THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice

CONSUMER PROTECTION DIVISION

ADDRESS REPLY TO:
HOOVER BLDG.,
DES MOINES, IOWA 50319
515/281-5926

November 29, 1989

Dear

In your letter of September 22, 1989 and in subsequent telephone conversations you have requested the advice of the Administrator as to the applicability of the Truth-in-Lending Act (TILA) to certain transactions engaged in by hospitals and their collection agencies. You state that a number of hospitals in Iowa wish to set up a payment system where patients will be permitted to pay their outstanding accounts through monthly payments. A finance charge of not more than 5% would be assessed on these transactions. The billing system would be handled by an independent collection agency, but the finance charge would be remitted in total to the hospital. It is our understanding that patients would not have the obligation to pay their total balance in full, and therefore the 5% finance charge serves as interest rather than as a late payment charge on accounts receivable. As we discussed previously, the hospital is permitted to assess a 5% finance charge on outstanding accounts so long as the charge is properly contracted for and disclosed.

As you have explained this procedure, it is our belief that these transactions would be subject to the TILA. The credit terms are offered to consumers by a party regularly engaged in credit transactions, the credit is subject to a finance charge, generally under $25,000 of credit is extended and the credit is offered primarily for personal, family or household purposes. See 12 C.F.R. §§ 226.1(c), 226.3(b). Therefore prior to the consummation of the credit transaction, the creditor must make all the disclosures required by the TILA in the manner set out in the Act. These disclosures must be in writing. 12 C.F.R. § 226.17(a).

Under the TILA these disclosures must be made prior to the "consummation" of the credit transaction. 12 C.F.R. § 226.17(b). Consummation is defined in 12 C.F.R. § 226.2(a)(13) as "the time that a consumer becomes contractually obligated on a credit transaction." In interpreting this requirement the Federal Reserve Board staff explains: "State law governs. When a

contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination . . ." (emphasis in the original) Official Staff Commentary § 226.2(a)(13). Therefore, the hospital must look to Iowa law to determine at what point it must make the required written disclosures. Of course the hospital would be free to make these disclosures at any point prior to consummation, and we would encourage the hospital to do so when the billing process is first explained in detail to the patient so they have a more complete understanding of the obligations they are incurring.

In your September 22, 1989 letter you include a sample notification letter that would be sent to the debtor by the collection agency. This letter would not conform to the requirements of the TILA. It appears that patients would be learning for the first time of the imposition of the 5% finance charge after they have already agreed to a set monthly payment schedule. The finance charge, as with all other terms of the credit transaction, must be disclosed prior to the "consummation" of the transaction in the manner set out in the TILA. Under the TILA, finance charges cannot be unilaterally imposed in a transaction; they must be contracted for and therefore agreed upon by both parties.

I hope this letter is responsive to your question. Please note that this letter is merely the advice of the Administrator and is neither an official ruling nor a formal opinion of the Attorney General or the Administrator.

Sincerely,

Peter Kochenburger

Peter Kochenburger
Assistant Attorney General