



October 27, 2023

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Via email only: CFPB_consumerreporting_rulemaking@cfpb.gov

Re: Small Business Advisory Review Panel for Consumer Reporting Rulemaking (Removal of Medical Debt from Credit Reports)

Dear Director Chopra:

Thank you for the opportunity to submit comments regarding the outline of proposals under consideration for the removal of medical debt from credit reports. We appreciate that the Consumer Financial Protection Bureau (CFPB) is accepting public comment during the Small Business Regulatory Enforcement Fairness Act (SBREFA) process.

Community Catalyst is a leading non-profit national health advocacy organization dedicated to advancing a movement for health equity and justice. We partner with local, state, and national advocates to leverage and build power so all people can influence decisions that affect their health. Health systems will not be accountable to people without a fully engaged and organized community voice. That's why we work every day to ensure people's interests are represented wherever important decisions about health and health care are made: in communities, state houses, and on Capitol Hill.

We strongly support the CFPB's proposals to: (1) revise 12 C.F.R. § 1022.30(d) so that creditors are prohibited from obtaining or using medical debt collection information to make determinations about consumers' credit eligibility; and (2) prohibit consumer reporting agencies from including medical debt collection tradelines on consumer reports furnished to creditors for purposes of making credit eligibility determinations.

As you know, Community Catalyst petitioned the CFPB in April 2023 to undertake a rulemaking to prohibit the reporting of medical debt on credit reports.¹ The National Consumer Law Center filed a similar petition in September 2022.² As discussed more fully in those petitions, the CFPB has ample authority and evidence to prohibit medical debt from affecting credit scores.

¹ Community Catalyst, "Request for Rulemaking Pursuant to the Fair Credit Reporting Act (FCRA)," CFPB-2023-0027-0001, April 13, 2023, <https://www.regulations.gov/document/CFPB-2023-0027-0001>.

² National Consumer Law Center, "Petition for Rulemaking – NCLC, et al. – Ban Medical Debts from Credit Reports," CFPB-2022-0067-0001, <https://www.regulations.gov/document/CFPB-2022-0067-0001>.

Moreover, as CFPB General Counsel and Senior Advisor Seth Frotman recently noted: “[A] growing body of evidence makes clear that a person’s history with respect to medical bills does not actually shed very much light on whether they will pay other bills.”³ They have limited predictive value in a person’s ability to make payments.

In these comments, we respond to some of the CFPB’s specific questions about medical debt. We also provide additional recommendations on medical debt that is charged to credit cards.

I. Responses to Questions on Medical Debt and Credit Reporting

Question 38. 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?

Response:

Presently, the three nationwide consumer reporting agencies (CRAs), Equifax, Experian, and TransUnion, have a voluntary arrangement (“Current Arrangement”) on medical debt. In March 2022, these three CRAs announced that they would: (1) remove all paid medical debts from consumer credit reports; (2) remove all medical collections under \$500 from consumer credit reports; and (3) delay the reporting of other medical collections for one year.⁴

The Current Arrangement is certainly better than no action on medical debt and credit reporting, and it undoubtedly has helped many individuals. Indeed, we applaud this action by Equifax, Experian, and TransUnion. However, we note that this is a *voluntary* arrangement, and these CRAs could reverse their policies on medical debt at any time. Further, the Current Arrangement does not go far enough to protect people who have medical debt from the additional burden of lowered credit scores. Moreover, we believe that people would not have sufficient protection even if the CFPB: (1) required that the Current Arrangement be made permanent; or (2) mandated a higher threshold amount for the reporting of medical debt and a longer waiting period before reporting.

First, many people have medical debt over \$500. A recent survey found that 84 percent of U.S. adults with health care debt owed *more* than \$500.⁵ Across the country, the *median* amount of medical

³ CFPB, “Prepared Remarks of Seth Frotman, General Counsel and Senior Advisor to the Director, at New Jersey Citizen Action Education Fund’s 14th Annual Financial Justice Summit,” Oct. 4, 2023, <https://www.consumerfinance.gov/about-us/newsroom/new-jersey-citizen-action-education-funds-14th-annual-financial-justice-summit/>.

⁴ Business Wire, “Equifax, Experian, and TransUnion Support U.S. Consumers with Changes to Medical Collection Debt Reporting,” March 18, 2022, <https://www.businesswire.com/news/home/20220318005244/en/Equifax-Experian-and-TransUnion-Support-U.S.-Consumers-With-Changes-to-Medical-Collection-Debt-Reporting>.

⁵ KFF, “Health Care Debt in the U.S.: The Broad Consequences of Medical and Dental Bills,” June 16, 2022, <https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/>.

debt in collections is \$703.⁶ Under the Current Arrangement, many people still have lower credit scores due to higher medical debt. Even if the CFPB set a higher threshold for excluding medical debt, people with debts above the new threshold amount – generally those with the most serious illnesses or injuries – would still struggle with reduced access to credit, or no credit at all.

Second, the waiting period of one year is not long enough to allow some people to pay off their debt, such as people who have incurred high medical costs, who incur ongoing medical expenses, who are in the middle of the burdensome process of appealing their bills, or who are still suffering from illnesses or injuries. This is likely to exacerbate existing inequalities. For instance, adults with disabilities are more than twice as likely as those without disabilities to have medical debt.⁷ Additionally, racial and ethnic minority groups experience higher rates of many chronic health conditions that can lead to medical debt, including diabetes, hypertension, asthma, and heart disease, as compared to white individuals.⁸ Even if the CFPB established a longer waiting period, people with the highest levels of medical debt would not be protected from ruined credit.

Ultimately, we believe that setting threshold amounts for including medical debt on consumer reports or a waiting period before reporting medical debt is not sufficient to protect patients. Indeed, such a policy is likely to provide the least protection to those who need it most. We urge the CFPB to prevent *all* medical debt from lowering credit scores and causing associated harm to people’s finances, employment opportunities, and housing options.

Question 39: 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?

Response:

This approach does not provide sufficient protection to patients. First, many medical bills contain errors, and determining the correct amount is difficult because medical billing is complicated. Second, insurance denials are increasing, but very few individuals appeal denials. Third, many hospitals improperly bill patients who qualify for financial assistance. Overall, this approach places too much of a burden on patients to dispute debts and on consumer reporting agencies to investigate complex billing and coverage issues.

⁶ Urban Institute, “Debt in America: An Interactive Map,” <https://apps.urban.org/features/debt-interactive-map/?type=medical&variable=medcoll>.

⁷ Urban Institute, “Most Adults with Past-Due Medical Debt Owe Money to Hospitals,” March 2023, at 5, <https://www.urban.org/research/publication/most-adults-past-due-medical-debt-owe-money-hospitals>.

⁸ Centers for Disease Control and Prevention, “Racism and Health,” <https://www.cdc.gov/minorityhealth/racism-disparities/index.html>.

First, medical billing errors are too common for this approach to be feasible. The CFPB has found that nearly 70 percent of people with medical debt say they were asked to pay a bill that should have been covered by insurance, and over 40 percent say that they received an inaccurate bill.⁹ The CFPB has also found that the most common consumer complaint in medical debt collections is that the debt is not owed, and that complaints about this issue have increased in recent years.¹⁰ After individuals submit complaints to the CFPB about medical debt, third-party collectors often cease collection efforts and update consumer reports without any follow-up questions – indicating that many medical debt collectors are “*contacting the wrong consumers, for the wrong amount, for debts that the collector is not entitled to collect.*”¹¹

Further, consumer reporting agencies and furnishers should not be tasked with the interpretation of medical billing statements. As the CFPB has acknowledged: “It can feel like full-time detective work to understand the costs for different procedures and what is and is not covered by insurance.”¹² Additionally, consumer reporting agencies and furnishers cannot independently verify key issues such as whether the patient received the treatments listed on the bill and whether the insurance information listed is correct.¹³ Such investigations by consumer reporting agencies and furnishers would also raise significant privacy concerns.

Second, verifying whether an insurance appeal is pending is not sufficient to protect patients who have medical debt that should have been covered. Insurance denials are common and appear to be increasing. A recent study found that overall, 18 percent of insured adults experienced denied claims in the past year.¹⁴ Notably, some Medicaid managed care organizations denied more than 25 percent of

⁹ CFPB, “Prepared Remarks of Director Rohit Chopra for the CFPB Hearing on Medical Billing and Collections,” July 11, 2023, <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-director-rohit-chopra-for-the-cfpb-hearing-on-medical-billing-and-collections/#:~:text=Among%20those%20with%20medical%20debt,lower%20healthcare%20costs%20for%20consumers>.

¹⁰ CFPB, “Complaint Bulletin: Medical billing and collection issues described in consumer complaints,” at 16, April 2022, https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin-medical-billing_report_2022-04.pdf.

¹¹ *Id.* at 19-20 (emphasis added).

¹² CFPB, “Know Your Rights and Protections When It Comes to Medical Bills and Collections,” April 11, 2022, <https://www.consumerfinance.gov/about-us/blog/know-your-rights-and-protections-when-it-comes-to-medical-bills-and-collections/>.

¹³ *See id.* (advising that, to check medical bills for accuracy, patients should confirm that they received the treatments listed on the bill and that the bills show the patient’s correct insurance information).

¹⁴ KFF, “Consumer Survey Highlights Problems with Denied Health Insurance Claims,” Sept. 29, 2023, <https://www.kff.org/health-reform/issue-brief/consumer-survey-highlights-problems-with-denied-health-insurance-claims/>.

prior authorization requests.¹⁵ In 2021, marketplace health plans denied 17 percent of in-network claims on average, and one plan *denied 49 percent of in-network claims*.¹⁶

Additionally, it is likely that many incorrect insurance denials are not challenged. Very few people file appeals when insurance claims are denied, and most do not know that they have appeal rights. For instance, people with marketplace plans appealed less than 0.2 percent of denied in-network claims.¹⁷ A recent survey of adults with both private and public insurance found that overall, only 15 percent filed formal appeals of denied claims.¹⁸ *Significantly, 69 percent of insured adults do not even know they have appeal rights.*¹⁹

Third, many hospital bills are incorrect because the patient should have qualified for free or discounted care under the hospital's financial assistance policy. Indeed, one study found that 45 percent of nonprofit hospitals regularly billed patients whose incomes are low enough to qualify for financial assistance (also known as charity care).²⁰ Even if consumer reporting agencies and furnishers were willing to review each hospital's financial assistance policy, they still would not be able to verify whether the patient was eligible for hospital financial assistance because they do not have access to the patient's income information.

In sum, while we appreciate the CFPB's consideration of medical billing errors and insurance disputes, this proposal does not reflect the realities facing many patients. Consumer reporting agencies and furnishers are not well-positioned to verify the accuracy of medical bills or insurance coverage. Moreover, the evidence suggests that many medical debts are the result of billing errors or improper insurance denials, which are highly time consuming and daunting to navigate and appeal. For these reasons, we urge the CFPB to ban the reporting of medical debt on credit reports and the use of medical debt in credit determinations.

II. Additional Recommendations: Medical Debt on Credit Cards

We applaud the CFPB's proposal to prevent medical debt from adversely affecting people's credit scores, and we urge the agency to extend the same protection to those with medical debt on credit cards. Medical debt on credit cards appears to be common, and it is currently difficult to track.

¹⁵ HHS OIG, High Rates of Prior Authorization Denials by Some Plans and Limited State Oversight Raise Concerns About Access to Care in Medicaid Managed Care," OEI-09-19-00350, at 1, July 2023, <https://oig.hhs.gov/oei/reports/OEI-09-19-00350.pdf>.

¹⁶ KFF, "Claims Denials and Appeals in ACA Marketplace Plans in 2021," <https://www.kff.org/private-insurance/issue-brief/claims-denials-and-appeals-in-aca-marketplace-plans/>.

¹⁷ *Id.*

¹⁸ KFF, "Consumer Survey Highlights Problems with Denied Health Insurance Claims," Sept. 29, 2023.

¹⁹ *Id.*

²⁰ KFF Health News, "Patients Eligible for Charity Care Instead Get Big Bills," Oct. 14, 2019, <https://kffhealthnews.org/news/patients-eligible-for-charity-care-instead-get-big-bills/>.



We urge the CFPB to ensure that medical debt on credit cards is not included in consumer credit reports or used to make credit eligibility determinations.

Many people charge medical bills to credit cards. Significantly, one recent survey found that a quarter of U.S. adults with outstanding medical bills had paid at least some of their bills with a credit card and were subsequently unable to make the minimum payment.²¹ To ensure that medical debt on credit cards is identifiable, the CFPB should ensure that credit card lenders are requiring health care providers to identify themselves using the Merchant Category Codes for the appropriate medical services and supplies.²²

In conclusion, we strongly support the CFPB's proposal to prohibit medical debt from adversely affecting credit reports and access to credit, and we appreciate the opportunity to submit comments on these proposals. If you have any questions, please feel free to contact Mona Shah at mshah@communitycatalyst.org.

Sincerely,

A handwritten signature in cursive script that reads "Mona Shah".

Mona Shah
Senior Director of Policy and Strategy
Community Catalyst

²¹ Urban Institute, "How Many Adults Have Past-Due Medical Bills on Credit Cards," at 2, Sept. 2023, <https://www.urban.org/sites/default/files/2023-08/How%20Many%20Adults%20Have%20Past-Due%20Medical%20Bills%20on%20Credit%20Cards.pdf>.

²² See, e.g., Visa Merchant Data Standards Manual - Visa Supplemental Requirements, Apr. 2023, 102 (MCC 8011 - Doctors and Physicians (Not Elsewhere Classified)), available at <https://usa.visa.com/content/dam/VCOM/download/merchants/visa-merchant-data-standards-manual.pdf>.