor:

- Documents that mail has been returned by scanning our company's unique bar code, which can be scanned without opening the piece of mail and which reflects the exact letter to the exact consumer that was sent.
- Documents this information and then electronically transfers it to our system of record.
- Does not open the envelope.
- Shreds the envelope and the letter enclosed in it to protect the privacy of our consumer.
- Does not store any returned mail but documents returns and then immediately shreds the return mail.

Upon receiving the electronic documentation from our mail vendor that a specific letter to a specific consumer has been returned as undelivered, we in turn have processes in place to ensure that we no longer contact the consumer at the address from which the letter was returned. We will also take steps to locate the consumer's correct address and resend the communication to that correct address, or we will otherwise stop collections.

Our Concern With Section 9, Paragraph 3 As Drafted

As drafted, under Section 9, NAC 649.280(3) would require collection agencies to store "a record from a third-party delivery service evidencing the return." The third-party delivery service would presumably be the U.S. Postal Service and the record evidencing the return would be the returned envelope itself. But by storing the letters and envelopes that constitute returned mail, we would need to have our mail vendor maintain a stack of unopened envelopes (with collection letters inside) sent returned as undeliverable. This means that a significant amount of our consumers' Personally Identifiable Information would potentially be exposed to a third-party mail vendor – including sensitive account information such as account balances, account numbers, and the very fact that the consumer owes an outstanding credit card debt.¹

¹ As we described in our October 26, 2021 letter, last year the 11th Circuit Court of Appeals ruled in Hunstein v. Preferred Collection and Management Services, Inc. that sharing a consumer's personal information with a third-party letter vendor constitutes a prohibited third-party communication about a debt, in violation of Section 1692c(b) of the Fair Debt Collection Practices Act. Given the issues raised in Hunstein, it is extremely important that third-party mail vendors do not see our consumers' personal account information. Having our mail vendor store returned envelopes for six years creates needless risks, when we could (and already do) document electronically when letters are returned as undeliverable.



Ultimately, physically storing for six years under NRS 649.335 the envelopes and letters returned poses significant data security and privacy concerns, and is problematic in light of the Hunstein decision. Physically storing returned envelopes is unnecessary to ensure that collection agencies appropriately document when a letter is returned as undelivered, in order to avoid future communications sent to the incorrect address and ensure that the consumer receives all intended communications, including required disclosures.

In light of these serious concerns, we respectfully ask that the Division amend the language in Section 9, Paragraph 3. We want to avoid stockpiling extremely large volumes of returned mail, creating a potential data security vulnerability. At the same time, we understand it is important that collection agencies have processes in place to ensure that, when machine-derived form letters are returned, the return is documented in the licensee's system of record. To that end, we propose the following addition and deletion:

All machine-derived form letters, including a copy of each letter that has been returned as undeliverable along with the returned envelope or a record from a third-party ~~delivery service~~ evidencing the return, and any proof of mailing or proof of delivery are considered a record for purposes of NRS 649.335. A collection agency must have processes in place to ensure that, when machine-derived form letters are returned, the return is documented in the collection agency's system of record.

Thank you for your attention to this important matter. Please feel free to contact me directly at Tamar.Yudenfreund@encorecapital.com for any further information.

Sincerely,

A handwritten signature in blue ink that reads 'Tamar Yudenfreund'.

Tamar Yudenfreund
Senior Director, Public Policy

From: Lisa Eastman <leastman@armadacorp.com>
Sent: Tuesday, March 8, 2022 4:40 PM
To: FID Master <FIDMaster@fid.state.nv.us>
Subject: RE: Hearing set for March 23, 2022 @ 10:00am
Importance: High

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

03/08/22 @ 4:40pm

To: State of Nevada, Dept. of Business & Industry, Financial Institutions:

I'm not sure I understand how: "The Division has determined that the proposed regulation does not have an adverse economic impact on small businesses" when businesses large and small are being forced to mail all medical notices via certified mailing at \$4.33 per letter. I realize your solution is "don't do medical collections," but is that really a solution?

If consumers (patients) are not responsible to pay for their medical services, why would a provider continue to treat that patient and/or remain in a State where it's ok to 'not pay your bill?' It's not only small collection agencies that are going to suffer from this, but small medical facilities as well. Which in turn can lead to fewer providers and/or longer wait times at the larger medical facilities.

Also taking away our ability to file lawsuits against consumers who refuse to pay simply because they are "no longer required to" will have a negative impact on Nevada's economy as a whole. Again referring back to a lack of providers and services.

It's bad enough NFID no longer required licensees to have a physical location in Nevada, but outsourced State and County services to agencies outside of Nevada.

I personally have been in the collection industry since 1997 and have never seen so much hatred within our own State and against one specific entity.

I agree changes are warranted in this industry and in this day and age, but the way SB248 came about is not it.

Thank you for your time and attention.

Lisa Eastman
Branch Manager



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PO Box 93086 | Las Vegas, NV 89193
o: 702-492-5000 x1405

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**DRAFT PROPOSED REGULATION OF THE COMMISSIONER OF
THE FINANCIAL INSTITUTIONS DIVISION**

(Medical Debt Collection)

August 31, 2021

Purpose: To adopt regulations under the Nevada Administrative Code to implement Senate Bill No. 248 (2021), which amends Nevada Revised Statutes Chapter 649 by adding provisions related to medical debt collections.

Authority: NRS 649.053

Explanation: Material in *bold italics* is new; material in ~~bold brackets~~ is to be omitted.

Section 1. *Chapter 649 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.*

Sec. 2. *NAC 649.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 649.013 to 649. _____, inclusive have the meanings ascribed to them in those sections and sections 2 through 6 of Senate Bill No. 248 and section 3 of this chapter.*

Sec. 3. *“Action to collect a medical debt” as provided in Section 7 of Senate Bill No. 248 means any attempt by a collection agency, or its manager, agents or employees to collect a medical debt from a medical debtor including, without limitation:*

- a. Placing telephone calls to a medical debtor.*
- b. Sending communication letters and notices to a medical debtor, other than the 60-day notice required pursuant to Senate Bill 248.*
- c. Contacting a medical debtor by any electronic means.*
- d. Reporting the medical debt to any credit reporting agency.*
- e. Demanding payment.*
- f. Commencing any civil action.*

2. The term does not include:

- a. Any action initiated by a medical debtor;*
- b. A collection agency, its manager, agents or employees that provide clarification to a medical debtor relating to the content in the written notification required by section 7 of Senate Bill 248, if the contact is initiated by a medical debtor;*
- c. Sending the medical debtor verification of the medical debt if requested by the medical debtor; or*
- d. Sending a receipt for a voluntary payment to the medical debtor.*

Sec. 4. *The written notification required by section 7 of Senate Bill No. 248 shall be sent to a medical debtor when the medical debt is assigned to a collection agency, unless such notice was already sent by a prior collection agency. Such written notification to a medical debtor is not intended to be a communication under the Fair Debt Collection Practices Act. No action to collect the medical debt shall take place for a period of 60 days from the date of mailing of the written notification. Once the 60-day period ends, a collection agency may proceed to attempt to collect the medical debt as usual and in compliance with all other provisions of this chapter and chapter 649 of NRS, including as amended by Senate Bill 248, Fair Debt Collection Practices Act, Fair Credit Reporting Act, and any other state law relating to medical debt. A collection agency shall keep written verification of compliance with section 7 of Senate Bill 248 as part of its records for an account even if a different collection agency provided the required notice.*

Sec. 5. *The written notice required by NRS 649.332(2), if applicable, shall be provided to the medical debtor within 5 days of the expiration of the 60-day notice.*

Sec. 6. *In addition to the content required pursuant to section 7 of Senate Bill 248, a collection agency shall include in the 60-day notice:*

On the front of the notice, within the body of the letter, at least 12-point bold type and in all capital letters:

THIS IS NOT A DEMAND FOR PAYMENT

On the front of the notice, within the body of the letter, at least 12-point bold type:

This notice is to inform you that your medical debt described herein was {assigned to OR otherwise obtained by} us, {enter name of collection agency}. As provided by NRS 649.____, we will not take any action to collect this debt within 60 days from the date of this letter. Any payments made toward the debt during this timeframe are considered voluntary and will not void the 60-day notification period described above.

This medical debt will not be reported to any credit reporting agency during the 60-day notification period.

Any voluntary payment you may make toward the medical debt during the 60-day period will not extend the applicable statute of limitation, is not an admission of liability and shall not be construed as a waiver of any defense to the collection of the medical debt.

This notification is not intended to be a communication under the Fair Debt Collection Practices Act.

Sec.7. NAC 649.280 is hereby amended to read as follows:

1. All machine-derived form letters *relating to past due debt* must be submitted to the Commissioner of Financial Institutions for review *during an examination or investigation or upon request by the Commissioner or his or her designee.* ~~and approval before their actual use by the collection agency.~~

2. ~~[No]~~ A collection agency ~~[may]~~ *shall not* use any machine-derived form letter *that was found to be in violation of state or federal law during an examination or investigation until the deficiency or violation has been corrected. The corrected form letter must be submitted to the Commissioner of Financial Institutions for review and written approval prior to use by the collection agency.* ~~[unless it has received prior written approval from the Commissioner.]~~

3. *All machine-derived form letters, including any letter that has been returned undeliverable along with the returned envelope, proof of mailing or proof of delivery are considered a record for purposes of NRS 649.335.*

Sec. 8. *The 60-day notification letter is considered a machine-derived form letter as defined in NAC 649.020.*

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**DRAFT PROPOSED REGULATION OF THE COMMISSIONER OF
THE FINANCIAL INSTITUTIONS DIVISION**

(Medical Debt Collection)

November 10, 2021

Purpose: To adopt regulations under the Nevada Administrative Code to implement Senate Bill No. 248 (2021), which amends Nevada Revised Statutes Chapter 649 by adding provisions related to medical debt collections.

Authority: NRS 649.053

Explanation: Material in (1) *blue bold italics* is language in the original proposed regulation; (2) green bold underlining is language proposed to be added in this amendment

Section 1. *Chapter 649 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.*

Sec. 2. *NAC 649.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 649.013 to 649. _____, inclusive have the meanings ascribed to them in those sections and sections 2 through 6 of Senate Bill No. 248 and section 3 of this chapter.*

Sec. 3. *“Action to collect a medical debt” as provided in Section 7 of Senate Bill No. 248 means any attempt by a collection agency, or its manager, agents or employees to collect a medical debt from a medical debtor including, without limitation:*

- a. Placing telephone calls to a medical debtor.*
- b. Sending communication letters and notices to a medical debtor, other than the 60-day notice required pursuant to Senate Bill 248.*
- c. Contacting a medical debtor by any electronic means.*
- d. Reporting the medical debt to any credit reporting agency.*
- e. Demanding payment.*

f. Commencing any civil action.

2. The term does not include:

a. Any action initiated by a medical debtor;

b. A collection agency, its manager, agents or employees that provide clarification to a medical debtor relating to the content in the written notification required by section 7 of Senate Bill 248, if the contact is initiated by a medical debtor;

c. Sending the medical debtor verification of the medical debt if requested by the medical debtor; or

d. Sending a receipt for a voluntary payment to the medical debtor.

Sec. 4. *The written notification required by section 7 of Senate Bill No. 248 shall be sent to a medical debtor when the medical debt is assigned to a collection agency, unless such notice was already sent by a prior collection agency. Such written notification to a medical debtor is not intended to be a communication under the Fair Debt Collection Practices Act. No action to collect the medical debt shall take place for a period of 60 days from the date of mailing of the written notification. Once the 60-day period ends, a collection agency may proceed to attempt to collect the medical debt as usual and in compliance with all other provisions of this chapter and chapter 649 of NRS, including as amended by Senate Bill 248, Fair Debt Collection Practices Act, Fair Credit Reporting Act, and any other state law relating to medical debt. A collection agency shall keep written verification of compliance with section 7 of Senate Bill 248 as part of its records for an account even if a different collection agency provided the required notice.*

Sec. 5. *The written notice required by NRS 649.332(2), if applicable, shall be provided to the medical debtor within 5 days of the expiration of the 60-day notice.*

Sec. 6. *In addition to the content required pursuant to section 7 of Senate Bill 248, a collection agency shall include in the 60-day notice:*

On the front of the notice, within the body of the letter, at least 12-point bold type and in all capital letters:

THIS IS NOT A DEMAND FOR PAYMENT

On the front of the notice, within the body of the letter, at least 12-point bold type:

This notice is to inform you that your medical debt described herein was {assigned to OR otherwise obtained by} us, {enter name of collection agency}. As provided by NRS 649.____, we will not take any action to collect this debt within 60 days from the date of this letter. Any payments made toward the debt during this timeframe are considered voluntary and will not void the 60-day notification period described above.

This medical debt will not be reported to any credit reporting agency during the 60-day notification period.

Any voluntary payment you may make toward the medical debt during the 60-day period will not extend the applicable statute of limitation, is not an admission of liability and shall not be construed as a waiver of any defense to the collection of the medical debt.

This notification is not intended to be a communication under the Fair Debt Collection Practices Act.

Sec.7. NAC 649.280 is hereby amended to read as follows:

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upon request by the Commissioner or his or her designee. ~~[and approval before their actual use by the collection agency.]~~

2. ~~[No]~~ *A collection agency ~~[may]~~ shall not use any machine-derived form letter that was found to be in violation of state or federal law during an examination or investigation until the deficiency or violation has been corrected. The corrected form letter must be submitted to the Commissioner of Financial Institutions for review and written approval prior to use by the collection agency. ~~[unless it has received prior written approval from the Commissioner.]~~*

3. *All machine-derived form letters, including a copy of any letter that has been returned undeliverable along with the returned envelope or a record from a third-party vendor showing the return, proof of mailing or proof of delivery are considered a record for purposes of NRS 649.335.*

Sec. 8. *The 60-day notification letter is considered a machine-derived form letter as defined in NAC 649.020.*