



October 30, 2023

Pavneet Singh
Deputy Assistant Director
Consumer Financial Protection Bureau
Washington, DC 20552

Via Email to CFPB_consumerreporting_rulemaking@cfpb.gov

Dear Deputy Assistant Director Singh,

Please accept this letter providing stakeholder feedback on the Outline of Proposals and Alternatives Under Consideration (Outline) for Consumer Reporting Rulemaking under the Fair Credit Reporting Act (FCRA), as provided on page 5 of the Outline. Capio Partners, LLC (Capio) is the nation's leading purchaser of non-performing healthcare accounts. Our mission is to help people burdened with medical debt achieve financial wellness. Our innovative solutions offer healthcare organizations immediate access to cash, reinforcing their revenue cycle, and instilling trust in the knowledge that patients are under the care of a seasoned, healthcare-focused team. To date, Capio has successfully acquired and provided exceptional consumer service through partnerships with over 800 esteemed provider clients nationwide. As a furnisher of information to consumer reporting agencies, we hereby submit (1) input on the pressures faced by providers and patients and (2) responses to the listed questions in the Outline.

At Capio, we acknowledge and appreciate the CFPB's concerns regarding medical debt and its relation to consumer creditworthiness. While these concerns are well-intentioned, we need to emphasize several crucial considerations based on our extensive experience in the industry.

The healthcare industry operates within a highly regulated, intricate, and extensive landscape, offering life-saving services to millions of individuals annually. These essential services often come with substantial costs, leaving many individuals unable to settle their bills immediately, leading to various levels of medical debt. At Capio, one of our core principles is affordability. With over 15 years of experience engaging with consumers, we take immense pride in the fact that *less than* 0.05% of our consumers have lodged CFPB complaints. In addition, we consistently maintain an impressive 99% billing accuracy rate. Taken together, this is a testament to our dedication to provide affordable solutions to medical debt. While these achievements bring us a sense of accomplishment, our ultimate objective remains achieving zero complaints and a flawless 100% billing accuracy rate.

Engaging in Collaborative Partnerships

Our collaboration with Georgetown University's Business for Impact, along with our utilization of BuoyFi, a cutting-edge technology tool designed to aid consumers in managing medical debt—including the possibility of complete debt forgiveness—underscores Capio's unwavering dedication to transparent and innovative solutions. These partnerships not only enhance our ability to provide valuable services, but also offer crucial insights that can help inform and optimize policy decisions. Recognizing the significance of public-private collaborations is imperative before implementing sweeping restrictions on well-established industry practices.

Considerations Surrounding Medical Debt and Credit Reporting

Currently, over 15% of healthcare providers' revenues depend on patient liabilities. An effective prohibition on credit reporting in this context could have profound implications, potentially undermining the fundamental stability of our healthcare system. Capio's data suggests that there is a significant decrease in the number of individuals with overdue medical bills who take proactive steps to resolve their accounts when there is no credit-reporting incentive. Removing this incentive will discourage many consumers from addressing their financial obligations, leading to adverse effects on their financial, physical, and mental well-being.

While we support actions by the CFPB to reduce unnecessary risk of harm to consumers, the current Outline is all-encompassing in nature and carries the potential for unintended consequences. It could potentially jeopardize the U.S. healthcare ecosystem and place additional strain on consumers and underserved communities across the United States. Such a result is antithetical to the CFPB's mission.

Impact on Consumers

If the practice of credit reporting medical debt were prohibited, many consumers could face a variety of financial challenges. First, when lenders and other credit grantors understand that many debts are no longer reported, we can expect a general tightening of the credit markets. Likely, this credit squeeze will disproportionately affect low-income consumers. Some lenders might inflate interest rates and fees as a hedge against the perceived risks of lending to those without a comprehensive credit profile.

Second, consumers are motivated to pay all their bills to achieve and maintain a good credit rating. Removing this incentive seems unwise, and likely to lead to reduced payments from consumers to the healthcare providers who provide a valuable service to them and their communities.

Third, if consumer payments are reduced, many healthcare providers may opt to engage in more aggressive collection practices, including legitimate collection techniques that they choose to avoid today. Collecting via lawsuits, property liens, and wage garnishments could increase as healthcare providers seek alternative avenues to recover outstanding balances.

Finally, lenders will undoubtedly make loans that create an unsustainable debt load for consumers when they are unaware of significant medical debts, creating unintentional financial harm and stress to the consumer. In other words, lenders without visibility into complete debt-to-income ratios may unintentionally over-leverage borrowers.

Impact on Healthcare Providers

According to the Georgetown annual report on medical debt, "The Impact of Medical Debt: Ailing Consumers and Struggling Hospitals," hospitals are currently operating on extremely slim margins, with a median of 0.0% year-to-date as of April 2023. Furthermore, rural hospitals are especially at risk given their financial predicament. Georgetown also notes that researchers at UNC Chapel Hill have found that 197 rural hospital have closed since 2005, and that 52% of those closures resulted in the end of health care services in that rural community. If a prohibition on credit reporting medical debts reduces consumer engagement and payments, it stands to reason and our empirical data predicts that hospitals and other



healthcare providers will be forced to make operational changes. Already underserved populations would be put under additional stress. Research and development efforts may be reduced. Even government payers could be impacted, including the Medicare Trust Fund, as it will be required to cover more losses from Medicare bad debt accounts.

Consumer reaction will affect healthcare providers' relationships with their patients because confusion will be one of the results. When the consumer reporting agencies recently enforced a one-year delay in reporting medical debts, many consumers incorrectly assumed that (1) the debts would *never* be reported, (2) medical services going forward would be free-of-charge, or (3) providers and collection agencies would no longer be allowed to contact them and ask for payment. These incorrect assumptions were reported to Capio from our consumers. This confusion creates a poor consumer experience and will reduce payments.

Proposed Solutions

Below, Capio proposes alternatives that will protect the consumer, while mitigating the financial risks to providers that the Outline currently presents. We believe that our proposal has the potential to bring substantial financial benefits to the millions of consumers who responsibly pay their medical bills, all the while mitigating or completely avoiding any adverse effects on credit ratings.

We propose that healthcare providers and other holders of medical debt should be obligated to report payments, a practice often referred to as "positive reporting," as a prerequisite for reporting non-payment or late payments, commonly known as "negative reporting." Furnishers should also adhere to minimal requirements and commit to restricting certain collection activities, including:

- 1) Never charging medical debtors interest or fees;
- 2) Never seeking collection from consumers via litigation;
- 3) Having access to healthcare providers' records so disputes and questions can be adequately researched;
- 4) Establishing a "charity" policy that adheres to national standards whereby a consumer is not required to pay more than a minimal percentage of their annual income; and
- 5) Limiting payment plans or payback periods to no more than 24 months.

These proposed requirements will help build and maintain good credit ratings for the millions of consumers who do pay their medical bills. Further, it will even help people who cannot afford to pay the entire original invoice, but nevertheless engage with their creditor and agree to pay what they can afford.

Recently, the consumer reporting agencies made three significant changes to the reporting of medical debts. We believe the first two changes (immediate deletion of tradelines once resolved or paid, and a one-year delay before reporting is allowed) are beneficial. The one-year delay reduces and delays payments, but these changes—in our view—are appropriate and beneficial to consumers. We recommend that the CFPB encourage consumer reporting agencies to reconsider the third change, which prohibits reporting balances less than \$500. We believe this alteration may not effectively assist consumers who require the most support, and we have proposed solutions that offer better assistance and incentives for individuals to pay what they can afford.

Responses to General CFPB Questions

As indicated, below we note the Outline's question numbers, followed by our responses. We also respectfully submit that the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires the CFPB to meaningfully consider our input, feedback, and responses.

Q1. How, if at all, will the proposal under consideration require your firm to change its operations, products, or services?

Answer:

The proposals will require significant changes in our operations. The elimination of credit reporting accounts, a lawful and legitimate tool that has been in place for several decades, will (1) reduce consumer engagement, (2) impact recoveries, and (3) require agencies to operate on smaller margins. This leads to higher costs for medical providers, which will inevitably (and unfortunately) pass the costs to consumers.

Q2. What do you anticipate will be the initial and ongoing costs to your firm, if any, of complying with the proposal under consideration? If applicable, how do those costs compare to your firm's current costs to comply with the provision(s) of the FCRA or Regulation V related to the proposal under consideration? Please quantify all such costs by type and amount to the extent possible.

Answer:

The elimination of the ability to lawfully credit report valid accounts is expected to have significant consequences, resulting in a 30% reduction in recoveries. This reduction in recoveries represents both an initial and ongoing cost. The 30% reduction is calculated by comparing non-reporting providers with reporting providers, where reporting is legally possible.

Furthermore, we anticipate that widespread knowledge of the proposed elimination of medical reporting will lead to even further reductions in provider recoveries. Additionally, costs are expected to substantially increase as efforts to engage patients in communications through new technologies, additional letters, and other means become necessary.

In summary, the elimination of medical reporting capabilities not only impacts financial recoveries, but also carries additional costs related to patient engagement and communication strategies.

Q3. What aspect or aspects of complying with the proposal under consideration would be the most challenging?

Answer:

Compliance with the proposals, as currently drafted, will require additional resources to locate and communicate with consumers. Lawful reporting of medical accounts affords consumers visibility/awareness of their outstanding accounts and the convenience of communicating with creditors regarding the same. The proposed prohibition will result in agencies resorting to traditional collection methods—including lawsuits, liens, and garnishments—which severely harm consumers.

Q4. What alternative approaches, if any, should the CFPB consider in lieu of the proposal under consideration?

Answer:

As described in our proposed solutions above, healthcare providers and other holders of medical debt should be obligated to report payments (*i.e.*, "positive reporting") as a prerequisite for reporting non-payment or late payments (*i.e.*, "negative reporting"). Furnishers should also be required to adhere to minimal requirements and commit to restricting certain collection activities, including:

- 1) Never charging medical debtors interest or fees;
- 2) Never seeking collection from consumers via litigation;
- 3) Having access to healthcare providers' records so disputes and questions can be adequately researched;
- 4) Establishing a "charity" policy that adheres to national standards whereby a consumer is not required to pay more than a minimal percentage of their annual income; and
- 5) Limiting payment plans or payback periods to no more than 24 months.

These proposed requirements will help build and maintain good credit ratings for the millions of consumers who do pay their medical bills. Further, it will even help people who cannot afford to pay the entire original invoice, but nevertheless engage with their creditor and agree to pay what they can afford. Capio believes that the ability to submit positive trade lines, rather than derogatory trade lines, should be considered by the CFPB.

Q5. Other than compliance costs, what costs, burdens, or unintended consequences should the CFPB consider with respect to the proposal under consideration? Please quantify if possible. What alternatives, if any, would mitigate such costs, burdens, or unintended consequences?

Answer:

As we previously indicated, our vast experience shows that the costs associated with the proposal will be ultimately passed on to the consumer. This unintended consequence is unavoidable. Medical providers rely on legitimate actions by their collection agency partners and a reduction in revenue with the medical provider always leads to consumer harm.

Q6. Are there any statutes or regulations with which your firm must comply that may duplicate, overlap, or conflict with the proposal under consideration? What challenges or costs would your firm anticipate in complying with any such statutes or regulations and the CFPB's proposal under consideration?

Answer:

None currently known, other than the well-established Financial Information Exception¹. This rule, which has been in place for nearly two decades, allows creditors to obtain and use medical information pertaining to a consumer in connection with any determination of creditworthiness, so long as (1) the information is the type of information routinely used in making credit eligibility determinations (such as debts); (2) the creditor uses the medical information in a manner no less favorable than it would use comparable information; and (3) the creditor does not take the consumer's health into account as part of any credit determination. At its core, this rule seeks to *protect* consumers by ensuring that—when seeking a loan—they have the ability to pay according to the terms. We take this opportunity to note that, among

¹ 12 C.F.R. 1022.30(d).

other reasons, the CFPB was established in response to a period of time when many consumers took on loans that they truly could not afford. The Financial Information Exception allows lenders to gather a complete financial profile of a borrower, which prevents lenders from luring consumers into unaffordable loans.

Q7. What factors disproportionately affecting small entities should the CFPB be aware of when evaluating the proposal under consideration? Would the proposal under consideration provide unique benefits to small entities?

Answer:

We anticipate that small entities, which includes many non-asset purchasers and healthcare contingency agencies, will be the most affected by the proposals under consideration. Larger firms may also not be able to absorb the additional reduction in revenue. Regulations such as those under consideration generally affect smaller businesses in a disproportionate manner. However, all organizations will feel the impact of proposed changes.

Responses to Section D: Medical Debt Collection Information

Q35. Under the proposals under consideration, would you anticipate that medical debt collectors would stop furnishing medical debt collection information to consumer reporting agencies and use alternative debt collection methods? If so, which ones?

Answer:

Given the proposals under consideration, we anticipate a shift in the methods employed by medical debt collectors. If the act of reporting medical debt to consumer reporting agencies becomes cumbersome or less effective due to the proposed changes, the medical debt collections industry may lean towards alternative debt collection methods. Some of these alternatives will include increased legal action such as pursuing debts through the courts, which may lead to potential interest-bearing wage garnishments, liens, or similar extraordinary collection actions. Additionally, there will likely be an increase in direct communication efforts with consumers via calls, letters, or texts. Providers may demand promissory notes or upfront payment before offering services, and, in more extreme cases, might even pressure patients into obtaining healthcare-specific credit cards. However, it is important to note that certain tactics, like unjustified price increases passing more of the burden on to patients, will be frowned upon or not supported by entities like Capio. The key would be for medical debt collectors to adapt in a manner that allows credit reporting but respects both the consumer's rights and the need to recover outstanding balances for providers. The overarching aim of Capio's proposal is to foster a more humane and transparent system; thus, collectors would need to operate within these boundaries.

Q37. From what sources do creditors obtain consumers' medical debt collection information, other than consumer reports?

Answer:

Modern tools and resources have greatly enhanced the capacity of collection agencies to access and manage medical debt collection information. For instance, Electronic Health Record (EHR) systems, advanced digital platforms, store invaluable data including medical histories and billing details, shedding light on outstanding balances. Simultaneously, when consumers face legal actions due to unpaid medical debts, the resulting legal proceedings yield data that is invaluable to collection agencies. Furthermore, payment processors, which manage transactions for medical services, can signal any missed or failed payments. Skip tracing is indispensable in locating individuals whose actual address differs from their

address at the time of service. Databases and online repositories like LexisNexis and Whitepages Pro offer insights such as current addresses, employment status, and more. To supplement this, data brokers specialize in amassing and retailing extensive consumer data, granting collection agencies a deeper understanding of a debtor's location, financial patterns, and contact details. Public records, ranging from court and property records to other government documents, can also be a resource. However, while these resources are invaluable, it is paramount to recognize the guiding role of regulations like HIPAA, which safeguard the privacy and security of patient information and underscore data sharing must always honor these standards and uphold the highest level of patient confidentiality. Finally, collection agencies also utilize bankruptcy and probate records.

Q38. What are the pros and cons of an alternative approach of mandating a delay in the furnishing and reporting of medical debt for a particular period of time, and not reporting or furnishing medical debt below a particular dollar amount?

Answer:

Exploring an alternative approach to medical debt by introducing a delay in its furnishing and reporting, coupled with setting a threshold for reportable debt amounts, has both pros and cons to carefully consider. On the positive side, this approach affords patients the chance to tap into charitable resources and to recover physically/fiscally from their medical event, potentially alleviating their financial burdens, and showcases a compassionate stance on medical debt management. Additionally, the delay would afford additional time for the often-time-consuming insurance claim adjudications, paving the way for potential debt reductions before any formal reporting. This grace period also encourages meaningful dialogue between patients and providers, fostering the creation of tailored payment plans that reflect genuine affordability. Such measures undeniably mitigate the immediate stress patients face regarding their debts, letting them prioritize health and healing.

However, challenges arise when focusing on debt amount thresholds. Capio has experienced a 30% decrease in self-pay collections as a result of the recent change by the consumer reporting agencies. A system that does not report smaller debts might inadvertently favor larger ones, leading to reporting inconsistencies. Larger balances often cause more financial harm to the patients and are not aligned with their ability to pay. Furthermore, by overlooking seemingly minor debts, we might inadvertently neglect individuals for whom such amounts are financially straining. The delay can result in a negative consumer experience as patients often "forget" about their various provider liabilities, leading to frustration and anger when faced with unexpected bills. It is worth noting that many minor balances are often indicative of insurance copayments and an individual's employment status. However, making broad assumptions may not always capture the complex financial situations of each patient. While there are evident advantages to delaying medical debt reporting and setting debt amount thresholds, it is essential to balance these benefits against potential drawbacks. Notably, patients with lower balances might find it easier to resolve their liabilities compared to those with considerably larger balances (exceeding \$10,000), which are being reported to consumer reporting agencies with limited options for resolution.

Q39. What are the pros and cons of an alternative approach of requiring consumer reporting agencies and furnishers, upon receiving a dispute, to conduct an independent investigation to certify that a disputed medical debt is accurate and not subject to pending insurance disputes?

Answer:

The idea of mandating consumer reporting agencies and furnishers to conduct independent investigations for disputed medical debts presents a nuanced balance of merits and challenges. On the positive side,

this proactive approach holds the potential to foster greater confidence in the accuracy of reported medical debts.

However, it is crucial to recognize the complexities associated with implementing such a verification process. The healthcare industry is widely dispersed, and consumer reporting agencies often lack the necessary infrastructure or contacts to engage with every healthcare provider across the United States. Additionally, some may argue that this approach leans more towards reactivity than proactivity. It could potentially amplify the administrative burden and related costs for providers, who traditionally rely on their bad debt partners to handle such disputes.

At Capio, we align with the perspective that enhancing the dispute resolution process represents a constructive step forward. To ensure a comprehensive and precise verification process, our methodology mandates access to all patient accounts, enabling the independent examination and resolution of each dispute. Furthermore, we advocate for flexibility at the discretion of the debt buyer or collection agency, allowing for the possibility of debt forgiveness and concluding the debt process.

Responses to Section E: Implementation Period

Q40. Please provide input on an appropriate implementation period for complying with a rule finalizing the proposals under consideration. Are there any aspects of the CFPB's proposals under consideration that could be particularly time consuming or costly to implement? Are any of these challenges particular to small entities? Are there any factors outside a covered entity's control that would affect its ability to prepare for compliance?

Answer:

Capio believes that, in addition to the Notice of Proposed Rulemaking (NPRM) with no less than a 180-day comment period and Final Rule implementation one-year post-publication, from an operational perspective, rapid or unwarranted implementation could adversely affect a significant portion of our workforce. We estimate that up to 500 of our employees could be impacted, which mirrors the potential upheaval for thousands of professionals across the industry. Moreover, the reverberations of such a move would extend beyond personnel to destabilize the broader financial ecosystem, with specific concerns arising related to the calculation intricacies of DSH reimbursements and Medicare bad debt. These calculations are pivotal for maintaining a balanced financial ledger of providers.

The repercussions for healthcare institutions, particularly hospitals, would be profound. Financial strains could push many towards the precipice of bankruptcy. This destabilization would inevitably cascade into reductions in both the services offered, the provider capital investments in their physical plant or emerging technologies, and the overall quality and safety of care provided. Furthermore, the patient experience with a provider would be less healing-focused and more finance-focused, as providers will be forced to be more aggressive.

For the workforce that remains undeterred by these challenges, the work environment would become increasingly challenging. The inevitable salary reductions, potential layoffs, and augmented workloads would not only induce burnout but also sow the seeds of deep-rooted job dissatisfaction and perpetuate the COVID provider burnout.



Moreover, it is essential to recognize that small entities, given their limited financial buffer and resources, would feel these impacts more acutely. They might face challenges that larger entities can navigate more adeptly, such as accessing capital or absorbing operational shocks.

Lastly, there will likely be factors beyond an entity's control affecting its compliance preparation. These could range from broader economic downturns to sector-specific regulations or unforeseen global events, which could exacerbate the challenges faced during the implementation phase.

Conclusion

Capio recognizes the unique nature of medical debt compared to other consumer obligations. As a pioneer in transparent dialogue around this topic, our ongoing collaborations with entities like Georgetown University exemplify our commitment. As the largest organization assisting patients with medical debt, we are uniquely positioned to offer insight and viable solutions to the CFPB's concerns.

While the intentions behind the Bureau's proposed rulemaking are laudable, it is crucial to evaluate the comprehensive impacts of such actions. We look forward to a collaborative approach to this pressing issue, ensuring the welfare of both patients and the healthcare system.

Moreover, it is essential to recognize that small entities, including small doctor groups, collection agencies, software companies, and billing/coding services, given their limited financial buffer and resources, would feel these impacts more acutely. They might face challenges that larger entities can navigate more adeptly, such as accessing capital or absorbing operational shocks. This dynamic could lead to industry consolidation, resulting in an increase in costs due to providers' diminished negotiation power and reduced options. In other words, a problematic unintended consequence is a reduction in competition, which will inevitably affect consumers. This is especially true of low-income consumers.

In summation, while we appreciate the objectives of the CFPB's proposals, it is essential to balance the potential benefits with the extensive challenges stakeholders may face. As an industry leader, Capio can offer invaluable insights to inform and optimize policy decisions, leveraging forward-thinking public/private collaborations. We respectfully request the CFPB to consider the unintended consequences of the Outline and carefully evaluate the alternatives proposed here before implementing blanket restrictions on long-established practices.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Mark Detrick".

Mark Detrick
Chief Executive Officer
Capio