

August 12, 2024

**RE: Comment on the Consumer Financial Protection Bureau’s proposed rule
Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information
(Regulation V) (Federal Register Doc. 89 FR 51682; Docket: CFPB-2024-0023)**

National Disability Institute (NDI) applauds the Bureau’s proposed rule to amend the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Regulation V]. The Bureau’s action is a significant and positive step towards addressing systemic inequalities and protecting vulnerable populations, especially people with disabilities, from undue financial burden. The proposed Rule change would remove as much as \$49 billion of medical debts that unjustly lower credit scores for consumers,¹ including for the largest minority of Americans – the disability community.² The National Institute of Health provides statistics on the size of the U.S. disability community at 50 million Americans with disabilities, making up 27% of the population.³

NDI is the first and only disability rights organization committed to building a better financial future for people with disabilities and their families by achieving financial security and independence. NDI is a leading voice on the intersection of disability and economic instability, as well as the adverse consequences of the intersectionality of discrimination based on disability, race, ethnicity, gender, and sexual orientation. The disability community is an overwhelmingly low-income population overall, though people with disabilities of color face additional overwhelming challenges. Thirty-six percent of Black people with disabilities are living in poverty and 35 percent of Black workers with disabilities lost their jobs during the pandemic.

Throughout, NDI has included stories from consumers with disabilities illustrating in their own voices the impact that medical debt reporting has had on their credit – and therefore their health, their financial freedom, and their lives.

¹ Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V), 89 FR 51686 (proposed June 18, 2024) (to be codified at 12 CFR 1022).

² *Advisory Committee to the Director, Working Group on Diversity, Subgroup on Individuals with Disabilities, Report*, NIH (Dec. 9, 2022), <https://acd.od.nih.gov/working-groups/disabilitiessubgroup.html>.

https://www.acd.od.nih.gov/documents/presentations/12092022_WGD_Disabilities_Subgroup_Report.pdf.

³ *Id.*

The CFPB is the primary regulator of the *Fair Credit Reporting Act* of 1970, an act based on consumer privacy rights.⁴ Medical debt-credit reporting became allowed under a rule exception in 2005. The CFPB's proposed rule removes the 2005 exception and would remove reporting of most medical debt. "The CFPB's proposed rulemaking on medical debt in credit reporting follows a near decade-long windup of publishing research findings and other regulatory guidance on the topic."⁵

NDI addresses three fundamental issues the proposed rule raises.

- (1) The rule would **eliminate the special medical debt exception**. This would help alleviate consumer's unfair barriers to housing, employment, and transportation because of inaccurate and inequitable practices with medical debt reporting.
- (2) The rule would **establish guardrails for credit reporting companies**. The proposed rule would prevent medical practices and collection agencies from coercing consumers into paying inaccurate and unnecessary bills while protecting their health privacy.
- (3) The rule would **ban repossession of medical devices**. This will ensure that hospitals have necessary life-saving equipment available on-site and that individuals relying on home medical devices do not lose access to medical devices and equipment used in daily life such as prosthetic limbs, portable ramps, continuous positive airway pressure (CPAP) machines, and wheelchairs.

Implementing the proposed rule is essential for advancing financial equity, protecting vital medical equipment, and ensuring fair treatment in the credit system.

CONSUMER STORY

"My disability came from an injury that started 3 years [ago, with] hospital stays [for] two surgeries. Also in that time I had a kidney transplant. I'm recovering from the kidney good. The other two injuries were horrible. I fell on the ice [at] my dialysis center, injured my neck and had to be operated on. They shaved six vertebrae off the back of my neck. During the year I found myself trying to struggle walking using my left hand and we thought I had a stroke. The next year

⁴ Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V), 89 FR 51689 (proposed June 18, 2024) (to be codified at 12 CFR 1022).

⁵ Consumer Financial Protection Bureau Proposes Rule to Transform Credit Reporting Practices for Medical Debt, Nat'l L. Rev. (July 13, 2023), <https://natlawreview.com/article/cfpb-proposes-rule-transform-credit-reporting-practices-medical-debt>.

I had a horrible fall. I spent the whole year in pain and losing the ability to use my left side. My left leg, my foot was dragging and it started moving to my right on top of intensive pain. I finally went to a hospital. Upon going to the ER after a fall, an MRI discovered I had a broken neck and two vertebrae pinching my spinal cord. I had this injury for a whole year trying to survive. I went from wheelchair to walker. Now I'm using [a] cane. My credit scores are low, bad because of the last 3 years of the current hospital [bill] that it's [been] in collections. As it is now, I'm on a fixed income and I struggle [with] heavy debt, heavy medical cost to make ends meet. There are times when I don't have enough money and I try to stretch my insulin out, eat less, stretch my pills out. I'm in a lot of medication as a kidney transplant patient.”

1. Discussion of the Proposed Rules

Issue 1: Eliminating the special medical debt exception would help alleviate unfair barriers to housing, employment, and transportation that arise because of inaccurate and inequitable practices with medical debt reporting.

Inaccurate Medical Debt and Inaccurate Medical Debt Reporting

The proposed rule effectively addresses the problem of harms caused by inaccurate medical debt reporting. Medical billing programs often incorrectly tally medical bills resulting in incorrect balances to collections agencies and inaccurate information on credit reports.⁶ Inaccurate medical debt reporting does not cause financial harm alone, but exacerbates medical harm by incentivizing patients to avoid seeking medical care and causing depression, anxiety, suicidality, chronic stress, and exacerbation of underlying chronic medical issues – all of which can lead to incurring further medical debt.⁷

Inaccurate billing can result from errors at multiple points in a patient’s journey:

⁶ Consumer Financial Protection Bureau, *CFPB Proposes to Ban Medical Bills from Credit Reports* (July 13, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-to-ban-medical-bills-from-credit-reports/>.

⁷ Consumer Financial Protection Bureau, *Medical Debt Burden in the United States* (March 2022), https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf.

- Medical providers making errors in billing and misapplying associated codes for services, hospital fees, or prescriptions;⁸
- Medical providers submitting claims to a patient’s inactive or former insurance plan;⁹
- Billers making errors in applying retroactive health insurance;¹⁰
- Providers and insurance companies failing to get prior authorizations,¹¹
- Insurance companies delaying provider reimbursements;¹² and
- Providers putting bills into collections that have been paid, but have not been updated to the collection agencies by the provider;¹³ or
- Insurance companies denying bills that are not the responsibility of the patient to pay, etc.¹⁴
- Insurance companies delaying worker’s compensation claims¹⁵
- Tort cases in litigation can hold the wrong party responsible for the medical bills¹⁶

Consumers who dispute credit report errors spend hours making phone calls, writing emails, and waiting on hold during business hours, which may be the same hours of operation as medical services providers. These calls can involve transfers to different departments and longer hold times with further call center queues.¹⁷ Making the time to take corrective action can result in lost wages for workers who need extended breaks to wait to speak to a live person.¹⁸

⁸ *Tips for Reducing Medical Billing Errors*, ELATION HEALTH, (Feb. 2, 2024), <https://www.elationhealth.com/resources/blogs/tips-for-reducing-medical-billing-errors>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Commercial Payers Delay Paying Out Claims to Providers*, HEALTHCARE FINANCE NEWS, (July 31, 2023), <https://www.healthcarefinancenews.com/news/commercial-payers-delay-paying-out-claims-providers>.

¹³ Consumer Financial Protection Bureau, *CFPB Proposes to Ban Medical Bills from Credit Reports*.

¹⁴ *Id.*

¹⁵ Martin & Jones, *Common Delay Tactics for Workers’ Comp Claims* (Feb. 23, 2024), <https://www.martinandjones.com/blog/common-delay-tactics-for-workers-comp-claims/>.

¹⁶ Sheltra, Scott J., *A Common Conflict: Common Fund Doctrine and Medical Provider Liens in Tort Settlements*, 62 *Rev.* 2619 (2021); White Law PLLC, *Who Pays for Medical Bills While a Lawsuit is Pending?* (last visited Aug. 7, 2024), <https://www.whitelawpllc.com/faqs/who-pays-for-medical-bills-while-a-lawsuit-is-pending/>.

¹⁷ Matt McInerney, *Study Finds Most Americans Using Vacation Time to Wait on Hold and Dispute Medical Bills*, THE HARD TIMES (Jan. 1, 2024), <https://thehardtimes.net/culture/study-finds-most-americans-using-vacation-time-to-wait-on-hold-and-dispute-medical-bills/>.

¹⁸ *Id.*

CONSUMER STORY

“Medical debt has been a drag on my credit score because of having to take out loans and credit card debt to pay off those medical bills. The debt I have taken on has left me with a credit score below 600 and two years ago cost me a job that would have paid more to allow me to better take care of my bills. I applied for a position that would allow me to make \$15,000 dollars a year more which would help alleviate my debt. However, a financial background check showed that I had too much outstanding debt to qualify for the job I applied for. Even after explaining the debt, I was denied the job leaving me in the same hole I have been in for years.”

“In addition to the medical debt, the cost of transportation services which are outrageous and the cost of owning your own accessible vehicle also [being] outrageous makes it increasingly difficult to do the things I need to do to pay my bills. I work hard and try to make things work but it feels like quicksand. The more I struggle the further behind I get. I really don't have [financial] choices. Failing to take on the health care debt leads to more [health] complications that add even more to the debt. As far as money choices, it means that my life is work, doctor appointments, and sleep. There really is no balance in my life as far as relaxation or recreation, and my quality of life has suffered greatly.”

Inequitable and Disparate Impact of Medical Debt Reporting

The proposed rule effectively addresses the inequitable and disparate impact of medical debt reporting. The purpose of a credit report is to indicate whether a consumer can afford to draw and repay a line of credit, based on factors including their income, current debt obligations, and prior credit history.¹⁹ As of 2021, medical debt constituted the largest amount of debt in collections, more than credit cards, utilities, auto loans, and other sources combined.²⁰ Medical debt, however, is not a reliable indicator of the likelihood of repaying other forms of credit,

¹⁹ Federal Deposit Insurance Corporation, *Credit Reports* (Aug. 1, 2023), <https://www.fdic.gov/resources/consumers/consumer-assistance-topics/credit-reports.html>.

²⁰ Hank Cardello et al., *The Casualties of Medical Debt: Sicker Consumers and Sicker Hospitals* (Oct. 30, 2023), GEORGETOWN UNIVERSITY, https://businessforimpact.georgetown.edu/wp-content/uploads/2023/11/2023-Annual-Medical-Debt-Report_Digital_103023.pdf.

such as (1) credit cards, (2) auto loans, (3) student loans, (4) home equity lines of credit, and (5) mortgages.²¹

Medical debt does not correlate to creditworthiness for a multitude of reasons, including the very nature of medical debt and the circumstances under which consumers incur it:

- Medical bills are often involuntary, unavoidable, and unpredictable.
- Illness can become chronic, intermittent, and/or progressive.
- Injury can occur at any time, in any place, for any reason, even without any reckless or negligent conduct on the part of the consumer.²²
- Patients cannot make price comparisons between medical providers when under duress or incapacity, including due to acute injury or illness or other medical emergencies.²³ Similarly, patients rarely know what the actual cost of care or out of pocket costs of care may be when seeking urgent or emergent care, and may be subject to restrictive insurance networks and constraints on provider availability that impact reimbursement rates and out of pocket costs.²⁴
- Unexpected – and even routine – healthcare costs can be unaffordable despite 81% of Americans having health insurance access.²⁵

Although the presence of medical debt is not a reliable indicator of creditworthiness, the inclusion of medical debt (whether or not in default) on consumer credit reports has serious consequences on access to housing, employment, and auto loans, all of which can substantially burden a person's ability to exercise self-determination and participate in the community.²⁶ Even a small amount of defaulted medical debt could result in negative action on a consumer credit report if there was a lawsuit, which could further result in bills for legal fees and lost wages to appear in court.²⁷ A poor credit score can negatively impact rental and mortgage applications, entrenching housing insecurity and putting consumers at risk of

²¹ Consumer Financial Protection Bureau, *CFPB Proposes to Ban Medical Bills from Credit Reports*.

²² Cardello et al., *The Casualties of Medical Debt: Sicker Consumers and Sicker Hospitals*.

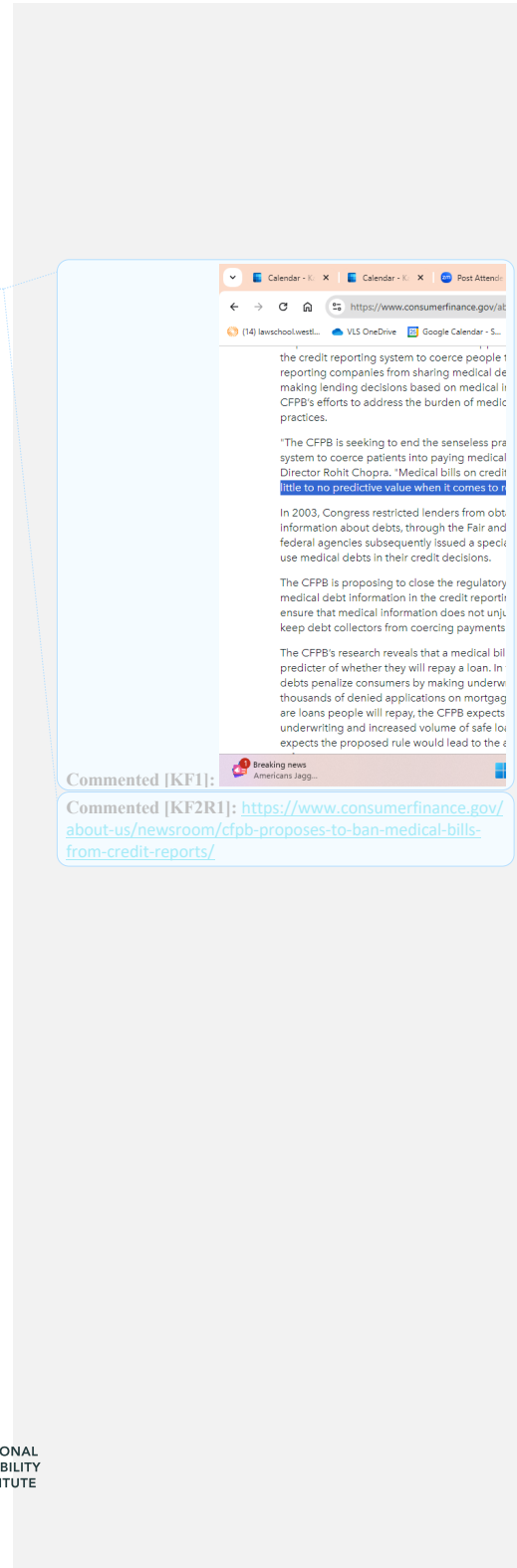
²³ Id.

²⁴ Consumer Financial Protection Bureau, *Medical Debt Burden in the United States*.

²⁵ Cardello et al., *The Casualties of Medical Debt: Sicker Consumers and Sicker Hospitals*.

²⁶ Id.

²⁷ Id.



homelessness.²⁸ Becoming unhoused can further lead to loss of and additional barriers to employment, health insurance, and income.²⁹

CONSUMER COMMENT

“A good credit score means stability, opportunity, and peace of mind. It represents the ability to secure loans for reliable transportation and stable housing, providing the foundation for financial independence and personal growth. With a good credit score, I can access better interest rates, which reduces the cost of borrowing and makes large investments more manageable. It also means the ability to qualify for rental housing without the fear of being turned away due to poor credit, ensuring a stable living situation.

“Moreover, a good credit score symbolizes financial health and responsibility. It gives me confidence in my ability to manage my finances effectively and opens doors to opportunities that require a solid credit history. This includes not only loans and mortgages, but also opportunities like starting a business or investing in further education. Additionally, with a good credit score, I can qualify for better insurance rates and avoid security deposits on utilities, further easing the financial burden.

“Ultimately, a good credit score provides a sense of security and the freedom to make choices that align with my goals and aspirations. It allows me to plan for the future with confidence, knowing that I have the financial flexibility to handle emergencies and seize opportunities as they arise.”

Medical debt is higher in non-Medicaid expansion states, which have larger populations of Black residents.

State of residence can determine if a low- or middle-income consumer will have access to Medicaid, which can affect the amount of medical debt some patients have. The Urban

²⁸ The Pew Charitable Trusts, *Housing Policy Initiative*, <https://www.pewtrusts.org/en/projects/housing-policy-initiative> (last visited Aug. 7, 2024).

²⁹ University of Southern California, *Homelessness and Employment* (Aug. 2020), <https://socialinnovation.usc.edu/wp-content/uploads/2020/08/Homelessness-and-Employment.pdf>.

Institute found that 99 of the 100 counties with the largest shares of adults unable to pay their medical bills are located in Southern states, while 79 of those 100 counties have not expanded Medicaid as permitted under the Affordable Care Act (ACA).³⁰ The Southern states, particularly those in the Southeast, have higher percentages of Black residents compared to other regions in the country.³¹

According to a Pew Research Center report, the Black population in the South grew by 33% from 2000 to 2020, compared to 6% in the Northeast, 10% in the Midwest, and 29% in the West.³² Overall, the Southern region of the United States has a higher concentration of Black residents, resulting in disproportionate impact of under-insurance and medical costs on Black people in low- and middle-income communities.³³ Predictive factors of medical debt in these counties include (1) high rates of uninsured people (across all racial and ethnic categories), (2) lower average household incomes, (3) higher concentrations of Black and Latine populations, and (4) higher prevalence of chronic health conditions compared to the national average.³⁴

These factors help predict medical debt for several reasons:

- Uninsured patients are often charged higher costs for medical services than insured patients at the point of service, since providers will not receive insurance company reimbursement.³⁵
- Workers classified as “essential workers” tend to have lower average household incomes and are overrepresented in communities of color.³⁶ These same workers carry the highest amounts of medical debt.³⁷
- Black and Latine communities have higher rates of chronic illnesses, in part due to structural racial inequities impacting living and working conditions, as well as quality of care. Both the Centers for Disease Control and Prevention and the World Health

³⁰ Fredric Blavin, et al., *Which County Characteristics Predict Medical Debt?* (June 2022), <https://www.urban.org/sites/default/files/2022-06/Which%20County%20Characteristics%20Predict%20Medical%20Debt.pdf>.

³¹ Id.

³² Mohamad Moslimani, et al., *Facts About the U.S. Black Population*, Pew Research Center, (Jan. 18, 2024), <https://www.pewresearch.org/social-trends/fact-sheet/facts-about-the-us-black-population/>.

³³ Blavin, et al., *Which County Characteristics Predict Medical Debt?*.

³⁴ Id.

³⁵ Gerard F. Anderson, PhD, *Anderson Hospital Charges* (May 8, 2007), Johns Hopkins University, <https://publichealth.jhu.edu/2007/anderson-hospital-charges/>.

³⁶ Cardello et al., *The Casualties of Medical Debt: Sicker Consumers and Sicker Hospitals*.

³⁷ Id.

Organization have declared racism to be a public health issue, noting that racial inequities are a cause and consequence of health disparities.³⁸

- Higher chronic condition prevalence in the South is impacted by socioeconomically determined health disparities and inadequate and inequitable health care access.³⁹

Disaggregating statistics on medical debt by state shows stark inequities in Southern states.

- People living in Southern states and counties have larger amounts of medical debt. Individuals living in non-expansion states have median balances that are 50% higher than those in expansion states.⁴⁰
- The average median medical debt in collections is \$923 per consumer in non-expansion states, compared to \$617 per consumer in expansion states.⁴¹
- The average 2021 medical debt balance in non-expansion states was 56% higher than in states that had Medicaid expansion.⁴²
- While balances increased from 2019 to 2021 in both Medicaid expansion states and non-expansion states, the increases were three times higher in states not expanding Medicaid (+103%).⁴³
- Southern states have higher percentages of residents with medical debt in collections.
- The average FICO credit score for individuals with credit cards in the Southeast region of the U.S. ranges between 687.2 and 726.0. In contrast, the FICO averages for the upper Northwest, Midwest, and Northeast regions range between 740.3 and 774.3.⁴⁴

CONSUMER STORY

“Being disabled, I'm not getting much of an income. I have started trying to find work with the Ticket to Work program. My spouse and I are renting a duplex

³⁸ Jeffrey E. Hall & L. Ebony Boulware, *Racism Is a Public Health Crisis: Combating Racism* (June 2023), Centers for Disease Control and Prevention, https://www.cdc.gov/pcd/collections/pdf/racism_is_a_public_health_crisis_combating_racism_508.pdf; Hall JE, Boulware LE. Combating Racism Through Research, Training, Practice, and Public Health Policies. *Prev Chronic Dis* 2023;20:230167. DOI: <https://doi.org/10.5888/pcd20.230167>.

³⁹ Gabriel A. Benavidez et al., *Results of the Study: [Title of the Report]* (Feb. 29, 2024), Centers for Disease Control and Prevention, https://www.cdc.gov/pcd/issues/2024/23_0267.htm.

⁴⁰ Cardello et al., *The Casualties of Medical Debt: Sicker Consumers and Sicker Hospitals*.

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

which has a new owner. He has more than doubled the rent amount. With the cost of everything else on the rise, our only hope is to move to a better place. This rental is old and we are paying about the same as a new apartment rental or even buying a house, but our credit is keeping us from being accepted to have that happen.

“We both have medical bills in the thousands of dollars on our credit reports. My spouse is working a full-time job and that, with my disability check, is just enough to get bills paid. We have found out from a loan officer that the medical bills are keeping our scores low even though we make small payments on them. The way we sit now, I have surgeries that are on hold just because I'm trying not to add to our debt due to co-pays. I'm owing money because of my CPAP and I'm to the point where they will not send me replacement parts because of owing money.”

Issue 2: Establish guardrails for credit reporting companies. The proposed rule would prevent medical practices and collection agencies from coercing consumers into paying inaccurate and unnecessary bills while protecting their health privacy.

Coercive Practices Used by Collection Agencies

The proposed rule establishes guardrails for credit reporting companies to prevent collection agencies from using unfair or coercive practices to obtain repayment. A past-due payment on a credit card (revolving line of credit) is often handled differently on a consumer credit report than a past-due payment on a medical bill. Credit card issuers keep track of past-due payments internally, but do not always report them to a credit reporting agency. Likewise, individual medical providers, such as physicians, mental health therapists, and health care workers, do not report their patients' late or missing medical bill payments to credit reporting bureaus. Instead, the medical practice or institutions can elect to sell their unpaid patient balances to collection agencies, sometimes at below the value the patient owes, reasoning that this sale will return some revenue as opposed to potentially expending significant resources to collect the payment directly (and potentially receiving no payment at all). Collection agencies in turn seek payment from the patient to collect on the debt and make a profit on the purchase price of the bundled debts, sometimes through coercion.

Medical practices sell debts to third-party creditors by transferring ownership of a trade line. A trade line serves as documentation for any type of borrower credit that is reported to a credit

reporting agency. The Fair Debt Collection Practices Act, Regulation F states that lenders cannot create a trade line that seems like a “trap.” In the medical debt space, collection trade lines coerce consumers into paying for debt that they might not otherwise need to pay – such as if a medical biller used the wrong code to tally services or misapplied the wrong health insurance policy. The research showed that 99.4% of these trade lines relating to medical debt are furnished by someone who does not own the debt. The debt is furnished by a third party, typically a collection agency.

Transferring ownership of debt trade lines can entrench accuracy issues, which is a typical area of complaint from credit reporting agencies. Consumers make payments toward a debt that they might not actually owe in attempts to improve their credit scores to make other credit applications or large purchases. Coercive credit collection practices can thus take a variety of forms, such as in the following examples:

- CFPB entered a recent consent decree with Phoenix Financial after penalizing the company for using software that worsened the debt issue.⁴⁵
- Section 806 of the *Fair Debt Collection Practices Act* under “harassment” forbids the publication of a list of consumers who allegedly refuse to pay debts. The exception would be consumer reporting agencies, but if a party is using consumer reporting or trade lines to coerce a consumer, they are more likely to be in violation of Section 806.⁴⁶

Regardless of whether a consumer is experiencing acute or chronic illness or not, under the proposed rule, consumers would have more equitable access to credit and be better positioned to avoid predatory rates and terms, as well as threats from aggressive debt collectors.⁴⁷

CONSUMER STORY

“A majority of my debt is medical debt that I am still trying to pay off. When I first became disabled and could no longer work, my income became very little to none most months, since the third-party disability company hired by my employer at the time would deny my short-term disability claims. They stated

⁴⁵ Consumer Financial Protection Bureau, *Proposed Rule on Medical Debt Under the Fair Credit Reporting Act* (last visited Aug. 7, 2024), https://files.consumerfinance.gov/f/documents/cfpb_fcra-med-debt-proposed-rule_2024-06.pdf.

⁴⁶ *Id.*

⁴⁷ *Id.*

that my surgeries (spinal fusions and other injury-related surgeries) and severe chronic pain were not disabling enough to warrant approval of disability payments. I would sometimes go for months without pay. I struggled financially for a year before becoming eligible for long-term disability.

“The medical debt piled up and my credit score continued to decline. To this day, I am still working on fixing my credit score to become eligible to buy a larger home which I need for my family of six, plus extra space for one or two offices within the home. Medical debt has made my life difficult. I wish that it did not affect my credit, and that people on disability with Medicare, such as myself, did not have out-of-pocket expenses and deductibles on medical services and medications.

“Due to high out-of-pocket expenses and co-pays, I sometimes have to make a decision between getting a medical service done or putting it off until I can afford it. Since I owe the hospital money for surgeries, I must pay my co-payments in full for medical services since I cannot make a payment arrangement to pay half at the time of service and the rest at a later date.”

Health Privacy Concerns

The proposed guardrails for credit reporting agencies would better protect patients' health privacy. As the CFPB stated, “Information about a person’s medical history and health is sacrosanct and among the most intimate and sensitive categories of data.” The proposed rule is in keeping with the privacy protection goal of the Fair Credit Reporting Act (FCRA).⁴⁸

Medical debt on credit reports is a privacy issue for several reasons:

- **Sensitive information exposure.** Medical debt can reveal information about a person's health conditions or treatments to potential employers, landlords, or other parties.⁴⁹
- **Stigma and discrimination.** The presence of medical debt on a credit report can lead to stigma and potential discrimination, especially based on actual or perceived disability.⁵⁰

⁴⁸ Id.

⁴⁹ Steve Alder, American Medical Association, *The Impact of Medical Debt on Patients’ Lives and Health Outcomes* (July 29, 2024), <https://www.hipaajournal.com/financial-business-and-consumer-solutions-4-million-breach/>.

⁵⁰ Signe-Mary McKernan et al., *Past-Due Medical Debt Is a Problem, Especially for Black Americans* (Mar. 27, 2017), Urban Institute, <https://www.urban.org/urban-wire/past-due-medical-debt-problem-especially-black-americans>.

- **Privacy laws and regulations.** Health information is protected under laws such as the Health Insurance Portability and Accountability Act (HIPAA). While HIPAA only applies to information held by medical providers and health insurers, a provider or insurer disclosing information relating to a medical debt to a third-party that makes a report to a consumer’s credit reports may raise serious issues relating to the privacy protections intended by HIPAA, as this information could indirectly reveal protected health information without the individual’s consent.⁵¹

A consumer should not have to worry that their health-related information – or inferences relating to their health, genetic status, or disabilities – could become available to a potential landlord, employer, or lender, including that they might need to seek continuing care for a chronic or progressive condition resulting in snowballed debts. Further, the identities of the original medical biller can also disclose specific information about a consumer’s health status. For instance, a large bill from a psychiatric treatment provider could indicate that the person sought inpatient care or was involuntarily committed to an inpatient unit, or a bill from a Planned Parenthood office could suggest that a person received pregnancy or abortion related care. Bills from a blindness rehabilitation center could disclose a person’s late-onset vision disability, while bills from a spinal rehabilitation center could lead to a reasonable inference of a person’s spinal cord injury and mobility impairments. This is not information that should be readily available or accessible when applying for rental housing, seeking financing for a used car purchase, or completing a final background check to secure a job.

CONSUMER STORY

“With today’s economy, being sick has never cost more. I [am the parent of an adult] with several rare diseases. Not only are our insurance premiums crippling, but so are all of the scans, services, and medications. I am a school principal and make a good wage, and it is almost impossible for me to be able to provide monetary support for my very ill child. I’ve had to let so many things go to the wayside because I had to choose between feeding my family and paying for a scan. Of course I have to let the scans go to collections most of the time. My child is a young adult, over 18. They currently cannot work because of their diseases,

⁵¹ *Medical Debt Collection Laws: What You Need to Know* (Oct. 23, 2023), First Credit, <https://www.firstcreditonline.com/blog/medical-debt-collection-laws-what-you-need-to-know/#:~:text=The%20HIPAA%20Privacy%20Rule%20also,if%20they%20are%20owed%20money.>

yet there is no help because of my current income. We are completely depleting everything that we have as a family just to keep up decent care for my child. In addition, with such little specialists available in our Southwest state, we have to travel out of state to another hospital. This is another major monetary issue for our family. We are already in debt just from paying insurance premiums and providing the daily care for my child that they need without being able to work.”

Issue 3: Banning medical device repossession ensures hospitals have access to life-saving equipment during emergencies and that people with disabilities do not face confiscation of medical devices, mobility aids, and assistive technologies.

Hospitals

The proposed rule would prohibit lenders and vendors from repossessing medical devices. Both hospital entities and individuals can face repossession of medical equipment used to secure loans because of defaulted debts. Hospitals often lease expensive, specialty medical equipment, such as infusion pumps, ventilators, and cardiac monitoring equipment, all of which can be necessary to save or sustain patients' lives.⁵² If a hospital defaults on the terms of its loan, lenders can repossess the hospital's medical equipment to resell at auction.⁵³ According to Data Horizon Research, reselling medical equipment was a \$14.2 billion industry as of 2022.⁵⁴ Further, private equity firms are buying nonprofit hospitals and converted them to private, for-profit institutions. Some of these corporations own 30 hospitals or more.⁵⁵ When these firms take over, they can seek to lower costs by not paying the bills for medical device loans and closing entire departments that are perceived as returning net losses, such as emergency departments that may be the only avenue for treatment for uninsured, low-income patients, including many homeless people and people returning from prison.⁵⁶

⁵² Nationwide Repo Services, *Repossession of Medical Equipment*, <https://nationwidereposervices.com/?q=repossession-medical-equipment> (last visited Aug. 7, 2024); MedOne Group, *Monitoring Equipment*, <https://www.medonegroup.com/equipment/monitoring> (last visited Aug. 7, 2024).

⁵³ Nationwide Repo Services, *Repossession of Medical Equipment*.

⁵⁴ Data Horizon Research, *Refurbished Medical Equipment Market*, (May 1, 2024). <https://datahorizonresearch.com/refurbished-medical-equipment-market-2699>.

⁵⁵ Lisa Marie Basile, *Are Some Community Hospitals Failing? Doctors Must Transfer Dying Patient as Hospital Supplies Are...* (Mar. 5, 2024), MDLinx, <https://www.mdlinx.com/article/are-some-community-hospitals-failing-doctors-must-transfer-dying-patient-as-hospital-supplies-are/2Vk7P7zz8PmRQnLN4yIS4s>.

⁵⁶ *Id.*

Instead of distributing the savings from cutbacks to improve the remaining medical departments, the corporations distribute the savings as dividends to shareholders while defaulting on medical equipment leases, directly causing patients who need such equipment to die. According to a two-year investigative report by CBS News, “private equity and other investor groups have siphoned hundreds of millions of dollars from community hospitals with devastating public health consequences.”⁵⁷ This includes cases of repossessed medical equipment leading to multiple deaths.⁵⁸ The CEO of one corporation (Steward) under investigation has been subpoenaed to publicly testify before the Senate Committee on Healthcare, Education, Labor, and Pensions on September 12, 2024. CBS reported that “[a] filing with the Securities and Exchange Commission from 2021 shows Steward’s owners paid themselves millions in dividends. Around the same time, [Steward’s CEO] acquired a 190-foot yacht estimated to be worth \$40 million.”

Steward-owned St. Elizabeth’s Medical Center in Boston, Massachusetts admitted a patient in October 2023, Sungida Rashid who developed a severe bleed just after giving birth.⁵⁹ When the medical providers called for an embolization coil – the medical device used to stop hemorrhaging – it was missing because it had been repossessed.⁶⁰ Sungida Rashid was transferred to another hospital but, because of the delay in receiving treatment, she died. The Department of Veterans Affairs similarly has failed to pay for the costs of prosthetic limbs for amputees receiving VA-funded care, suddenly removing their mobility, independence, and their ability to participate in social and economic life.⁶¹

CONSUMER STORY

“Firstly, the substantial medical debt I incurred severely impacted my credit score, making it nearly impossible to secure financing for essential purchases. I was unable to purchase my own car, which drastically limited my employment and education opportunities. Without reliable transportation, I was restricted to

⁵⁷ Michael Kaplan & Sheena Samu, *Steward Health Care CEO Ralph de la Torre Subpoenaed by Senate* (July 25, 2024), CBS News, <https://www.cbsnews.com/news/steward-health-care-ceo-ralph-de-la-torre-senate-subpoena/>.

⁵⁸ Id.

⁵⁹ Jessica Bartlett, *Steward Health Care and the Mother’s Death* (Jan. 25, 2024), Boston Globe, <https://www.bostonglobe.com/2024/01/25/business/steward-health-care-mother-death/>.

⁶⁰ Id.

⁶¹ Hope Hodge Seck, “‘I Had a Body Part Repossessed’: Post-9/11 Amputee Vets Say VA Care Is Failing Them,” *The War Horse*, Aug. 6, 2024, available at <https://thewarhorse.org/amputee-veterans-face-chronic-lack-of-va-care-prosthetics/>;

jobs and educational institutions within a limited radius, which often did not align with my career goals or aspirations.

“Additionally, my poor credit prevented me from qualifying for stable housing. I was forced into precarious living situations for many years, constantly moving and facing uncertainty about my living arrangements. This instability affected all aspects of my life, from my ability to focus on work and studies to my overall mental and emotional well-being. At one point, my credit was so damaged that I couldn’t even qualify for a cell phone plan, which added another layer of difficulty to managing daily life and staying connected with potential employers or educational institutions.

“The fear of accumulating more medical debt significantly influenced my decisions regarding health care. On numerous occasions, I avoided seeking emergency medical care despite needing it. Instead, I tried to treat conditions such as UTIs, ear infections, and skin infections on my own, enduring severe pain and risking further health complications. This avoidance was driven by the concern of adding more debt and restarting the seven-year period for the debt to fall off my credit report. The constant fear of incurring additional debt prevented me from receiving timely and appropriate medical care, which could have alleviated my suffering and prevented long-term health issues.

“One of the most impactful periods was more than 10 years ago, when I was 18 years old and had just started college. My mental health deteriorated due to the stress of moving away from home and the loneliness often experienced by new college students. After a suicide attempt a few months into my first semester, I was hospitalized in the emergency department and then a psychiatric facility for 48 hours, resulting in nearly \$10,000 in debt. During the most vulnerable and traumatic time of my life, I was faced with the overwhelming burden of needing to pay off thousands of dollars for medical care, on top of addressing my mental health issues, leaving school, and moving back home. This financial strain derailed my educational and career aspirations, forcing me to put my dreams on hold. I was never able to afford to pay this debt and it severely damaged my credit until I was 25 years old.”

Individuals

People with disabilities also face repossession of their medical devices when insurance matters are unresolved or bills go unpaid, including vital mobility aids such as wheelchairs, portable ramps, and prosthetic limbs.⁶² Jerry Holliman, a Black disabled man, had two prosthetic legs taken from him against his will, while he was in a nursing home, two days before Christmas in 2019. Without help from staff, the Department of Veterans Affairs, or Medicaid, Holliman reached out to the local media for help.

“Holliman served active duty in the U.S. Army twice — as an 18-year-old specialist who volunteered to fight in Vietnam and as a 53-year-old master sergeant in Iraq. He earned Bronze Stars in both wars, according to his discharge papers. Between active duty and the U.S. Army National Guard, Holliman said he served 40 years in the military. While in Vietnam, Holliman said he was exposed to Agent Orange, a chemical the American military used to kill vegetation. The chemical also caused diseases to Vietnamese and U.S. Service members, including cancers and diabetes. Holliman said he's survived three forms of cancer, but in recent years, diabetes began affecting his legs.”⁶³ As a result, he had both his legs amputated.

A private company fitted Holliman for the prosthetics and left them with him. He was still healing from the surgery so all the adjustments could not be completed. This rendered the prosthetics unusable as they would fold in with weight. Holliman waited to get the adjustments made, but the VA refused to pay, and Medicaid charged co-pays. These prosthetics can cost up to \$50,000 each out of pocket. Holliman tried to get the VA to pay, but struggled with an inaccessible system and could not get his questions answered about the costs. Then the prosthetic company representative came to the nursing home and asked him to sign a document that he would pay an unknown amount of a co-pay, which he declined to sign. The representative confiscated his legs and left. After going to the media, the VA offered to pay for his legs, and another prosthetic company offered to help him at no cost to him. Many others in similar situations, however, do not have the ability to access local media coverage and simply lose access to their mobility.

⁶² Giacomo Bologna, *VA to Make New Prosthetic Legs for Veteran Who Had His Repossessed* (Jan. 17, 2020), Clarion Ledger, <https://www.clarionledger.com/story/news/politics/2020/01/17/va-make-new-prosthetic-legs-veteran-who-had-his-repossessed/4454755002/>.

⁶³ *Id.*

Another Black disabled man, Jamaal Gilchrist, faced repossession of his wheelchair by a medical equipment supply company. Gilchrist was diagnosed with spinal muscular atrophy and received a wheelchair from a medical supply company, which he had for nine months. Blue Cross Blue Shield and Medicaid insurance were supposed to pay the \$13,800 bill, but they did not. “If I don’t have this chair, I’m stuck in one spot – all day,” Gilchrist told NBC News. It was not until the media reported on his case that the insurance came through and paid the bill, allowing Gilchrist to keep the wheelchair.⁶⁴

People with mobility disabilities rely on mobility aids to secure independence, autonomy, and dignity. Wheelchairs, prosthetics, and other mobility aids enable freedom of movement and participation in social and economic life. Threatening to revoke access to a person’s mobility aids is a severe imposition on that person’s ability to exercise self-determination and live their daily life. The proposed rule would help to protect people with disabilities from this kind of dangerous and degrading repossession.

CONSUMER STORY

“My husband was seriously ill for the last three years of his life, and once our savings and 401K accounts were exhausted, we were unable to pay all of his medical bills with just our salaries from work. The medical debt on our credit reports made us look like we weren’t responsible people. Anything we needed to buy was impacted by the credit score that became lower and lower from the medical debts, so we ended up paying usury rates for things that were necessary for his care and our family. My husband died almost 20 years ago, but the medical debt on my credit report stayed with me for over 10 years after his passing.

“We had a small older car that needed regular repairs, and decided that we should try to buy a newer car with more safety features, fewer miles, and more room for the wheelchair that my husband needed due to weakness after his dialysis treatments. But because our credit score had dived because of the exorbitant costs for the care that he needed, it was extremely difficult to get it financed. The medical debt on our credit report prohibited us from getting a loan

⁶⁴ Gail Paschall-Brown, *News Report Helps Lake County Man Keep Wheelchair* (Jan. 13, 2015), WESH, <https://www.wesh.com/article/news-report-helps-lake-county-man-keep-wheelchair/3841611>.

at a normal interest rate and, in effect, we were penalized because my husband was gravely ill. In addition, the cost to insure the car rose to a very high dollar amount, and when I called to question the invoice, I was told that credit reports are used to determine rates for both auto and home insurance. We were penalized a second time because my husband had serious medical conditions and our incomes could not support the cost for his care. The medical debt that was reported to the credit agencies enslaved us in our attempts to provide the things that were needed for his care and our family.”

Addressing industry concerns

The proposed rule strikes a balance between credit consumers, credit reporters, and healthcare providers, in permitting limited, specific consideration only of relevant medical information. Lenders retain the ability to consider medical information relevant to a particular loan or disability income and similar benefits, provided certain conditions are met. This balance ensures that lenders can still assess risk related to specific financial needs without perpetuating systemic bias against those with medical debts. For instance, collection agencies that furnish trade lines incur costs to maintain the accuracy of the debts that they report and can become liable to private actions and regulator scrutiny if they fail to do so. However, these risks are reasonable and congruent with the type of business that they conduct. Further, cost-bearing measures to ensure such accuracy in reporting should be an ordinary, reasonably anticipated expenditure in the course of conducting business.

Under this rule, health care providers, lenders, and other financial institutions do not lose any right to seek repayment for defaulted debts, nor do consumers automatically discharge all existing obligations. This rule protects consumers from unscrupulous practices and unfair consequences of credit reporting of a specific kind of debt that correlates strongly with chronic illness and disability. Consumers will remain responsible for making payments and, in the absence of coercive practices, may be more incentivized to seek flexible repayment options that would result in some amount of repayment to their creditors rather than entirely defaulted, unpaid debts altogether. Further measures to ensure timely payment to health care providers would require legislative and regulatory action beyond the scope of the Bureau’s authority, and beyond the ability of individual consumers or patients. These areas for further policy development should not hinder adoption of a final rule.

CONSUMER COMMENT

“No one chooses to incur medical debt. No one anticipates a cancer diagnosis or debilitating injuries from a car wreck. No one looks to struggle to pay for tests and treatments and surgeries and devices and medicines in order to continue living. It isn't the same as buying things that you don't need or can't afford. It isn't the same as gambling your paycheck away or investing in a risky business opportunity. Medical debt is not caused by choice. It's caused because, ultimately, it means the difference between living and dying. The listing of medical debt on credit reports is punitive. Health care costs increase each year and are now skyrocketing. Without excellent medical insurance, and indeed, even with it, many are left with thousands of dollars in medical charges disproportionate to their incomes and ability to pay. If I ever receive a diagnosis where there is less than an 80 per cent chance to survive, I will not opt for any treatment. I will stop treatment without clear evidence that it is working. I won't leave my family with thousands of dollars in medical debt. And if I incur more medical debt for trying to get care for someone I love, I will declare bankruptcy without hesitation.”

National Disability Institute urges the Bureau to promulgate the final rule to protect people with disabilities and all consumers experiencing negative impacts of medical debt. If the Bureau has any further questions about the impact of the proposed rule on people with disabilities, NDI would be glad to provide additional information or assistance. Please contact Lydia X. Z. Brown at lbrown@ndi-inc.org with any questions regarding this comment.

Sincerely,

Thomas Foley, JD, Executive Director
Lydia X. Z. Brown, JD, Director of Public Policy
National Disability Institute

NDI thanks Kate Frederick, JD, Public Policy Fellow, and Monika Krol, MSc, Research Specialist, for their assistance in drafting this comment.