Casey Elliott

From: comments
Sent: Friday, March 11, 2011 1:00 PM
To: greenfim@wulaw.wustl.edu; attyboris@aol.com
Subject: UDMSA comment 12
Attachments: Comments to Standby Comm for UDMSA - 3-10-11.pdf

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From: Doug Miskew [mailto:dmiskew@publicsectorgroup.com]
Sent: Thursday, March 10, 2011 4:40 PM
To: comments
Subject: CareOne Services Comments -- UDMSA

Attached please find comments regarding proposed changes to the Uniform Debt Management Services Act by CareOne Services, Inc. Please contact me if you have any questions regarding this submission.

Sincerely,

Doug Miskew
for CareOne Services, Inc.

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Doug Miskew
Public Sector Group, LLC
9 Glenwood Avenue
Raleigh, NC 27603
919-522-5201

March 10, 2011

Standby Committee for the
Uniform Debt Management Services Act
Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602

Dear Standby Committee Members:

CareOne Services, Inc. is pleased to provide comments regarding proposed revisions to the Uniform Debt Management Services Act (UDMSA). We appreciate the committee's efforts to seek the perspective of interested parties in the debt relief industry prior to consideration of changes to the Act.

CareOne Services, Inc. is a for-profit corporation that provides a full spectrum of debt relief services to consumers in 42 states. We offer credit counseling, debt management and debt settlement, and bankruptcy referral services. CareOne is one of the nation's largest debt relief providers and maintains an "A" rating with the Better Business Bureau (BBB).

CareOne has been a participant in the UDMSA drafting process since its inception. We are licensed and operating in all jurisdictions that have adopted the Act. Additionally, we have been actively engaged in the legislative process in numerous states supporting the adoption of the Act. The UDMSA represents a strong and comprehensive framework for regulating the debt relief industry. We support the continued evolution of the Act as regulatory and industry changes warrant.

The drafting committee is to be commended for its prompt attention to the changes brought about by the Federal Trade Commission's debt relief rule. CareOne was a vocal supporter of the Rule and believe its long-term impact will help ensure the presence of an industry whose interests are effectively aligned with those of consumers looking for viable solutions to their debt problems. The revisions to the Act will address one of the major flaws of the FTC rule which is the limitations in its applicability to the entire debt relief industry. We look forward to working with the drafting committee on this effort.

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The following are specific comments related to the proposed UDMSA changes:

1) **Nonprofit vs. for-profit status** – We support removal of the option for states to adopt the Act in a manner that restricts licensing based on the tax status of a provider. In 2004, when the original Act was developed, 25 states restricted debt relief services to nonprofit providers. Today, only seven states maintain that restriction and all states that have modernized their debt adjusting/pooling laws over that period have done so in a tax status-neutral manner.

2) **Conformity with the Telephone Sales Rule** – We generally support conformance of the Act to the requirements of the TSR. CareOne believes the advance fee ban encompassed in the rule is the single most important consumer safeguard. As such, the inherent limitations of encompassing requirements and prohibitions for the debt relief industry with the TSR create significant loopholes for providers intent on operating an upfront fee model. For example, the rule does not apply to nonprofit entities which represent an estimated 85% of the debt relief industry. Also, certain models that avoid triggering TRS coverage are problematic as they could serve to maintain a business approach that is not founded in the interest of the consumer. Extending the TSR through the Act will help alleviate these concerns.

   However, there are certain proposed changes to the Act that are inconsistent with the TSR and should be modified to conform to the rule. The following areas should be addressed:

   a) **Trust Accounts and Dedicated Accounts** – The TSR permits providers to require a consumer to place funds -- both for payment of fees and monies intended for creditor payments -- in a "dedicated account" in compliance with § 310.4(a)(5)(ii). This provision ensures that under an advance fee ban, a provider has certainty those allowable fees for the services provided are available for payment when such payment is permitted. This approach was acknowledged and accepted as a necessary component of establishing a workable advance fee ban by a variety of entities interested in the rule.

      The proposed changes to the Act in Section 22 combine TRS dedicated account provisions with existing trust accounts language in a manner that conflicts with the TSR and makes harmful changes to the current trust

account structure. Currently, trust accounts under the Act can be administered by the provider and must meet certain requirements intended to protect consumers' funds.

Additionally, under the proposed change, a provider would be prohibited from requiring a consumer to establish a dedicated account for fees that will be earned by the provider upon successful execution of settlement.

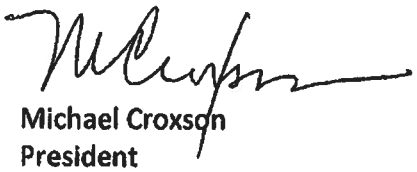
We suggest that the current trust account language in the Act be maintained as is. It is a safe and valid mechanism for managing consumer funds in a debt relief program. Also, separate and distinct dedicated account language should track the TSR. Dedicated account language incorporated in the proposed changes add additional restrictions beyond those included in the TSR such as prohibiting a provider from being the administrator of a dedicated account and the aforementioned prohibition on the use of dedicated accounts for the accumulation of provider fees. The Act should be consistent, not more restrictive than the TSR.

b) **Power of Attorney** – The TSR does not prohibit use of a power of attorney to settle a debt on behalf of a consumer. However, the TSR does require the consumer to execute any specific settlement contracts. A requirement for a consumer to execute each settlement contract and permitting the use of a power of attorney to settle a debt are not inconsistent.

The proposed language eliminates the power of attorney option which in many cases allows the provider to reach agreement with a creditor promptly and then seek approval of the contract, rather than delaying a response on an offer until pre-approval is provided. Ultimately, the consumer must approve the agreement before the provider can receive it fees, which is a significant safeguard against obtaining settlements the consumer does not accept. We suggest maintaining the option for a power of attorney to settle a debt.

We appreciate the opportunity to provide comments regarding the proposed changes to the UDMSA. Please let me know if you have any questions.

Sincerely,



Michael Croxson
President