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Consumer Financial Protection Bureau

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Re: Docket Number CFPB-2024-0023 / RIN 3170-AA54
Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical
Information (Regulation V)

The Center for Elder Law and Justice is a non-profit providing free, civil legal services to promote the mission of ensuring that older adults can live with dignity and independence. We serve clients in the Western New York region in a variety of areas, including debt collection, healthcare law, and medical debt issues. We see first-hand the impact that medical debt has on our clients, often leading to an inability to obtain needed credit for home repairs, car purchases, housing, etc. Research shows that older adults are increasingly relying on credit as the cost of living increases and affordable housing becomes harder to access for people of all ages.

Thus, the issue of negative credit reporting of medical debts is having a greater impact on vulnerable older adults whose medical needs are unexpected and can be life-altering. As such, we strongly support the CFPB's proposed rule to eliminate the use of medical debt, expenses, and medical assets in creditor's determinations of eligibility for new credit.

CELJ supports the CFPB proposed rule and urges the CFPB to extend the protections against the harms of medical debt in the proposed rule as follows:

1. Extend the prohibition on the use of medical debt, expense, and asset information in credit eligibility determinations to debts generally incurred to pay for medical bills and expenses, including medical financial products (ie medical credit cards, etc.);
2. Issue regulations restricting harmful practices relating to the issuance of medical lending products, such as medical credit cards; and
3. Extend the prohibition on credit reporting agency's reporting of information on medical debt to creditors to also include reports used for employment and tenant screening.

**CELJ STRONGLY SUPPORTS THE CFPB PROHIBITION ON THE USE OF
MEDICAL DEBT IN CREDIT ELIGIBILITY DETERMINATIONS**

CELJ's clients are greatly harmed by the reporting of medical debt on credit reports. As referenced above, older adults are increasingly in need of access to credit in recent years for a variety of reasons as the costs of living are skyrocketing making it ever-more difficult for older adults on fixed incomes to live comfortably. Older adults are taking on greater amounts of debt

than ever before. According to a report by the National Council on Aging, the percentage of households headed by an adult 65 or older having debt increased from 41.5% in 1992 to 60% in 2016. The amount of debt in older adult-headed households also increased 2.5 times from 2001 to 2016. See [Get the Facts on Senior Debt \(ncoa.org\)](http://ncoa.org). Debt issues also disproportionately impact minority and lower-income households as well.

Medical debt, as cited in the CFPB's proposed rule, is often an unfair and unreliable indicator of one's creditworthiness. Medical debts and expenses are not planned for or controllable. When care is needed, consumers often have no choice about it. We do unfortunately hear from our clients about the impact of the medical debt issue on their healthcare choices, leading some of our clients to forego needed care due to fear regarding the repercussions on their financial lives. Some of our clients lose their homes because of medical expenses that come up unexpectedly. We see many cases in which a medical debt that is disputed is sued upon by the creditor or debt collector before insurance is ever even billed. Medical billing is complex to the point where errors are the norm rather than the exception. This problem is compounded in our older adult population who may have both Medicare and Medicaid or others in the general population who may have multiple insurances. Our attorneys have seen cases in which even the insurance companies themselves cannot figure out who is to be billed as the primary insurance and where both insurance companies deny the claims expecting the other insurance to provide coverage. These are very complicated legal issues that take a long time to sort out. Insurance appeals are difficult and time-consuming. Providers and their collection agencies or assignees often start pursuing collections well before any of these issues can be resolved. Meanwhile the debt is reported as delinquent on the patient's credit report.

Many of our clients in their initial calls to us on these matters express great fear and desire to pay debts that they do not necessarily owe in order to avoid the harassing and emotionally draining impact of medical debt. Many express fear that their medical provider who they continue to need for their chronic conditions may not serve them if they do not clear these issues up quickly. Many also express concern about the impact on their credit.

We also commonly see individuals who should have been offered financial assistance by their providers to cover their medical expenses who have no idea that these financial assistance programs exist. Many of the debts we deal with for our clients could have been avoided if the providers were reviewing their patients for financial assistance as they are required to do.

Thus, medical debts are often the result of inaccurate billing, insurance denials, and failure to provide required financial assistance to those who qualify. As such, it is an incredibly unfair and unreliable indicator of one's creditworthiness and should not be used by creditors in their eligibility determinations.

CELJ URGES THE CFPB TO EXTEND THE PROHIBITION ON USING MEDICAL DEBT INFORMATION IN CREDIT DETERMINATIONS TO INCLUDE MEDICAL LENDING PRODUCTS

Medical lending products should be covered by this new rule as well. The nature of the debt incurred is the same whether it is a debt owed directly to a provider or a debt that is caused

by paying a provider using a medical credit card or just a general credit card. Often times, consumers trying to be responsible put their debt on a credit card or medical credit card or take out a loan to pay for their care. The same reasons that medical debt itself is an unfair and unreliable indicator of creditworthiness as outlined above apply in these scenarios. More and more healthcare providers are promoting the use of these medical credit cards and they often have gimmicky terms that mislead consumers. Leaving this category of medical debt unprotected would cause further unfairness to consumers who would not realize that if they pay by credit card or with a loan or other product, they will be missing out on the protections that apply to medical debt not paid in these manners.

Hence, the CFPB should include all medical debt, including general credit card debt that results from paying medical bills, as well as debt incurred in the form of medical lending products in its new rule. Regarding the feasibility of doing so, it would be the furnisher or lender providing this information to the credit reporting agencies and the furnisher or lender would merely need to designate that the debt is medical debt.

CELJ URGES THE CFPB TO EXTEND REGULATIONS TO ADDRESS ISSUES WITH MEDICAL LENDING PRODUCTS

As the CFPB looks at the issue of medical debt, it would be missing a large piece of the problem if it were to fail to take the opportunity to impose regulations to address issues that are arising with medical lending products, such as medical credit cards. Medical providers are increasingly promoting these products while simultaneously failing to explain their terms and conditions to consumers. Consumers are easily misled about what they are signing up for and often end up in a worse situation than had they not used these products at all. There is tremendous pressure on consumers to pay off their medical debt, as often, consumers may fear that their providers will not continue treatment if they do not or will not treat them as effectively. Thus, these products are attractive ways for consumers to alleviate that concern. However, this leads to consumers paying bills that may have been covered by financial assistance or insurance. It also sometimes leads to providers taking advance payments before services are rendered. These products also lead to the debt being transferred from a medical debt to a regular consumer debt. Any state law or federal protections covering medical debt will no longer apply and the consumer is then subject to collections, lawsuits, judgments, garnishments, etc. As these products seem to widely be compounding the problems related to medical debt, they should be regulated as part of a broader strategy to alleviate the impact of medical debt.

CFPB SHOULD EXTEND THE PROHIBITION ON CREDIT REPORTING AGENCIES PROVISION OF MEDICAL DEBT INFORMATION TO CREDITORS TO INCLUDE REPORTS USED FOR TENANT AND EMPLOYMENT SCREENING

The CFPB should extend this rule to cover credit reports used for the purposes of tenant screening and employment screening. The use of credit reports by potential landlords and employers is increasing and making it ever more difficult to find affordable housing and job stability. The housing crisis in this country is already at an all-time peak and is made worse as credit scores are made a larger part of the consideration. Having medical debt should not impose additional barriers to finding safe, affordable housing. Many of our clients at CELJ are affected

by this as they seek to move into more affordable, smaller housing units but must now worry about their credit score being lowered by medical debts they owe.

Just as it is not a good predictor of creditworthiness, it is an even worse predictor of a tenant's ability to pay rent or a worker's ability to do their job. Thus, the impact of medical debt should be ameliorated not only with respect to lending but also with respect to tenant and employment screening.

CELJ greatly appreciates the CFPB's interest in addressing the harms caused by medical debt and strongly supports the proposed rule, encouraging the CFPB to go even further in extending these protections to cover medical financial products and extend to tenant and employment screening reports. Should you have any questions, please reach out to Amy Gathings at agathings@elderjusticenyc.org or by telephone (716-853-3087 x247). Thank you.

Respectfully Submitted,

Center for Elder Law & Justice