CFPB PROPOSED REGULATION COMMENT SAMPLES

Meduit Individual Employee Options

The following are draft responses that could be submitted regarding the CFPB's proposed rule. Hopefully these will provide various levels of engagement and data points that you can either copy and paste as your response or pull pieces from the various statements to help tell your own story. Thank you for taking steps to be heard in this process!

SHORT FORM - SAMPLE #1

Please DO NOT adopt the Proposed Rule on Credit Reporting. I am uniquely positioned as both an individual consumer / patient affected by this rule as well as an individual who depends on the payment of medical debt services to pay my own bills as I work for a receivables management company. With those two perspectives, I will be impacted by this rule on multiple levels and from the facts that have been presented, I see many more negative impacts to my future rather than benefits from this rule.

Whether it is my ability as an individual to obtain healthcare services without having to pay for them in full ahead of time and have providers within a reasonable distance from my home to guarantee services in emergencies, or the fact that my livelihood is potentially at risk as I depend on the consumers' payment of their outstanding medical debt to pay my own bills. I do not believe that all the impacts of this change have been fully considered. Of course, as an individual consumer I can get excited about the talking points of never seeing a medical debt on my credit report again, but as I understand each of the larger economic and healthcare related impacts that I will be faced with after the implementation, the small "win" on my credit will not be worth the loss of my future larger goals and growth.

Please consider the numerous unintended negative consequences this proposed regulation would have on patients, financial consumers, the healthcare system and the broader economy. Thank you for your consideration.

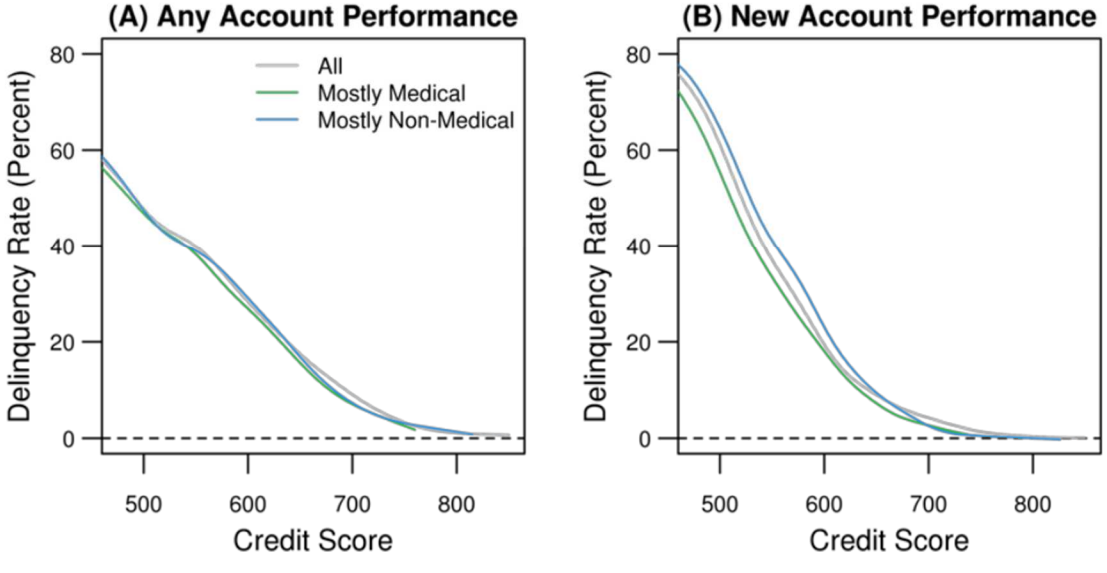
Dear CFPB,

Thank you for the opportunity to submit our response to the Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V).

I oppose this regulation because of the unintended consequences that will occur to the medical industry, patient urgency to reply, and overall cost of healthcare.

- **First**, as a revenue cycle company, we want to fully dispute that "*medical debt is often plagued with inaccuracies and errors*" as the CFPB mentioned on Page 4[1]. This rhetoric creates a divisive nature for patients against the healthcare entities that are working to provide services that can be lifesaving. CFPB can only see a small sample size in regard to a complaint database, which is a one-sided communication with patients alone and rarely, if ever, have the medical provider's side. 99.9% of patient accounts that are billed are accurately submitted to all payers and adjudicated as insurance plans intended. When errors do occur, they are rare and never do we pressure patients to pay bills *"they do not owe."*
- **Second**, medical debt is, in fact, predictive in nature as the 2014 CFPB study called "Data point: Medical debt and credit scores[2]" has shown. The CFPB has misstated this fact in several press releases and statements by Director Chopra and others within the CFPB using the phrase *"aren't predictive"*[3]. This is a false statement. The true statements are that there is a "score differential" between the data of mostly medical and mostly non-medical as Figure 2 correctly points out.

FIGURE 2: PERFORMANCE BY CREDIT SCORE, MEDICAL VS. NON-MEDICAL COLLECTIONS



And the documented statement - *"If we directly compare the MM (mostly medical) and MNM (mostly non-medical) consumers, however, there is a clear pattern. Across almost all of the score range, MM consumers had lower delinquency rates than MNM consumers."*
This is still predictive by a score of future delinquencies. Finally, the three major credit bureaus took three steps to combat this with the several changes[4] that previously took effect in 2022 and 2023. This includes removing paid medical bills from the credit report, which would have completely removed the issue with paid vs unpaid medical bills as stated in – Section 5. The result: Paid versus unpaid medical collections. Along with this, the data used in this statement is from 2011-2013 which is over ten years old. This study needs to be updated with data from 2023 after the March 31st removal of balances less than $500 by the credit bureau industry.

[1] Notice of Proposed Rulemaking: Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) (consumerfinance.gov)
[2] Data point: Medical debt and credit scores | Consumer Financial Protection Bureau (consumerfinance.gov)
[3] https://x.com/chopracfpb/status/1815473618295431318
[4] Can Medical Debt Impact Credit Scores | Equifax®

- **Finally**, the accountability that is perceived and/or real that is created by credit bureaus reporting have secondary impacts that aren't obvious in nature in several areas including –
  1. A decrease in the rate in which healthy Americans have health insurance if no accountability is required (ACA requirement of health insurance is gone). Why would a healthy, young American have health insurance if there are no repercussions for not having insurance?
  2. The accountability to respond to the medical providers communications timely is already a difficulty for medical providers. Removing any accountability will prevent medical providers from receiving needed insurance conversations, such as coordination of benefits (primary and secondary insurance), accident survey requests, and financial assistance paperwork responses.

In conclusion, we urge CFPB to not move forward with the proposed regulation as requested in the question on the preliminary conclusion.

We also submit answers to several of the questions that are surprisingly not answered prior to considering this proposed regulation in the attached "Feedback on Proposed Regulation".

Thank you for your attention to this matter.

Sincerely,

Shawn Gretz

Feedback on Proposed Regulation

Conflicts with Federal Statues passed by Congress
As requested, there is a conflict with a privacy regulation that already exists today for medical information put in place by the US Department of Health and Human Services (HHS). In 1996, this privacy regulation, known as Health Insurance Portability and Accountability Act (HIPAA), was passed by US Congress and gave oversight to HHS. A definition was created that already addresses consumer reporting agencies in the terms of "Payment".

HIPAA § 164.501[5]- Definitions -
Payment means:
…
(2) The activities in paragraph (1) of this definition relate to the individual to whom healthcare is provided and include, but are not limited to:
(vi) Disclosure to consumer reporting agencies of any of the following protected health information relating to collection of premiums or reimbursement:
(A) Name and address;
(B) DOB;
(C) SS#;
(D) Payment history;
(E) Account number; and
(F) Name of the healthcare provider

"To avoid interfering with an individual's access to quality health care or the efficient payment for such health care, the Privacy Rule permits a covered entity to use and disclose protected health information, with certain limits and protections, for treatment, payment, and health care operations activities."

The preeminent healthcare privacy regulation that has domain expertise in medical information considers consumer reporting agencies information to be acceptable under the efficient payment definition coincidently

[5] Guidance: Treatment, Payment, and Health Care Operations | HHS.gov

coincides with the FACT Act of 2003[6] definition of medical information. As such, the CFPB should consider this proposed regulation as duplicative, overlapping, and a conflicting requirement. We believe that CFPB should withdraw the proposed regulation.

Potential Impact

Potentially Decreased Recovery Rates Based on available information, the CFPB expects that approximately 2.5 percent of medical collection accounts are recovered by debt collectors who furnish medical collections information to the NCRAs, as estimated using the share of medical collections marked as paid on consumer reports.

> [169] It is possible for debt collectors to furnish to consumer reporting agencies and pursue debt litigation for the same account. As discussed in *Costs to Medical Debt Collectors*, only 2.5 percent of medical collections on consumer reports are ever reported as paid. *See* Consumer Fin. Prot. Bureau, *Paid and Low-Balance Medical Collections on Consumer Credit Reports* (July 27, 2022), https://www.consumerfinance.gov/data-research/research-reports/paid-and-low-balance-medical-collections-on-consumer-credit-reports/.

The potential decrease in recovery rates used by the CFPB is extremely low compared to the overall recovery results. Historically recovery rates for medical bad debts have ranged from 18.2-24.8%, much of which is dependent upon economic conditions. The use of 2.5% drastically underestimated the number of individuals, who in an effort to ensure their credit remains unaffected, setup payment plans to ensure an account does not reach the credit bureaus. This accountability is desired so that the majority do not have to pay the bills of the minority. We anticipate the revenue decreases to be close to a 900 basis-point reduction in decreased recovery which will be extremely harmful to our organization.

Point of Service Collections

The CFPB discusses that a majority of healthcare already collects payment at the time of service and such, it should not be an issue that point of service collections increases and it points to a survey performed by HFMA.

> [177] According to an HFMA survey, 96 percent of health care industry respondents reported having pre-payment or point-of-service collection policies and procedures. Healthcare Fin. Mgmt. Ass'n, *Analyzing pre-payment and point-of-service collections efforts* (Aug. 15, 2021), https://www.hfma.org/technology/analyzing-pre-payment-and-point-of-service-collections-efforts/.

The CFPB's assumption that the existence of point-of-service collection policies translates to 96% of patients making such payments is fundamentally flawed. While the HFMA survey indicates that 96% of healthcare industry respondents have pre-payment or point-of-service collection policies, this does not directly correlate to the same percentage of patients actually making these payments. The existence of a policy does not guarantee its uniform application or effectiveness across all patient interactions. Various factors, such as the patient's financial situation, type of service the patient is present for, such as ER, the complexity of billing processes, and the timing and clarity of payment requests, can significantly influence the actual rate of point-of-service collections. Therefore, the CFPB's assumption oversimplifies the practical challenges and realities faced by healthcare providers in managing patient payments, leading to an inaccurate representation of the situation.

Inaccuracies with Data

We believe there are inaccuracies with the Technical Appendix that need to be corrected before issuing a proposed regulation. These are significant and impactful to the overall decision making that led to this proposal. First, the XI. Technical Appendix clearly states that -

"Furthermore, the summary statistics for consumers in the full sample are similar to those for the over-$500 sample, but consumers in the over-$500 have nearly two fewer medical collections reported within 180 days of an inquiry in the sample. Though this at first may seem counterintuitive, this is because consumers with several medical collections often have at least one medical collection valued under $500 which removes them from the over-$500 subsample."

Individuals with multiple debts were likely to be excluded from the dataset because the analysis eliminated individuals with any medical debt issues below $500 (even if they also had debts above $500), making the

[6] Federal Register :: Fair Credit Reporting Medical Information Regulations

resulting population both narrower and potentially biased, particularly as the remaining individuals with multiple debt issues (all above $500) were weighted more heavily in the analysis. All medical accounts with any balance above $500 should have been considered in all the regression analysis.

Second, the XI. Technical Appendix cannot quantify the number of consumers who never applied for credit because they owed medical providers.

These two limitations of the regression analysis prohibit the usefulness of the study and as such should either be removed or all together recalculated before a final rule can be published.

Litigate More

"The potential for revenue losses described above may affect the rate at which health care providers or the debt collectors they work with choose to file debt collection lawsuits against consumers."

The CFPB's proposed rule to remove medical debt collections from consumer reports and potentially increase litigation by hospital systems is problematic for several reasons. First, litigating medical debt is both costly and resource-intensive for all parties including hospital systems, collection attorneys, and patients. The costs can be as high as $270 (Nevada) for filing fees and another $200 (Oklahoma) for serving fees. These have to be paid before pursuing small claims litigation and will have a drastic impact on the operations of a healthcare facility. These do not even include the variable costs such as attorney fees, which can strain the financial resources of healthcare providers already operating on thin margins. The increase in costs reduces the amount spent directly on patient care and only increases the overall cost of healthcare. Finally, several jurisdictions and/or states do not allow for medical debt litigation thereby preventing this as an option.

Thin Credit Files

There is an impact by removing medical debt by creating additional thin credit files.

[210] A thin credit file is a consumer report that contains fewer than five credit accounts. Jennifer White, Experian, *What is a Thin Credit File?* (May 25, 2022), https://www.experian.com/blogs/ask-experian/what-is-a-thin-credit-file-and-how-will-it-impact-your-life/.

As a revenue cycle company, we regularly rely on credit report information for validating information. We regularly use the credit bureaus for presumptively qualifying patients for financial assistance. We regularly use credit bureau information for demographic information to help validate insurance providers. It is highly likely that furnishers will discontinue sending medical information to credit bureaus and, as such, will degrade the information from the 15 million Americans who today have their information on the credit bureaus. This will cause thin credit bureau (defined as 5 or less tradelines) reports to be a larger occurrence. Medical collections tradelines still constitute a majority (57 percent) of all collections on consumer credit reports. This will additionally harm patients in the case of presumptively qualifying individuals for financial assistance (free care).

LONG FORM - SAMPLE #2

I am opposed to the Proposed Rule on Credit Reporting and ask that this rule does not move forward. I am uniquely positioned as both an individual consumer / patient affected by this rule as well as an individual who depends on the payment of medical debt services to pay my own bills as I work for a receivables management company. With those two perspectives, I will be impacted by this rule on multiple levels and from the facts that have been presented, I see substantially more negative impacts to my future rather than benefits from this rule.

As a consumer of healthcare services, I depend on the ability to obtain necessary care without needing to stress and struggle to find ways to pay for those services ahead of time. My understanding is that the CFPB has encouraged the "buy now / pay later" model within the marketplace to ensure that all consumers can leverage their finances to obtain the loans and services they not only desire, but more importantly need. I struggle to understand the change of that mindset when it comes to one of the most important things I "consume" in the marketplace when it comes to accessing necessary healthcare services. If passed, this rule will force the hand of healthcare providers and facilities nationwide into removing the "buy now / pay later" process. To remain open and cover overhead, providers and facilities will in all likelihood need to change to all upfront payment of services, and I will be forced to work with my insurance company to be reimbursed for expenses. If I don't have the funds to cover and wait for reimbursement, I will need to decide between not receiving my medical care because I cannot pay or putting all those payments onto credit cards to get the services.

Under the proposed rule, there would be a fundamental shift of medical expense debt from from outstanding amounts I need pay with my provider through normal interest free payment plans, into credit card debt that will immediately start incurring potentially high interest rates and lengthy payment plans as I wait for reimbursements and resolutions from the providers and facilities.

Now as an employee within the healthcare receivables management field, I must add the fact that at a minimum my paycheck will begin to decrease as the ability to collect outstanding receivables decreases. The potential closure of providers and facilities will also have an impact on the business my employer will be able to secure and again, in turn, will have an impact on my livelihood as I know it today. If the unintended consequences of this rule play out as research is showing, before long I could be faced with no job at all due to the need to reduce staff with the reduction of accounts being placed. All of these possibilities equal a potentially bleak future for myself, my company, and my community as a whole.

Below are some key points on the economic impact that I would like to highlight for consideration that are directly from economist Dr. Andrew Nigrinis' CFPB Proposed Rule Analysis (which can be read in full here: **report**). Each of these points are of concern to me as an individual consumer as well as a member of the healthcare field:

- Restricting the use of accurate information about valid debts would cause increased financing for unqualified borrowers.
- There would be decreased access to credit for credit-qualified borrowers.
- There would be an increase in difficulty in meaningfully repairing credit scores.

- The proposed rule would cause conflicting obligations on creditors under the Truth in Lending Act (TILA) and Regulation Z, particularly under the ability to repay provisions.
- There would be adverse effects if certain medical debts were excluded from underwriting decisions or consumer reports.
- Medical providers would suffer a loss of income from non-payment of services. The loss in the first year is estimated to be $24 billion. The estimated range for the losses over time ranges from $82 billion to $655 billion.
- There is a likely increase in litigation costs for medical providers to collect debts, including increased costs to consumers facing that litigation.
- There is potential to harm consumers, including those without health insurance and many in protected classes.
- There is a strong possibility of more lending of the type that precipitated the financial crises that culminated in the formation of the CFPB.
- There is a risk of health insurance markets entering a death spiral if young and healthy consumers who infrequently use health care forgo insurance due to not needing to pay for medical treatment.