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ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs
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June 26, 1980

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Declaratory Ruling No. 6.201-8006 Edgefield County Hospital

EDGEFIELD COUNTY HOSPITAL MAKES CONSUMER CREDIT
SALES OF HOSPITAL SERVICES AND IS REQUIRED TO FILE
NOTIFICATION WITH AND PAY A FEE ANNUALLY TO THE
ADMINISTRATOR

Edgefield County Hospital completed a 1980 Consumer Credit Grantor Notification Form and paid the \$50.00 fee to the Administrator with a request for an official ruling whether Consumer Protection Code Sections 6.202 and 6.203 [S.C. Code Ann. §§37-6-202 and 37-6-203 (1976 as amended)] apply to it. In our opinion, the notification and fee provisions apply to Edgefield County Hospital for the following reasons.

Consumer Protection Code Section 6.201 [S.C. Code Ann. §37-6-201 (1976)] states in pertinent part, "this part [Notification and Fees] applies to a person engaged in this State in making consumer credit sales."

According to the request for a ruling, Edgefield County Hospital is a non-profit county hospital that does "not promote the availability of credit or readily extend it as is done in the commercial sector." Neither does it extend credit to patients upon their admission to the hospital. However, in some instances when it has been determined that a patient cannot or will not pay the total amount owed to the hospital after having been billed for it, rather than turn the account over to a collection agency or otherwise pursue immediate collection of the entire balance, a member of the hospital staff will discuss with the patient his ability to make periodic payments. When and if an agreement is reached, a legal document is executed in which the patient agrees to pay a specific amount periodically until the debt is paid off. No finance charges are added to the account for the privilege of deferring payment and less than one percent of the hospital's total charges are repaid on such deferred payment plans.

TELEPHONES [AREA CODE 803]

ADMINISTRATION
758-3017

CONSUMER COMPLAINTS
758-2040
WATS 1-800-922-1594

PUBLIC INFORMATION
758-7546

NOTIFICATION
758-8587

CONSUMER ADVOCACY
758-5864

Because written contracts are used and the hospital's annual gross volume of business exceeds \$150,000 per year [see CPC §6.203 as amended], the question is whether Edgefield County Hospital is "engaged in making consumer credit sales."

Subsection (1) of Consumer Protection Code Section 2.104 [S.C. Code Ann. §37-2-104 (1976)] provides in pertinent part:

"[C]onsumer credit sale" is a sale of ... services ... in which

- (a) Credit is granted by a person who regularly engages as a seller in credit transactions of the same kind,
- (b) The buyer is a person other than an organization,
- (c) The ... services ... are purchased primarily for a personal, family or household purpose,
- (d) Either the debt is payable in instalment[s] or a credit service charge is made, and
- (e) With respect to a sale of ... services, the amount financed does not exceed \$25,000 [\$32,500 as of July 1, 1980; see Emergency Regulation 28-61-1.109 "Adjustment of Dollar Amounts"]. (Emphasis added)

Hospital accommodations are specifically included in the Consumer Protection Code's definition of "services." CPC §2.105(3)(b), S.C. Code Ann. §37-2-105 (1976). It can be assumed that hospital services are obtained by an individual for personal reasons. And while there is no credit service charge involved, these transactions are "payable in instalments" as defined in Consumer Protection Code Section 1.301(12) [S.C. Code Ann. §37-1-301 (1976)]:

"Payable in instalments" means that payment is required or permitted by agreement to be made in ... four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no credit service charge is made....

The fact that the hospital is a county, non-profit hospital rather than a private, profit-making hospital is not determinative. There is no exclusion from the Consumer Protection Code for creditors who are governmental agencies or instrumentalities (although there is an exclusion for extensions of credit to government, governmental agencies, and governmental instrumentalities. CPC §1.202(1), S.C. Code Ann. §37-1-202 (1976)). The question becomes the narrow one whether

Edgefield County Hospital is a person regularly engaged in credit transactions of this kind. The fact that only a small proportion of the hospital's charges is repaid on deferred payment plans does not prevent the hospital from being a consumer credit seller for purposes of the Consumer Protection Code. Administrative Interpretation No. 3.104-7511 issued October 22, 1975 stated that it is the position of this Department that "regularly engaged" means "as a regular course of business" and does not refer to volume or percentage of business and is not dependent upon whether it is a major or minor endeavor. So long as the hospital will enter into formal agreements with patients to repay amounts owed in four or more instalments, it is the opinion of this Department that Edgefield County Hospital is engaged in making consumer credit sales and is subject to the Consumer Protection Code's notification and fee requirements.

We are directed to harmonize the Consumer Protection Code with the Truth in Lending Act when appropriate. See CPC §§1.102(2)(f), 6.104(3); S.C. Code Ann. §§37-1-102, 37-6-104 (1976)]. Our conclusion is consistent with Federal Reserve Board interpretations of its Regulation Z [12 C.F.R. §226] which implements the federal Truth in Lending Act [15 U.S.C. §§1601-1687e] as it applies to hospitals in similar situations. For example, unofficial staff interpretation No. 1171 dated March 31, 1977 [1974-1977 Transfer Binder] Cons.Cred.Guide (CCH) ¶31,568, says in part:

If ... no finance charge is imposed in connection with the promissory note, then the hospital would be a creditor subject to the regulation only if, in the ordinary course of business, the hospital obtains such notes from patients and if, by agreement between the hospital and the patient, the amount of the note is payable in more than four instalments.

See also FRB letters No. 170 of October 24, 1969 [1969-1974 Transfer Binder] Cons.Cred.Guide (CCH) ¶30,498, and No. 909 of August 1, 1975, [1974-1977 Transfer Binder] Cons.Cred. Guide (CCH) ¶31,243.

Finally, our conclusion is consistent with the recent federal case Bright v. Ball Memorial Hospital Association, Inc., 616 F.2d 328 (7th Cir. 1980), a federal court case concerning the application of the Truth in Lending Act to a hospital located in Indiana, another Uniform Consumer Credit Code State. Although that case held that the hospital was not a

creditor for purposes of the Truth in Lending Act with regard to the two patients bringing suit, it did find that the hospital regularly extended credit to other patients with whom it had agreements for extended repayment.

Irvin D. Parker
Administrator

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