



August 12, 2024

Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20036

Submitted via regulations.gov

Re: Docket No. CFPB-2024-0023 Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)

Comments in Response to the Consumer Financial Protection Bureau's Proposed Rulemaking on Medical Bills Appearing on Consumer Credit Reports

The National Association of Consumer Advocates (NACA), a national non-profit association of attorneys and advocates actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, submits these comments in support of the Consumer Financial Protection Bureau's proposed Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information. The proposed rule would substantially boost consumers' credit scores thereby making it easier for them to weather financial uncertainty and access mortgages, car loans, small business loans, and more. In order to more fully protect consumers, we also urge that the Bureau apply the rule to medical debts on credit cards and other loan products and to credit reports used for tenant and employee screening purposes.

Medical debt unfairly impacts millions of consumers' financial well-being and ability to access credit

Medical debt is a modern American crisis. Recent polling numbers have found that 41% of working age adults, approximately 72 million people, have some form of medical debt along with an additional 7 million elderly adults.¹ Due to its prevalence and the burden it imposes on consumers, medical debt is now the number one source of debt collections and continues to be a leading cause of personal bankruptcies. The appearance of medical debt on consumer credit

¹ Kaiser Family Foundation, *Health Care Debt in the U.S.: The Broad Consequences Of Medical And Dental Bills*, June 16, 2022, available at <https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/>.

reports is also known to be a major source of physical and financial stress with consumers reporting losing access to vehicles and housing as a result of lowered credit scores.² Further, consumers whose credit scores have declined due to medical debts may have little choice but to turn to high-cost lending products like payday loans when they need funds. This only serves to deepen the debt trap that consumers burdened by medical debt can find themselves in. The harmful effects of medical debt are especially impactful on vulnerable populations including BIPOC communities, uninsured consumers, and disabled and chronically ill consumers.

Research, including the Bureau's own, has repeatedly shown that unlike other consumer debts, medical debts are not predictive of a consumer's ability to repay other loans.³ Due to the prohibitively high costs of healthcare for most consumers, the complexity of medical billing, and the urgency and necessity of many medical procedures, medical debt is often involuntary, unavoidable, and can come as a surprise. Furthermore, consumers are often unaware of avenues that they could have taken to reduce their medical debt, such as negotiating their bills with their healthcare providers and charity care. As a result, millions of consumers each year find themselves saddled with unanticipated medical bills that they cannot afford to pay off.

For example, an Illinois consumer went to an oral surgeon that he believed was part of his insurance network in order to have his wisdom teeth removed, which is typically a necessary procedure. He alleged that at no point in the process was he advised that the office was out-of-network and therefore significantly more expensive than he would have expected. The consumer later received a collections notice for \$5,000 along with an unlawful \$1,000 collections fee that he and his family could not afford to pay off.

In addition to its unavoidable nature, medical debt is also often inaccurately billed to the wrong person, or in the wrong amount due to the byzantine billing and insurance system. Further, it may also continue to be furnished to credit bureaus even after it has been paid off. The Bureau's analysis of consumer complaints has shown that many medical bills appearing on credit reports are outdated or inaccurate in some way.⁴ Because of this, medical debt's predictive value is even further diminished.

² *Health Care Debt*, supra note 1.

³ See e.g., Consumer Financial Protection Bureau, *Consumer credit reports: A study of medical and non-medical collections*, December 2014, available at https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.

⁴ Consumer Financial Protection Bureau, *Debt collectors re-evaluate medical debt furnishing in light of data integrity issues*, February 14, 2023, available at <https://www.consumerfinance.gov/about-us/blog/debt-collectors-re-evaluate-medical-debt-furnishing-in-light-of-data-integrity-issues/>.

For example, in 2017, a Kentucky consumer who was preparing to apply for a mortgage allegedly discovered 13 medical collections accounts ranging from \$92 to \$9967 that did not belong to him on his credit report.⁵ He claimed that when he attempted to dispute the debts with the big three credit bureaus, two refused to delete the debts and one deleted all but one.⁶ In another example, a Florida consumer and worker was injured on the job in 2022 and sought medical treatment.⁷ The consumer says that his healthcare provider knew it was a workplace injury and that any debt incurred would be covered by his employer and their insurance.⁸ However, the provider attempted to collect payment from the consumer and eventually sold the debt to a third-party collector that also attempted to collect from the consumer.⁹ Instances like these where the consumer does not actually owe the medical debt in question are all too common and illustrate how unreliable medical debt information can be.

The consumer reporting industry has already responded to the widespread acknowledgement that medical debt is a poor predictor of a consumer's ability to repay. In 2022, the big three consumer reporting agencies, Equifax, Experian, and Transunion all removed paid medical collections from consumer credit reports and extended the 6-month grace period before unpaid bills were reported to 12 months.¹⁰ In 2023, they removed and stopped reporting all medical debts under \$500.¹¹ Data shows that after these changes went into effect, consumers with medical debt collections on their credit reports experienced a significant boost to their credit scores, going from an average of 585 (subprime) to 615 (near prime).¹²

While these measures by the credit bureaus have provided significant benefits for consumers, they were not enough to fully ease the burden of consumers with medical debts greater than \$500. According to the Bureau's research, there were still 15 million consumers with medical debts on their credit report totaling over \$49 billion even after the credit bureaus' changes.¹³ The proposed rule is necessary to provide much-needed relief to those millions of consumers.

⁵ Complaint, *Hayden v. Merchants & Medical Credit Group*, W.D. Kent., (filed Jun. 19, 2017).

⁶ *Id.* at 4-5.

⁷ Complaint, *Crawford v. North American Credit Services, Inc.*, Ninth Cir. Fla., (filed Sept. 15, 2023).

⁸ *Id.* at 3.

⁹ *Id.* at 4.

¹⁰ Joint Statement of Equifax, Experian & TransUnion, *Equifax, Experian and TransUnion Support U.S. Consumers With Changes to Medical Collection Debt Reporting*, March 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>.

¹¹ *Id.*

¹² Urban Institute, *Medical Debt Was Erased from Credit Records for Most Consumers, Potentially Improving Many Americans' Lives*, November 2, 2023, available at [https://www.urban.org/urban-wire/medical-debt-was-erased-credit-records-most-consumers-potentially-improving-many#:~:text=The%20credit%20bureaus%20recent%20actions,\(from%20712%20to%20711\)](https://www.urban.org/urban-wire/medical-debt-was-erased-credit-records-most-consumers-potentially-improving-many#:~:text=The%20credit%20bureaus%20recent%20actions,(from%20712%20to%20711)).

¹³ Consumer Financial Protection Bureau, *CFPB Finds 15 Million Americans Have Medical Bills on Their Credit Reports*, April 24, 2024, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-15-million-americans-have-medical-bills-on-their-credit-reports/>.

The final rule should be expanded to also prohibit the credit reporting of medical debt arising from other payment products

Recent survey results, 24% of Americans between 18-64 with past due medical bills have used a credit card, whether a specialized medical credit card or a general use credit card, to pay these bills.¹⁴ In order to protect the fullest scope of consumers with medical debts, the Bureau should also prohibit negative credit reporting of payment products that are often used to pay for medical bills including medical credit cards and loan. Much like medical debt collection, balances incurred using these products are also often involuntary and unavoidable and have similar, and sometimes greater, negative impacts on consumers.

The Bureau studied the medical credit card and medical loan market and released a report on these products in May 2023.¹⁵ According to the Bureau's findings, medical payment products are increasingly being offered for basic and emergency medical care, have higher interest rates than other forms of credit, and are aggressively marketed to consumers, who may not fully understand their terms.¹⁶

Medical payment products have seen significant growth in usage in recent years. According to the Bureau's findings, CareCredit, just one of the main medical credit card providers, had 11.7 million cardholders in 2023.¹⁷ Those 11.7 million, along with holders of other medical credit cards and payment products users would still have medical debts on their credit report if the scope of the proposed rule is not expanded. The number of consumers who turn to medical payment products is likely to continue to grow too as healthcare providers increasingly seek to shift the administrative costs of managing payment programs to third parties. Because of this, it is necessary for the Bureau to expand the rule to apply to payment products used for medical expenses.

To illustrate, in 2021, Dustin Carpenter, a Minnesota consumer, brought suit against CareCredit and the big three credit bureaus over alleged false information furnished by CareCredit.¹⁸ After being seriously injured in an accident, Mr. Carpenter opened a CareCredit card after he was allegedly told it was his only option for payment.¹⁹ Eventually, he paid off his CareCredit

¹⁴ Urban Institute, *How Many Adults Have Past-Due Medical Bills On Credit Cards?*, September 5, 2023, available at <https://www.urban.org/research/publication/how-many-adults-have-past-due-medical-bills-credit-cards>.

¹⁵ Consumer Financial Protection Bureau, *Medical Credit Cards and Financing Plans*, May 2023, available at https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.

¹⁶ Id.

¹⁷ Id.

¹⁸ Complaint, *Carpenter v. Trans Union, et al.*, Hennepin County Dist. Ct. (filed Aug. 27, 2021).

¹⁹ Id. at 4.

balance in 2018. However, upon reviewing his credit report in 2021, Mr. Carpenter discovered that CareCredit was allegedly still reporting that he owed a balance of over \$6,000.²⁰ He claims that he quickly reached out to the credit bureaus to dispute the tradeline and have it reinvestigated but was either ignored or told that the information was accurate.²¹ As a result of the alleged inaccurate information, Mr. Carpenter claimed his credit score suffered and he was unable to obtain a mortgage to purchase a home.²²

Mr. Carpenter was eventually able to settle his case after several years of litigation. However, other consumers in his situation may continue to be subjected to the same harms and forced to undergo legal headaches to resolve similar issues even if the proposed rule is enacted without protection for consumers who have used medical payment products. With all signs indicating that medical payment product usage is only going to continue to grow, it is necessary for the Bureau extend the scope of the rule.

The Bureau should prohibit medical debts from appearing on consumer reports used for tenant and employee screening

In addition to expanding the rule to prohibit medical debts incurred using medical payment products from being appearing on consumer credit reports, the Bureau should also ensure that medical debts are not considered when making non-credit related decisions. Increasingly, consumer credit reports are being used to screen consumers for purposes other than granting credit. Their usage has become especially common by landlords and employers making housing and hiring decisions. Just as medical debt is not predictive of whether a consumer will pay future debts, it is similarly not predictive of whether they will pay rent on time or be a reliable employee.

Close to 90% of landlords check potential tenants' credit reports as part of the rental applications process with nearly 40% citing poor credit scores as the factor that they are most concerned about.²³ Similarly, 51% of employers include credit checks as part of their background screening process.²⁴ Because housing and employment are absolutely necessary for consumers' survival, it is imperative that they are not unfairly denied for having medical debt.

Thank you for the opportunity to comment. If you have any questions or concerns, please contact Sophia Huang, Sophia @ consumeradvocates.org.

²⁰ Id.

²¹ Id.

²² Id. at 6.

²³ Urban Institute, *The Real Rental Housing Crisis is on the Horizon*, March 11, 2022, available at <https://www.urban.org/urban-wire/real-rental-housing-crisis-horizon>.

²⁴ OnLabor, *Credit Checks in Employment*, November 7, 2023, available at <https://onlabor.org/credit-checks-in-employment/#:~:text=More%20than%20ninety%2Dsix%20percent,and%20their%20bankruptcies%20or%20liens..>