



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

EXECUTIVE OFFICE

August 12, 2024

Via Federal eRulemaking Portal

Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

RE: Comment by State of New York / Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) NPRM (RIN 3170-AA54)

Dear Director Chopra:

The Attorney General of the State of New York (NYAG) submits this comment in support of the Consumer Financial Protection Bureau's (CFPB) proposed rule titled "Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)" (the "Proposed Rule") which includes important restrictions on how creditors and consumer reporting agencies (CRAs) may obtain, utilize, and furnish consumer medical debt information under the Fair Credit Reporting Act (FCRA).

We strongly support the Proposed Rule's targeted amendments to Regulation V that would (1) remove a provision that currently permits creditors to obtain and use medical financial information in connection with credit eligibility determinations and (2) further limit the circumstances in which CRAs may furnish medical debt information to creditors. Medical debt on consumer credit reports not only burdens individuals' decision-making regarding important health care transactions, but burdens also their ability to obtain credit in support of important life events, including renting a home, purchasing a vehicle, or even obtaining employment. These far-reaching consequences of "bad credit" due to medical debt are unnecessary and need not be inevitable, especially in light of CFPB's own research showing the limited utility of medical debt in predicting a consumer's likelihood of repayment in other situations.¹

¹ Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V), 89 FR 51682, 51692 (June 18, 2024).

The Proposed Rule is Rooted in Evidence-Based Research

We applaud the CFPB for grounding the amendments in the Proposed Rule in a “significant body of research” that questions the premises underlying the use of medical financial information in credit eligibility determinations.² Indeed, CFPB’s work has shown that medical debt information has relatively limited predictive value.³ Medical care and thus medical debt often result from sudden and unforeseen events, and consumers cannot “shop around” for the most cost-effective option.⁴ Medical debt is also prone to error, and the complexities of medical billing further exacerbate the inaccuracies, lack of clarity, and potential for inflation.⁵ This research provides invaluable empirical support in favor of prohibiting creditors from considering medical debt in determinations of credit eligibility. As a result, credit markets would become more efficient in extending credit to more consumers regardless of whether or not they carry medical debt.

As the CFPB is well aware, our country’s health care system has turned millions of hard-working Americans into beleaguered debtors. Nationwide, four out of ten Americans adults carry debt due to unpaid medical or dental bills, including, troublingly, 44% of adults under the age of 65 who have health insurance coverage.⁶ New York is no stranger to the medical debt crisis, with over 740,000 New Yorkers holding medical debt on their credit reports.⁷ The weight of medical debt has disproportionate impacts on marginalized groups including people of color, people with low incomes, people with disabilities, and residents of rural areas.⁸ These inequalities hold across race and gender, with more women than men (48% of women, 34% of men) and more Black and Latinx adults than white adults (56% of Black adults, 50% of Latinx adults, 37% of white adults) carrying medical debt.⁹ The harm of medical debt extends beyond poor credit and has real impacts on health care decision-making. The fear of incurring additional debt leads many to refuse to seek or receive medical or dental care which ultimately has serious consequences on the health of the consumers and their families.¹⁰ The Proposed Rule would help mitigate many of

² *Id.* at 51691.

³ *Id.* at 51692.

⁴ *Id.* at 51684, 51691.

⁵ *Id.*

⁶ Lunna Lopes et al., KFF, Health Care Debt in the U.S.: The Broad Consequences of Medical and Dental Bills, Main Findings (June 16, 2022), <https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/>.

⁷ Michael Karpman et al., Urban Institute, Medical Debt in New York State and Its Unequal Burden Across Communities 3 (July 2023), <https://www.urban.org/research/publication/medical-debt-new-york-state-and-its-unequal-burden-across-communities> (recognizing that reliance on consumer credit reports understates the prevalence of medical debt, because not all medical debt is reported on a consumer report).

⁸ *Id.* at vi.

⁹ Lopes, et al., *supra* note 6 at fig. 2; *see also* Perry Udem, Impact of Medical Debt: Findings from a National Survey 17 (Oct. 2023), <https://unduemedicaldebt.org/wp-content/uploads/2023/10/Medical-Debt-Report.pdf> (showing 45% of women and 39% of men reported delaying or skipping medical care because of medical debt).

¹⁰ The Dose, *How Medical Debt Makes People Sicker—and What We Can Do About It*, The Commonwealth Fund (Oct. 27, 2023), <https://www.commonwealthfund.org/publications/podcast/2023/oct/how-medical-debt-makes-people-sicker-what-we-can-do-about-it>; *see also* Perry Udem, *supra* note 9 at 8 (reporting 42% of people with past or present medical debt delayed medical care to avoid further debt).

these real costs of reporting medical debt on credit reports and the harm of relying on medical debt information in making credit assessments.

The Proposed Rule Aligns with and Strengthens Advancements Elsewhere

NYAG welcomes federal policymaking on this issue to strengthen and support state action in protecting consumers from the inclusion of medical bills in credit reports. In July 2022, CFPB issued an interpretive rule clarifying that state laws that are not “inconsistent” with FCRA are generally not preempted, and that states “retain substantial flexibility to pass laws involving consumer reporting to reflect emerging problems affecting their local economies and citizens,” specifically noting that “if a State law were to forbid consumer reporting agencies from including information about medical debt . . . such a law would generally not be preempted.”¹¹ New York accepted CFPB’s invitation. Indeed, this Proposed Rule comes directly after New York’s recent legislative changes regarding medical debt reporting. In December 2023, New York enacted a law prohibiting hospitals, health care professionals, and ambulance companies from reporting unpaid medical debt to credit agencies.¹² Medical debt that is improperly furnished to a consumer reporting agency is voided.¹³ That same bill prohibits CRAs from including information on medical debt in their reports or files.¹⁴ The law effectively bars the medical and collections industries from reporting medical debt information on consumers’ credit reports within the State. Other states have passed or are considering similar legislation.¹⁵ The NYAG supports the Proposed Rule as the next step in the ongoing, broader effort to reduce the burden of medical debt on Americans and its use in determining creditworthiness. The Proposed Rule importantly sets a uniform, nationwide baseline consistent with these improvements.

The Proposed Rule further aligns with recent trends regarding the management of medical debt by the national CRAs. Since June 2022, the three credit reporting agencies—Experian, Equifax, and TransUnion—stopped reporting previously paid medical debt and unpaid medical debt less than a year old. Beginning in April 2023, all three voluntarily stopped reporting medical debt in collections under \$500.¹⁶ While laudable, these are voluntary policy changes and not mandated

¹¹ Interpretive Rule, The Fair Credit Reporting Act’s Limited Preemption of State Laws, 87 FR 41042-01 at 41042, 41044-45 (Jul. 11, 2022), <https://www.federalregister.gov/documents/2022/07/11/2022-14150/the-fair-credit-reporting-acts-limited-preemption-of-state-laws>.

¹² NY Pub. Health Law § 4926.

¹³ NY Pub. Health Law § 4927.

¹⁴ NY Gen. Bus. Law § 380-j.

¹⁵ Colorado Consumer Credit Reporting Act, at Colo. Rev. Stat. § 5-18-109(1)(f)(I) (prohibiting CRAs from making a report that includes any adverse item of information the CRA knows or should know concerns medical debt); Minnesota Debt Fairness Act, at Minn. Stat. § 332C.03 (effective Oct. 1, 2024) (prohibiting collecting parties from reporting medical debt information to CRAs and CRAs from making a report containing an item the CRA knows or should know contains medical debt); California SB-1061, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1061 (Senate bill would prohibit CRAs from making a report containing medical debt information and any person from considering reported medical debt as a negative factor in a credit determination).

¹⁶ See Fredric Blavin et al., *Medical Debt Was Erased from Credit Records for Most Consumers, Potentially Improving Many Americans’ Lives*, Urban Institute (Nov. 2, 2023), <https://www.urban.org/urban-wire/medical-debt-was-erased-credit-records-most-consumers-potentially-improving-many>.

by law; further, CFPB research shows that despite these changes fifteen million Americans still have medical collections on their credit reports.¹⁷ Likewise in New York communities with the lowest incomes more than half of consumers owe more than \$500, and statewide nearly 30% of those who have medical debt on their credit reports owe \$1,000 or more.¹⁸ The NYAG thus welcomes the permanency and broader scope the Proposed Rule brings by removing all medical debts—regardless of the amount owed—from consumer credit reports.

Medical Credit Card Debt Should be Included in the Prohibitions Under the Proposed Rule

The NYAG supports the Proposed Rule’s revisions with the additional recommendation that the proposed definition of “medical debt information” be expanded to include debts charged to health care or medical credit cards and financing plans.

The NYAG supports the Proposed Rule’s inclusion of a definition of “medical debt information,” which will improve compliance and enforcement by clarifying which debts must not be included in a credit report by a CRA and which types of debts may not be considered by a creditor in making credit eligibility determinations.¹⁹ The proposed definition is appropriately expansive in that it includes debts owed by a consumer to a health care provider and those offering health care or medical services, products, or devices, and their agents and assignees. Likewise, the proposed definition also expands the categories of medical bills to non-exclusively include medical bills that are not yet past due or those that have been paid.²⁰ The NYAG would recommend further expanding the new definition of “medical debt information” to include debts for medical care charged to credit cards specifically offered for the payment of medical services.

Medical Credit Cards Pose Widespread Risks to Consumers’ Finances

As the CFPB has recognized, medical credit cards are a problematic financing device for many consumers, yet are increasing in popularity.²¹ Medical credit cards are no longer restricted to elective procedures but are increasingly utilized for medically-necessary care, including services that are not covered or only partially covered by health insurance, such as audiology testing, hearing aids, and dental services, as well as preventive and emergency care.²² Moreover, medical credit cards are pitched to patients by their own health care providers. Medical financing companies are marketing their products to health care providers who, instead of offering in-

¹⁷ Zachary Blizard & Ryan Sandler, CFPB, Recent Changes in Medical Collections on Consumer Credit Records 3 (March 2024), https://files.consumerfinance.gov/f/documents/cfpb_recent-changes-medical-collections-on-consumer-credit-reports_2024-03.pdf.

¹⁸ Karpman et al., *supra* note 7 at vi.

¹⁹ Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information, 89 FR 51682, 51691 (June 18, 2024).

²⁰ *Id.* at 51735.

²¹ CFPB, Medical Credit Cards and Financing Plans 7 (May 2023), https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.

²² *See e.g.*, CareCredit, <https://www.carecredit.com/> (last visited Aug. 9, 2024) (listing “primary care/clinics,” “labs & diagnostics,” and “health systems and hospitals” as “ways to use the health and wellness credit card”).

house low-cost or no-cost payment plans, are encouraging patients to consider medical credit cards.²³ Patients are under pressure to simultaneously make medical decisions and financial decisions and are likely to accept the recommendations of their trusted physicians without fully understanding the financial consequences of their decision to use a medical credit card.²⁴ The NYAG has received numerous complaints from consumers regarding these medical credit cards, alleging they were misled by their providers or not fully informed of the terms.²⁵

And the financial consequences of medical credit cards can be disastrous. While the specific terms of the products vary, as a general matter medical credit cards may be significantly more expensive than other methods of payment. Many medical credit cards lure in consumers with extremely low promotional interest rates only to spring a greatly inflated interest rate on the full purchase amount if the consumer is unable to pay off the full balance within a certain amount of time. In one complaint to NYAG, a 70-year-old veteran complained that a third-party financing plan had been set up at his dentist's recommendation at a promotional 0% APR for two years; however, at the term's expiration the balance was not paid off and the rate ballooned to 29% on the original amount rather than the remaining balance. In this case, it is not clear that the consumer was aware of the risks and consequences of signing up for a medical credit card, and was left with a terrible financial outcome. Moreover, it may be more difficult for consumers to challenge inaccurate billing when working with a third-party financial institution rather than negotiating directly with their health care provider. NYAG has received complaints from consumers regarding a variety of billing errors including unauthorized charges, incorrect dates or amounts, and the failure to post or timely post payments made. The widespread prevalence of medical credit cards and their growing contribution to consumer medical debt recommends that they be included in the Proposed Rule.

Including Medical Credit Card Debt in the Proposed Rule is Consistent with the FCRA

Including medical credit cards in the definition of medical debt is consistent with the statutory scheme and the existing definition of medical information under the FCRA. Under the FCRA, medical information is defined to mean “information or data . . . created or derived from a health care provider or the consumer, that relates to . . . the payment for the provision of health care to an individual.”²⁶ Here, debts incurred through a medical credit card issuer whose products are

²³ CFPB, *supra* note 21 at 8-10.

²⁴ See Letter from U.S. Public Interest Research Group to CFPB and HHS re: Request for Information Regarding Medical Payment Products, at 3-4 (Sept. 6, 2023), <https://publicinterestnetwork.org/wp-content/uploads/2023/09/U.S.-PIRG-Comments-on-Medical-Credit-Cards-RFI-Sept-6-2023.pdf>; see also CFPB, *supra* note 21 at 10-11.

²⁵ While prior work by the NYAG and CFPB have improved disclosures with respect to certain health care credit cards, complaints have not ceased. See “In the Matter of GE Capital Retail Bank and CareCredit, LLC, Assurance No.: 12-103, Assurance of Discontinuance Under New York Executive Law Section, 63, Subdivision 15,” Attorney General of the State of New York (June 3, 2013), https://ag.ny.gov/sites/default/files/settlements-agreements/AOD_GE.pdf; “Consent Order in the Matter of GE Capital Retail Bank, CareCredit LLC, File No. 2013-CFPB-0009,” CFPB (Dec. 10, 2013), https://files.consumerfinance.gov/f/201312_cfpb_consent-order_0009.pdf; “Consent Order in the Matter of Springstone Financial, LLC, File No. 2015-CFPB-0021,” CFPB (Aug. 17, 2015), https://files.consumerfinance.gov/f/201508_cfpb_consent-order-springstone-financial-llc.pdf.

²⁶ FCRA § 603(i).

offered specifically for the payment of medical services are “medical information” that is “derived” from a health care provider because it “relates” to the payment for the provision of health care to an individual. Accordingly, medical care charged to credit cards solely intended to be used to pay for health care services should be included in the proposed definition of “medical debt information” in the Proposed Rule.

Moreover, this approach is feasible. There is a clear distinction between medical credit cards created specifically for the payment of health care services, products, or devices, and general consumer credit cards that aggregate all charged bills. Medical credit cards are marketed to consumers as such, and charges on these specialized cards are limited to the cost of medical procedures or services incurred through participating providers including dental, vision, pharmacy, primary and specialty care, labs and diagnostics, and other outpatient care.²⁷

The Proposed Rule Should Mirror Similar State Laws

Indeed, the New York Law discussed above includes such a provision. The definition of “medical debt” under New York law includes debt charged to a credit card “issued under an open-ended or closed-end plan offered specifically for the payment of health care services, products, or devices provided to a person.”²⁸ The Proposed Rule should adopt a similar approach and include debt accrued on medical credit cards. The NYAG also enthusiastically anticipates additional reforms with respect to health care financing, after the CFPB concludes its most recent initiative concerning the medical credit card industry.

CONCLUSION

The Proposed Rule will provide essential protections to consumers who have been penalized simply for incurring medical debt, and it should be finalized swiftly to provide immediate relief. The NYAG urges the CFPB to consider and incorporate the suggestion to include medical credit cards and financing plans within the definition of medical debt information, in order to better implement the statutory scheme and extend the protections to the intended population.

Sincerely,



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New York Attorney General

²⁷ See CFPB, *supra* note 21 at 6.

²⁸ NY Pub. Health Law § 4925(1). The Colorado and Minnesota laws similarly provide that medical debt includes debt charged to a credit card issued “under an open-end or closed-end credit plan offered specifically” for the payment of health care treatment, services or goods. Colo. Rev. Stat. § 5-18-103(11.5); Minn. Stat. § 332C.01 subd. 4 (effective Oct. 1, 2024).