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Nurses
Association**



**National
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OUR PATIENTS. OUR UNION. OUR VOICE.

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Via regulations.gov

August 12, 2024

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

Re: Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V), 89 Fed. Reg. 51,682 (Docket No. CFPB-2024-0023; RIN 3170-AA54)

Dear Director Chopra,

On behalf of more than 225,000 registered nurses (RNs) across the country, National Nurses United (NNU) submits these comments in support of the Consumer Financial Protection Bureau’s (CFPB) above-captioned Notice of Proposed Rulemaking (NPRM) on “Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V),” 89 Fed. Reg. 51,682 (Proposed Rule). For NNU’s union nurses, nothing short of a universal, single-payer health care system that is free at the point of service for patients will truly solve the problem of medical debt for working families across the country. However, removing the loophole in the Fair Credit Reporting Act (FCRA) that allows creditors to obtain and use information on medical debt for credit eligibility determinations will go a long way towards mitigating the most disastrous effects of medical debt under our current system.

While the Proposed Rule is an excellent starting point, NNU urges the Bureau to strengthen its ability to enforce protections for patients under the Fair Credit Reporting Act (FCRA).¹ In this regard, the CFPB should consider expanding the Proposed Rule to cover other common ways in which individuals pay for medical expenses and accumulate medical debt that might still be considered by creditors when making credit eligibility determinations. One way this can be accomplished is through adopting the widest possible definition of “medical information” and “medical debt information” to cover the widest possible variety of cases. The CFPB should also explicitly include medical credit cards within the scope of medical information that cannot be reported to creditors or used in credit eligibility determinations. NNU also strongly recommends that the CFPB develop a system to identify when patients use general purpose credit cards or other lending products to pay for medical procedures, and to include these within the scope of the Proposed Rule’s prohibitions.

¹ Medical information is protected under FCRA as amended by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The FACT Act amended the FCRA to restrict creditors' ability to obtain or use medical information in connection with credit eligibility determinations (creditor prohibition).

I. Closing the Loophole that Permits Creditors to Obtain and Use Medical Debt Information in Credit Eligibility Determinations will Benefit Both Nurses and Their Patients.

Medical debt has had an enormous impact on patients across the country. According to the 2023 Commonwealth Fund Health Care Affordability Survey,² patients often delay or avoid getting health care because of medical debt, including more than one-third (34 percent) of people with medical debt in employer plans, 39 percent in marketplace or individual-market plans, 31 percent in Medicaid, and 32 percent in Medicare. Moreover, the impact of medical debt is unevenly felt with low-income, Black and Latinx patients disproportionately report having medical debt. For instance, according to the Kaiser Family Foundation's (KFFs) Burden of Medical Debt report approximately 13% of Black patients report have medical debt compared to only 8% of white patients and 3% of Asian patients.³ Likewise, patients with a disability are often disproportionately impacted by medical debt. KFF found that adults with a disability are more than twice as likely as those without a disability to report owing over \$250 in medical debt (13% vs. 6%).⁴ As these statistics demonstrates, the impact of medical debt is substantial and weighs most heavily on communities subject to current and historical discrimination.

Nurses know that many of our patients who face damaging medical debt on their credit reports are uninsured or underinsured when they receive hospital or other care. Existing racial, socioeconomic, and ability-based health disparities are exacerbated when health care providers and medical debt collectors report unpaid medical bills to credit reporting agencies. This practice causes havoc in the financial lives of working people by limiting housing options, increasing interest rates on mortgages and car loans, and limiting employment opportunities. This, in turn, causes patients to delay needed care in order to avoid accumulating medical debt which could have prevented their condition from worsening.

As a result, when patients who delay care finally do seek medical treatment, they often present with more acute conditions or comorbidities that may require more complicated interventions from our already-overburdened staff in already overcrowded-hospitals. In addition, receiving delayed care for an acute condition, often in a hospital emergency room, is almost always far more expensive for patients, providers, and payers than receiving earlier, preventive care. Thus, the very patients that avoid necessary care earlier due to fear of medical debt are ultimately saddled with the largest medical bills, causing them to delay future care and ultimately accumulate more medical debt in a downward spiral of illness and financial ruin. This sad state of affairs is dangerous, illogical, and untenable for both nurses and the patients we care for. NNU

² The Commonwealth Fund, Paying for It: How Health Care Costs and Medical Debt are Making Americans Sicker and Poorer. Oct. 2023. <https://www.commonwealthfund.org/publications/surveys/2023/oct/paying-for-it-costs-debt-americans-sicker-poorer-2023-affordability-survey>.

³ Shameek Rakshit et al., The burden of medical debt in the United States, Feb. 12, 2024.

⁴ *Id.*

therefore applauds the CFPB for its efforts to reform this broken system through the Proposed Rule, which would eliminate medical debt from credit reports for 46 million Americans and will drastically improve their financial stability and personal wellbeing as a result.

II. Medical Debt Information is Not Necessary and Appropriate for Determining Credit Worthiness.

As the CFPB has meticulously documented, medical debt on credit reports does not provide added predictiveness for credit underwriting.⁵ Medical debt is not like other types of debt in that it is often incurred involuntarily and inadvertently by people who need health care. A patient in need of urgent medical care is in no position to negotiate over the cost of that care, nor can they realistically elect to receive or forgo emergency medical services based on price. Medical billing and the health insurance system are also confusing for patients to navigate, and thus medical debt is frequently riddled with problems such as billing errors and disputes with insurers over liability for accounts.⁶ It is therefore not surprising that the CFPB's research has confirmed medical debt does not predict whether a person is a credit risk.⁷ To the contrary, as the CFPB correctly concluded in the NPRM, medical debt has such poor predictive value for credit underwriting that its consideration might actively undermine otherwise accurate credit assessments rather than increase their reliability.⁸

Indeed, many in the credit scoring industry have already reached this conclusion. VantageScore, one of the two major credit scoring providers, has announced that it will no longer include medical debts in its two latest scoring models (VantageScore 3 and 4).⁹ This change strongly suggests that medical debts are simply not necessary to make credit scores predictive. To the contrary, as discussed above, the inclusion of medical debt information may actually make them less predictive.

⁵ A technical appendix published with the Notice of Proposed Rulemaking with research finding that medical debt information, in the form of medical collections, has limited predictive value for credit underwriting.

⁶ See Kenneth P. Brevoort & Michelle Kambara, Data Point: Medical Debt and Credit Scores, Consumer Fin. Prot. Bureau (May 2014).

⁷ See Kenneth P. Brevoort & Michelle Kambara, Data Point: Medical Debt and Credit Scores, Consumer Fin. Prot. Bureau (May 2014) (medical debt is "less predictive of future repayment than reporting on traditional credit obligations.")

⁸ "On average, new credit accounts of consumers whose medical collections were not included on their consumer reports at the time of their credit applications were no more likely to be seriously delinquent within two years of a credit account's origination than the new credit accounts of consumers whose medical collections were included on their consumer reports at the time of their credit applications. This research suggests that not only can creditors underwrite credit without information about consumers' medical debts, but also that such information may lead to a market failure because it may be an inaccurate signal of whether a consumer will pay a future debt. NPRM, 89 Fed. Reg. at 51,692.

⁹ See VantageScore, VantageScore Removes Medical Debt Collection Records from Latest Scoring Models (Aug. 2022) available at <https://www.vantagescore.com/major-credit-score-news-vantagescore-removes-medical-debt-collection-records-from-latest-scoring-models/>.

It is well-established that consideration of medical debt information is not necessary and appropriate for credit eligibility determinations or credit underwriting generally. As such, as the CFPB has correctly concluded, information about medical debt does not warrant an exception to the medical information privacy protections established by Congress, and therefore the Proposed Rule is wholly appropriate.

III. The CFPB Should Include Medical Credit Cards and General-Purpose Lending Products and Credit Cards Within the Scope of the Proposed Rule.

The CFPB should extend the scope of the proposed rule to ban reporting and consideration of medical debt incurred using medical credit cards and general-purpose lending products and credit cards. Patients struggling to pay medical expenses often resort to paying their bills through products such as medical credit cards, which are marketed specifically to pay for medical expenses and typically offered directly by health care providers, and general-purpose credit cards. In addition, medical financing companies are continuously developing other medical payment products that are offered to patients by health care providers to pay for medical procedures. Debt information on credit reports regarding these items is equally harmful to patients as medical debt collection items themselves and should not be reported for the same reasons. The CFPB should therefore expand the Proposed Rule by clarifying that the definition of “medical information” and “medical debt information” both include medical debt incurred through these products and prohibit it from being reported to creditors or considered in credit eligibility determinations.

A. The CFPB Should Clarify that the Definition of “Medical Information” and “Medical Debt Information” Both Include Medical Debt Incurred through General-Purpose Lending Products and Credit Cards.

It is well-established that a significant amount of medical expenses are underreported because medical bills are put on credit cards or paid for through general-purpose loans. The Kaiser Frontier Foundation (KFF) recently conducted a study that highlights the extent to which existing medical debt is undercounted because it is paid for through credit cards or other payment products. KFF found that 11 percent of older adults reported putting medical or dental bills on credit cards and another 7 percent had debt owed to a lender that included medical or dental debt. As KFF explained:

The rate of health care debt among people ages 65 and older is higher than reported by some others, principally because of methodological differences in the way health care debt is defined. Surveys of health care debt in the US have commonly focused on unpaid medical bills, or bills which have been sent to collections, which may

overlook the share of adults who pay off their health care bills by accumulating credit card debt, taking out loans, or borrowing from family and friends.¹⁰

Likewise, a 2022 study found that 1 in 6 adults was using a credit card to pay off medical debt,¹¹ and a 2023 report by the Urban Institute found that 24% of adults with past-due medical bills reported paying for some or all of these bills with a credit card and being unable to make subsequent minimum credit card payments.¹² As these studies demonstrate, in order to fully prevent medical debt from being reported and considered in credit eligibility determinations, the CFPB must also capture medical debt that is owed through general purpose lending products.

One way this can be accomplished is if the CFPB clarified in its rulemaking that definitions of “medical information” and “medical debt information,” and the related prohibitions on the use, sharing, and consideration of this information, applies equally to medical debt incurred through such products. A broad and inclusive definition of “medical information” and “medical debt information” will ensure that novel approaches for financing medical care that are developed in the future are also captured by the Proposed Rule, and that medical debt accumulated through such products will also not impact patient’s credit.

Indeed, the CFPB should ensure that medical debt incurred through credit cards and other lending products is included within the scope of the Proposed Rule because medical debt on credit cards and other lending products may become increasingly important if health care providers seek upfront payment for services at a higher rate, as opponents of the Proposed Rule suggest. Capturing this piece of medical debt accumulation is therefore critical to realizing Congress’ intent to restrict the use of medical information for inappropriate purposes.

B. The CFPB Should Clarify that the Proposed Rules Cover Medical Credit Cards.

Medical credit cards are particularly pernicious form of medical lending that should be explicitly included in the Proposed Rule’s prohibitions for a host of reason. Most obviously, medical credit cards are an increasingly common way to finance medical procedures, and thus an increasingly common way to accrue medical debt. For instance, CareCredit, the largest medical

¹⁰ Alex Cottrill, Tricia Neuman, Lunna Lopes, and Liz Hamel, KFF, What are the Consequences of Health Care Debt Among Older Adults?, July 26, 2024, <https://www.kff.org/medicare/issue-brief/what-are-the-consequences-of-health-care-debt-among-older-adults/>. These bills were for services for themselves or the care of a spouse, child, or parent.

¹¹ Noam N. Levey, 100 Million People in America Are Saddled With Health Care Debt (KHN and NPR (June 16, 2022), [kffhealthnews.org/news/article/diagnosis-debt-investigation-100-million-americans-hidden-medical-debt/](https://www.kffhealthnews.org/news/article/diagnosis-debt-investigation-100-million-americans-hidden-medical-debt/). See also Lunna Lopes, et al., Health Care Debt In The U.S.: The Broad Consequences Of Medical And Dental Bills (Kaiser Family Foundation, Jun. 16, 2022), www.kff.org/report-section/kff-health-care-debt-survey-main-findings/ (17% of survey respondents said that they had credit card debt that they are paying off over time due to medical or dental bills).

¹² Michael Karpman, Fredric Blavin, and Dulce Gonzalez, Urban Institute, How Many Adults Have Past-Due Medical Bills on Credit Cards?, September 2023, <https://www.urban.org/research/publication/how-many-adults-have-past-due-medical-bills-credit-cards>.

credit card provider, already has more than 12.4 million cardholders.¹³ Moreover, the terms of medical credit cards are often confusing and predatory. For instance, many medical credit cards offer patients deferred or springing interest for a period of between six and eighteen months, then, if a patient has not paid within the designated period, they are charged all the interest that would have accrued since their original purchase date, often at an extremely high interest rate.¹⁴ Worse still, these products are often offered to patients as a cost saving mechanism to pay for services that their insurance does not cover by providers at the time of treatment, with little opportunity for patients to consider their full implications. As a result of these confusing and exploitative practices, patients often end up with credit they are unable to afford. The CFPB should address this growing mechanism for accumulating medical debt by making clear that medical credit cards are included and covered by the Proposed Rule's ban, perhaps through a clear example discussing the use of medical credit cards.

C. The CFPB Should Develop a System for Identifying and Reporting When Patients Use General Purpose Lending Products and Credit Cards to Incur Medical Debt.

In order to include medical debt accrued through general-purpose credit cards and lending products within the scope of the Proposed Rule, the CFPB should develop a system for identifying and tracking when such products are used to pay for medical procedures. For instance, this could be accomplished for medical debt placed on general-purpose credit cards using the Merchant Category Codes (MCCs) system that is already in place.¹⁵ The MCC system allows merchants who are coded as medical providers to be identified, and debts from the providers to be removed from reports and excluded from consideration as inappropriate "medical information" and "medical debt information." The CFPB should also develop mechanisms for identifying and tracking when loan disbursements or payments from other general-purpose lending products are used to pay for medical expenses to ensure that these are captured under the Proposed Rule's prohibitions as well.

For all of the foregoing reasons, NNU supports the Proposed Rule and encourages CFPB to further strengthen the protections against reporting of medical debt on credit reports in its rulemaking.

¹³ CareCredit, Dedicated support you can rely on for your business, Is CareCredit widely used?, www.carecredit.com/providers/faq (viewed August 12, 2024).

¹⁴ The APR of the typical medical credit card is 26.99%; currently, the mean APR for all general-purpose credit cards is approximately 16%. See California Legislature, State Assembly, Assembly Committee on Health (2024). Hearing, SB 1061 (Limon) – As Amended June 19, 2024 (hearing date June 25, 2024).

¹⁵ See, e.g., Visa Merchant Data Standards Manual - Visa Supplemental Requirements, Apr. 2023, 102 (MCC 8011 - Doctors and Physicians (Not Elsewhere Classified)), <https://usa.visa.com/content/dam/VCOM/download/merchants/visa-merchant-data-standards-manual.pdf>.

Sincerely,

A handwritten signature in black ink that reads "Michelle Grisat". The signature is written in a cursive, flowing style.

Michelle Grisat
Director of Health Policy
National Nurses United

