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CALIFORNIA INSURANCE COMMISSIONER

Submitted via www.regulations.gov

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Comment Intake—2024 NPRM FCRA Medical Debt Information
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau,
1700 G Street NW
Washington, DC 20552.

SUBJECT: Comments on *Notice of Proposed Rulemaking Regarding a Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)*

Dear Director Chopra,

I would like to thank you for the opportunity to comment on the proposed regulation published by the Consumer Financial Protection Bureau (CFPB) on June 6, 2024 entitled *Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)*.

As California's Insurance Commissioner, I believe that health care is a right, not a privilege. Obtaining medical care should not pose an undue financial burden for anyone who needs it. Unfortunately, until we have universal health care, medical debt is a harsh reality for many Americans.

Medical debt is a health access issue for uninsured Americans, and those with insurance. Americans with private insurance indicate that they do not have sufficient liquid assets to meet their deductible.¹ Therefore, if a person has a chronic condition or if an emergency medical condition arises, they only have two choices: incurring medical debt or delaying or skipping medically necessary health care due to the financial burden associated with receiving care. However, by forgoing care, individuals can increase both the morbidity and mortality associated with chronic and acute health conditions, and strain their mental health. It is unfair to further penalize individuals and families for simply receiving medically necessary and in some scenarios, life-saving, medical care.

Medical debt is a health equity issue, disproportionately affecting individuals from historically disadvantaged and underserved communities, including Black, Latino/x, LGBTQ+ populations as well as the chronically ill. For example, in 2024, the California Health Care Foundation found that 58% of Black households and 46% of Latino/x

¹ [Rakshit, et. al. *The Burden of Medical Debt In The United States* \(February 12, 2024\) Peterson-KFF Health System Tracker.](#)

households were likely to report medical debt compared to 33% of White households and 28% of Asian households.² In 2022, Forbes found that 39% of individuals who identified as LGBTQ+ on Healthcare.com reported having medical debt.³

Medical debt is an increasing problem in our nation. In 2019 the Kaiser Family Foundation found that 100 million American adults had medical debt amounting to 195 billion dollars.⁴ By 2024, the amount of medical debt in the United States increased to at least 220 billion dollars.⁵ In California, 38% of individuals reported having some type of medical debt.⁶ Our nation's ongoing medical debt crisis has only deepened the health inequities that exist in our current health care system. Medical debt has been linked to declining population health, and even premature death.⁷ Similarly medical debt has been found to be a predictor of worsening social determinants of health⁸, including housing insecurity⁹, food insecurity¹⁰ and loss of income or employment¹¹. However, it has been shown that medical debt is not an indicator of credit worthiness.¹² Therefore, incurring medical debt should not impede a person's ability to rent an apartment, to be hired for a job, or get a home or auto loan.

California has taken steps to tackle medical debt. For example, county supervisors in Los Angeles have proposed eliminating medical debt by buying back debt through negotiations.¹³ Furthermore, recently proposed state legislation would create protections for Californians by prohibiting the reporting of medical debt on credit reports, as well as extending the time individuals would have to repay medical bills before providers could commence legal actions.¹⁴ However, California cannot tackle this issue alone. We, as a nation must act. The proposed rule is a step in the right direction by limiting the power and ability of credit agencies to ruin individuals' financial and emotional wellbeing. With

² [Id.](#)

³ [Gordon, *1 in 8 LGBTQ + Americans Face Health Insurance Discrimination, New Survey Shows \(May 26, 2022\)* Forbes.](#)

⁴ [Levy, *100 Million People in America Are Saddled with Health Care Debt \(June 16, 2022\)* KFF Health News.](#)

⁵ [Rakshit, et. al, *The Burden of Medical Debt in the United States \(February 12, 2024\)* Peterson-KFF Health System Tracker.](#)

⁶ [California Health Care Foundation, *The 2024 California Health Policy Survey \(January 2024\)*.](#)

⁷ [Han, et. al, *Associations of Medical Debt with Health Status, Premature Death, and mortality in the US \(March 4, 2024\)* JAMA Network; Yao, et. al, *Medical Debt Associated With Worse Physical And Mental Health, Premature Death, Study \(March 4, 2024\)* ABC News.](#)

⁸ [Himmelstein, et. al, *Prevalence and Risk Factors for Medical Debt and Subsequent Changes in Social Determinants of Health in the US \(Sept 16, 2022\)*, JAMA Network.](#)

⁹ [Garcia, et. al, *Homelessness and Health: Factors, Evidence, Innovations that Work, and Policy Recommendations \(February 2024\)* Health Affairs](#)

¹⁰ [Scauzillo, *LA County Supervisors Want To Erase \\$2.6 Billion In Residents Medical Debt, Los Angeles Daily News \(October 4, 2023\)*](#)

¹¹ [Burky, *JAMA Study Finds Medical Debt A Predictor Of Housing And Food Insecurity \(October 2022\)* Fierce Health Care](#)

¹² [Consumer Fin. Prot. Bureau, *Data Point: Medical Debt and Credit Scores \(May 2014\)*.](#)

¹³ [Senate Bill \(SB\) 1061 \(Limon\) \(2023-2024\).](#)

¹⁴ [Work, *Los Angeles County Approves Medical Debt Relief For Residents \(June 25, 2024\)* California Healthline.](#)

this in mind, I want to express my support for the following changes found in the proposed rule.

Comments on the Proposed Regulatory Changes

1. Defining “Medical Debt Information”

I strongly support CFPB’s proposal to define “medical debt information” as including, but not limited to, information involving medical bills that have already been paid or are not past due. As referenced by CFPB, medical debt is fraught with inaccuracies and is not a sign of credit worthiness.¹⁵ Limiting access to current debt information safeguards individuals from deleterious reports based on debt that may be inaccurate or remain contested. Restricting access to information regarding past paid medical debt protects individuals from disclosure of information that may hinder an individual’s credit options. Medical debt information is not an accurate gauge of an individual’s current ability to pay on a new debt, making it irrelevant to a credit inquiry. Of particular concern is that medical debt information could lead to a prejudicial financial review by marking an individual as having a chronic illness or disabling condition. Further, even though the proposed definition of medical debt information is not exhaustive, an express inclusion of past due debt would be another layer of consumer protection. Therefore, while I largely support CFPB’s overall definition of “medical debt information”, I am concerned that the definition may not properly capture many medical debts.

First, the proposal to define “medical debt information” as debt owed by an individual to a person or person’s agent for the provision of medical services or devices may not capture debts owed to hospitals or health care facilities. Second, limiting the definition of “agents and assignees” to “debt buyers and third-party collectors” has the potential to exclude bills from hospitals and health care facilities. Individuals who go to the hospital or other health care facilities for radiological or laboratory services often receive bills from both the providers who perform the services, as well as the facility in the form of a facility fee. Severely limiting the definition of “medical debt information” to debts owed to a person or person’s agent will likely exclude these “facility fees” and may lead to unexpected medical bills for some individuals.¹⁶ To rectify this situation, I recommend that CFPB include hospitals and health care facilities in the definition of “medical debt information”. Moreover, to protect individuals from financial ruin, I strongly urge CFPB to ensure that the proposed definition include these types of debts.

Third, CFPB’s definition excludes certain debts incurred by individuals to pay off medical debts. Debts that would be excluded from the definition of “medical debt information” include medical credit cards, loans from family members, and loans owed to third party lenders. Unfortunately, these debts make up a significant portion of the medical debt in this country. In 2022, the Kaiser Family Foundation found that 17% of Americans with medical debt had either a debt owed to a bank, collection agency, or other lender for a loan they acquired to pay a medical or dental bill or had placed these

¹⁵ [Consumer Fin. Prot. Bureau, *Consumer credit reports: A Study of Medical and Non-Medical Collections*, \(December 2014\) at 15- 16, 38-49.](#)

¹⁶ [Consumer Fin. Prot. Bureau, *Bulletin 2022-01: Medical Debt Collection and Consumer Reporting Requirements in Connection with the No Surprises Act* \(Jan. 20, 2022\), 87 FR 3025.](#)

bills on credit cards.¹⁷ Given that these debts have the same financial and health-related consequences as debts that fall under the definition as proposed, I strongly urge CFPB to include these types of debts as well as all debts incurred to pay medical debts in the proposed definition of “medical debt information”.

Finally, the definition does not include dental debt. Dental care is a form of health care, and thus, dental debt should be treated no differently than other forms of health-related debt. Despite the availability of dental insurance, many costs associated with dental care are for services that are either not covered or are only accessible after a deductible has been met. In a recent study, the Kaiser Family Foundation found that 49% of Americans with medical debt cited dental bills as the cause of some of their debt.¹⁸ Similar to what we see with medical costs, dental costs create barriers to access and impede health equity. This is especially true amongst the Black and Latino/x communities who are more susceptible to periodontal disease.¹⁹ Thus, to create a more equitable health care system, I urge CFPB to include dental care expenses in this definition.

2. Removal of Exceptions for Utilizing or Obtaining Medical Information for Financial Determinations

I strongly support CFPB’s proposal to amend section 10122.30 to remove the financial exceptions to use medical information for credit extension applications, and other similar purposes. Credit agencies should not be privy to medical information for financial determinations, and these exceptions infringe on an individual’s right to keep their protected health information private. Given the attacks on reproductive health and gender affirming care, we need to make sure that the use of sensitive health information is protected, and that it will only be divulged with the express consent of the individual. I agree with Congress in previously enacting the Fair Credit Reporting Act, which recognized the uniquely sensitive nature of health information and appears to be the basis for the limiting of medical debt information proposed here.²⁰

3. Revised Exceptions to Utilize Medical Information for Credit Insurance and Other Purposes

I support CFPB’s proposal to include revised exceptions for the use and obtaining of limited relevant medical information for very specific purposes. These exceptions should err on the side of being beneficial and not prejudicial to the individual, and not lead to the release of unauthorized protected health information. For instance, it is relevant to share medical information to support the triggering of a credit insurance benefit. Similarly, it may be relevant to disclose an individual’s income from a medical injury settlement. However, it is irrelevant to divulge that the settlement is based on a medical condition or disabling injury. It should be noted that although these exceptions include proposed limitations on the uses of this medical information, the self-policing aspect of

¹⁷ [Kaiser Family Foundation, *Health Care Debt in the United States: The Broad Consequences of Medical and Dental Bills* \(June 26, 2022\).](#)

¹⁸ [Id.](#)

¹⁹ [Borrell, Luisa, *Racism and Oral Health Equity in the United States: Identifying its effects and providing future directions* \(Spring 2022\) *Journal of Public Health Dentistry*.](#)

²⁰ [Fair and Accurate Credit Transactions Act of 2003, codified to 15 U.S.C. §§ 1681- 1681x.](#)

these stated limitations are a concern, as further discussed in Section 4 below. I therefore support these exceptions with safeguards to limit the disclosure of unnecessary information that could potentially harm the individual.

4. Credit Reporting Agencies Duties in Handling Medical Information

I generally support CFPB's proposal to outline the duties of credit reporting institutions in safeguarding the use of medical debt information both accurately and in the best interests of individuals. However, I have some concerns.

These proposed revisions would permit a consumer reporting agency to include medical debt information in a consumer report furnished to a creditor for credit eligibility purposes, provided both elements of a two-prong test outlined below are true:

- (1) The consumer reporting agency has reason to believe the creditor is not prohibited from obtaining or using the medical debt information.
- (2) The consumer reporting agency is not otherwise prohibited from furnishing to the creditor a consumer report containing the medical debt information, including by state law that prohibits furnishing to a creditor a consumer report containing medical debt.

The first prong of this test is vague and gives the consumer protection agency the ability to self-police their actions, which could invalidate some of the safeguards proposed in these revisions. To prevent this, I propose either removing the first prong in its entirety or creating an objective criterion to flesh out this prong.

Conclusion

Thank you for your leadership and your on-going commitment to protect the interests of our nation's individuals, particularly in regard to their health care and financial concerns. I share your commitment to reducing and eliminating barriers to health care coverage and financial security. Medical debt is a growing crisis in our nation, which threatens to further amplify existing health disparities in our health care system. Thus, it is imperative that we, as a nation, act quickly to address these issues, and why I support efforts to finalize this rule sixty days after publication. These regulations represent the action needed to effectively combat this crisis. If you have any follow-up questions or wish for additional information, please contact my staff Stesha Hodges, Chief of my Health Equity and Access Office, at Stesha.Hodges@insurance.ca.gov.

Thank you,



RICARDO LARA
Insurance Commissioner

