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

**Re: Docket No. CFPB–2024–0023 or RIN 3170–AA54
Prohibition on Creditors and Consumer Reporting Agencies Concerning
Medical Information (Regulation V)**

Dear Director Chopra:

Thank you for the opportunity to comment on the Consumer Financial Protection Bureau’s (CFPB) Notice of Proposed Rulemaking (Proposed Rule) addressing changes to Regulation V.¹ The Community Service Society of New York (CSS) urges the adoption of the proposed rule that would remove medical debt from credit reports.

The Community Service Society of New York (CSS) has been an unwavering voice for low-income New Yorkers for over 175 years. CSS administers Community Health Advocates (CHA)—New York State’s designated Consumer Assistance Program under Section 1002 of the Affordable Care Act (ACA). CHA operates a live-answer helpline and a network of 25 community-based organizations located throughout the state. Since 2010, CHA has helped over 528,000 New Yorkers enroll in and use health insurance, negotiate medical bills, and otherwise access free or low-cost health care, saving them \$216 million.² In 2019, CHA observed a 64 percent spike in medical debt cases. In response, our researchers investigated hospital billing and collection practices in New York and issued eight comprehensive reports that are available on

¹ Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V), 89 Fed. Reg. 51682, (proposed June 11, 2024) (to be codified at 12 CFR § 1022.30).

² See <https://communityhealthadvocates.org/who-we-are/our-impact/>.

our website.³ Since 2020, New York State has enacted eight laws protecting patients with medical debt.⁴

The comments provided below are based upon the experiences of the clients served by CHA advocates and attorneys and the investigations undertaken by CSS’s policy team. They represent solely the views of CSS and not our funders.

According to CFPB research, 20 percent of Americans have at least one medical debt listed on their credit reports, with 58 percent of collection items on credit reports representing medical debts.⁵ The problem disproportionately affects people of color; 28 percent of African Americans and 22 percent of Latinx people carry medical debt, versus 17 percent of White people.⁶ In 2022, 740,000 New Yorkers had medical debt on their credit reports.⁷ In most regions of New York, people of color are twice as likely and low-income people are three times more likely to have medical debt referred to a credit bureau.⁸ The existence of medical debts on a credit report makes it harder for New Yorkers to get jobs, secure credit, rent an apartment and build long-term wealth.

Medical debt is different from other consumer debt. People rarely plan to get sick and have little to no ability to “shop around” for the best medical deal. Moreover, research indicates that medical debt is rife with errors—often due to incorrect coding and insurance claims disputes. For these reasons, medical debt is not predictive of a consumer’s ability to pay future

³ Discharged Into Debt (DID) (March 2020); DID: A Pandemic Update (January 2021); DID: Medical Debt and Racial Disparities in Albany Co. (March 2021); DID: Nonprofit Hospitals File Liens on Patients’ Homes (Nov. 2021); DID: NY’s Nonprofit Hospitals Garnish Patients’ Wages (July 2022); DID: Upstate Hospital (Dec. 2022); An Ounce of Prevention: Reforming the Hospital Financial Assistance Law Could Save Pounds of Patient Debt (April 2023); DID: State-Run Hospitals Filed Over 80% of Medical Debt Lawsuits in New York in 2023 (May 2024).

⁴ See, N.Y.C.P.L.R. §213-d (shortening statute of limitations for medical debt cases from six to three years); N.Y.C.P.L. §5004 (reducing judgment interest rate from 9 percent to 2 percent for all consumer debt, including medical debt); N.Y.C.P.L.R. §§5201, 5231 (banning medical creditors from securing liens or wage garnishments in medical debt cases); N.Y. Pub. Health L. §§ 2801(12), 2830 (banning facility fees for preventive care and requiring additional disclosure for facility fees); N.Y. Pub. Health L. § 2807-k(9a) (requiring hospitals to use a uniform Hospital Financial Assistance form); N.Y. Pub. Health L. §§ 4925-27 & Gen. Business L. §§ 380-j(a)(3), 380-j(f)(1)(viii) (prohibiting medical providers from reporting medical debt to credit reporting agencies, and banning reporting agencies from reporting medical debt to would-be creditors); and N.Y. Pub. Health L. § 2807-k(9) (strengthening New York’s Hospital Financial Assistance Law, by banning lawsuits against patient’s below 400 percent of federal poverty level, improving discounts, and collection protections).

⁵ “Medical Debt Burden in the United States,” CONSUMER FINANCIAL PROTECTION BUREAU (Feb. 2022), available at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf.

⁶ *Id.*

⁷ “Medical Debt in New York State Varies Widely Across Regions and Communities,” URBAN INSTITUTE (Mar. 2023), available at: <https://www.urban.org/sites/default/files/2023-02/Medical%20Debt%20in%20New%20York%20State%20Varies%20Widely%20Across%20Regions%20and%20Communities.pdf>

⁸ *Id.*

bills.⁹ It also explains the following recent phenomena: (1) one of the two major credit scoring providers stopped considering medical debt in its latest model, citing “minimal effects on predictive performance;”¹⁰ (2) consumer reporting agencies have removed certain medical debts from consumer reports; and (3) some creditors have adjusted how their underwriting standards treat medical debt information.¹¹

The CHA program has assisted many clients over the years who have medical debt on their credit reports. For example, Ms. A’s hospital-based medical debt was sent to collections before her hospital financial assistance application was processed, in violation of New York State law.¹² The medical debt that appeared on her credit report had negatively impacted her ability to secure credit.

Fortunately for our CHA clients and thousands of other New Yorkers, on December 13, 2023, New York Governor Kathy Hochul signed the Fair Medical Debt Reporting Act into law at CSS’s office. This law prohibits New York hospitals, health care professionals, and ambulance providers from reporting medical debt to consumer reporting agencies.¹³ Under this law, bills from New York hospitals, health care professionals, and ambulance providers are considered medical debt, as well as medical debts charged to medical credit cards.¹⁴ We urge the CFPB to similarly include debt incurred on both general-purpose and medical credit cards in its definition of medical debt.

Accordingly, CSS supports the CFPB proposed rule and respectfully urges the agency to further protect vulnerable consumers from the harms of medical debt. Specifically, the CFPB

⁹ “Debt Collectors Re-Evaluate Medical Debt Furnishing in Light of Data Integrity Issues,” CONSUMER FINANCIAL PROTECTION BUREAU (Feb. 14, 2023), available at: <https://www.consumerfinance.gov/about-us/blog/debt-collectors-re-evaluate-medical-debt-furnishing-in-light-of-data-integrity-issues/>.

¹⁰ See *VantageScore Excluding Medical Debt from Credit Scores*, VANTAGESCORE (Aug. 12, 2022), available at: https://www.vantagescore.com/press_releases/vantagescore-excluding-medical-debt-from-credit-scores/.

¹¹ See, e.g., *Equifax, Experian, and TransUnion Support U.S. Consumers With Changes to Medical Collection Debt Reporting*, BUSINESS WIRE, (Mar. 18, 2022), available at:

<https://www.businesswire.com/news/home/20220318005244/en/Equifax-Experian-and-TransUnion-Support-U.S.-Consumers-With-Changes-to-Medical-Collection-Debt-Reporting>; See, e.g., *Single Family Selling Guide*, FED.

NAT’L MORTG. ASS’N, B3-2-03 (2021), available at:

<https://sellingguide.fanniemae.com/#Public.20Records.2C.20Foreclosures.2C.20and.20Collection.20Accounts> (noting that “[c]ollection accounts reported as medical collections are not used in the DU [Desk Underwriter] risk assessment”); *The Single-Family Seller/Service Guide*, FED. HOME LOAN MORTG. CORP., 5201.1 (2022),

<https://guide.freddie.com/app/guide/section/5201.1>; U.S. DEP’T OF HOUS. & URBAN DEV., *Single Family Housing Policy Handbook*, 4000.1 (2021),

<https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsg-112021.pdf>; see also *Fact Sheet: The Biden Administration Announces New Actions to Lessen the Burden of Medical Debt and Increase Consumer Protection*, THE WHITE HOUSE, (Apr. 11, 2022),

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/11/fact-sheet-the-biden-administration-announces-new-actions-to-lessen-the-burden-of-medical-debt-and-increase-consumer-protection/> (announcing changes to certain federal government underwriting standards to remove medical debt from evaluations of whether a consumer will repay a loan, including those for the U.S. Department of Agriculture’s rural housing service loans and the Small Business Administration’s loan programs and the Federal Housing Finance Authority’s review of credit models).

¹² N.Y. Pub. Health L. §2807-k(9).

¹³ N.Y. Pub. Health L. §§ 4925-27 & Gen. Business L. §§ 380-j(a)(3), 380-j(f)(1)(viii).

¹⁴ *Id.*

should: (1) extend the credit reporting ban to negative information about lending products used to pay for medical debts, including general-purpose credit cards and medical credit cards, and (2) address other common abuses with medical lending products, like prohibiting deferred interest on credit cards, prohibiting issuance of medical credit cards or loans to consumers whose insurance covers a procedure or they qualify for financial assistance, and prohibiting services from being charged to a credit card before they are rendered.

Recommendations

Section 1022.3: Definitions

CSS supports the Proposed Rule’s provision that introduces the definition of “medical debt information,” but urges CFPB to apply it to general-purpose credit cards as well as medical credit cards.

CSS agrees with the Proposed Rule’s definition that “medical debt information” is debt that the consumer owes, or at one time owed directly to a health care provider or to the health care provider’s agent or assignee. CSS also supports the interpretation that medical debt includes debt that has been sold or resold to a debt buyer, who has become the health provider’s assignee for the debt, because the payment obligation that was sold was created by a health care provider and at one time was owed to the health care provider. This interpretation includes medical debt assigned to a third-party debt collector, acting as an agent on behalf of the health care provider or debt buyer, to whom the debt is owed. It also includes information in the form of a civil judgment arising from a debt collection action as to a medical debt directly owed to a health care provider or debt buyer, whether provided on a credit report, by the consumer on a credit application, or if the creditor learns of the civil judgment through other means.

The rule is currently written so that “medical debt information” must relate to a debt the consumer owes (or owed) directly to a health care provider or via a third-party debt collector. Medical debt would not include a debt owed to a third-party lender, including a medical credit card issuer whose products are offered specifically for the payment of medical services or general-purpose credit card issuer, from whom a consumer took out a loan to pay medical expenses or bills.

As described below, CSS urges to extend these protections to general-purpose and medical credit cards.

A. General Purpose Credit Cards

CSS believes that the CFPB should strengthen this definition to include medical debt on general-purpose credit cards. The industry may raise concerns – as they did successfully in reaction to New York’s credit reporting bill – that it is impossible to disaggregate medical debt from other debt incurred on a general-purpose credit card. But this is untrue. It is operationally possible to include medical debt incurred on general-purpose credit cards in the proposed ban because medical debt can be identified on these accounts by using Merchant Category Codes

(MCCs).¹⁵ The CFPB should implement such a ban by requiring issuers to exclude negative information about debts from merchants who are coded under MCCs as medical providers.

B. Medical Credit Cards

Likewise, the CFPB should extend the definition to include debt that appears on medical credit cards. The New York legislature achieved this by passing the Fair Medical Debt Reporting Act, which was signed by Governor Kathy Hochul on December 13, 2023.¹⁶ Negative information regarding these debts is just as harmful as medical debt collection items on credit reports. Moreover, medical credit cards can be much more harmful than other forms of credit. This is because some providers' staff fail to properly explain to patients that they are opening a credit card, as opposed to receiving a payment plan with the health care provider.¹⁷

Other patients may have insurance that covers the service for which the patient is using a medical credit card. For example, CHA helped Ms. Rosa, a 64-year-old Spanish speaker who signed an application for a CareCredit Card at her optometrist's office, thinking it would secure insurance coverage for the optometrist's services and glasses. Because of a language barrier, she did not understand what she was signing. Even though Ms. Rosa had comprehensive vision insurance through Medicaid, the provider's office did not file a prior approval request with her insurance plan. Instead, they had Ms. Rosa sign an application to open a CareCredit Card to pay for the optometrist's services and her glasses. As a result, she incurred \$1,630 in credit card debt for care that should have been covered by Medicaid. With a monthly Social Security Benefit of only \$867, Ms. Rosa could not afford any credit card balance that would also be accruing interest.

Patients like Ms. Rosa should not suffer credit damage because they did not realize they were signing up for a medical credit card.

Section 1022.30: Obtaining or using medical information in connection with a determination of eligibility for credit

CSS supports the Proposed Rule's provision that would remove the financial information exception. This exception broadly permits lenders to obtain and use information about medical debt to make credit eligibility determinations. Removing the financial information exception would have a positive impact on the consumers CSS serves. For example, under the Proposed Rule clients would experience the following positive impacts:

- A reduction in the need for dispute resolution over medical debt.¹⁸
- An increase in the number of consumers who will have credit extended to them.¹⁹

¹⁵ *Visa Merchant Data Standards Manual*, VISA (Apr. 2024), available at: <https://usa.visa.com/content/dam/VCOM/download/merchants/visa-merchant-data-standards-manual.pdf>.

¹⁶ *Supra* note 13.

¹⁷ April Kuehnhoff & Chi Chi Wu, *Health Care Plastic: The Risks of Medical Credit Cards*, NAT'L CONSUMER L. CENTER, at 20 (Apr. 27, 2023).

¹⁸ *Supra* note 1, at 116-18.

¹⁹ *Supra* note 3.

- Increased approval of mortgages.²⁰
- Improved loan rates, leading to saved money and enhanced wealth accumulation.²¹

However, CSS urges the CFPB to address common abuses with medical payment products. Many common abuses for medical payment products can be addressed by prohibiting deferred interest on credit cards; prohibiting providers from issuing medical credit cards or loans to patients whose insurance covers a procedure or who qualify for financial assistance; and prohibiting services from being charged to a credit card before they are rendered.

The problems with specialized medical payment products go way beyond adverse credit reporting. The National Consumer Law Center report, *Health Care Plastic: The Risk of Medical Credit Cards*, documents numerous harms to consumers from these products, including: patient confusion about deferred interest; the failure of providers to screen patients who are eligible for financial assistance before medical bills were charged to a card; charging a patient for procedures to a credit card that were covered by the patient's insurance; suing patients; sustaining credit reporting damage; and having services pre-charged to the patient's card that were ultimately never provided.²²

The CFPB's most recent Supervisory Highlights report likewise identifies myriad problems with these products, including misrepresentations about deferred interest and that consumers "felt pressured by healthcare providers to open a credit card while receiving treatment."²³

The CFPB has broad authority to regulate medical credit cards because they are lending products. We urge the CFPB to do so.

Section 1022.38: Duty of consumer reporting agencies regarding medical debt information.

CSS makes no specific comment in reference to Section 1022.38. Any changes made to the Proposed Rule, in Section 1022.38, should reflect the previously stated changes advocated for by CSS in this comment.

Conclusion

CSS strongly supports the Proposed Rule's proposed elimination of the financial information exception, as detailed in Section 1022.30. Additionally, CSS urges the CFPB to protect consumers from harmful credit reporting by including two further protections in its final rule. First, the CFPB should extend the credit reporting ban to include medical debt on general-

²⁰ Kate Gibson, *Biden Administration to Bar Medical Debt from Credit Reports*, CBS NEWS (June 13, 2024, 10:42 AM EDT), available at: <https://www.cbsnews.com/news/medical-debt-credit-reports-cfpb/#> (CFPB expects the Proposed Rule would lead to the approval of approximately 22,000 additional, safe mortgages each year).

²¹ *Supra* note 3.

²² *Supra* note 17.

²³ See *Supervisory Highlights: Servicing and Collection of Consumer Debt*, 34 CONSUMER FIN. PROT. BUREAU, 12 (2024).

purpose credit cards and medical credit cards, such as CareCredit. Second, the CFPB should address common abuses with medical payment products, for example by prohibiting deferred interest on credit cards, prohibiting providers from issuing medical credit cards or loans to patients whose insurance covers a procedure or who qualify for financial assistance, and prohibiting services from being charged to a credit card before they are rendered.

Thank you for providing us with the opportunity to comment. If you have any questions, please contact Diane Spicer, Supervising Attorney, CHA, at dspicer@cssny.org or Elisabeth Benjamin, Vice President, Health Initiatives, at ebenjamin@cssny.org.

Respectfully submitted,

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