



State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

August 12, 2024

Via Federal eRulemaking Portal

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

RE: “Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V),” 89 Fed. Reg. 51,682 (June 18, 2024), CFPB-2024-0023

Dear Director Chopra:

I submit the following comments in support of the Consumer Financial Protection Bureau’s (CFPB) Proposed Rule, “Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V),” 89 Fed. Reg. 51,682 (June 18, 2024) (Proposed Rule). As a proud cosponsor of State Senate Bill 1061, which aims to stop companies from using medical debt in credit scores in California, I applaud the CFPB’s important nationwide leadership on the issue of unfair medical debt reporting practices and strongly support the Proposed Rule. This change will provide desperately needed relief for millions of Americans burdened by unexpected or inaccurate medical bills.

Millions of Californians are saddled with medical debt as a result of our broken healthcare system. Fifty two percent of adults reported that in the last 12 months they or a family member had delayed or postponed care due to cost, 36% had medical debt, and 27% had problems paying or could not pay their medical bills.¹ Burdensome medical debt impacts uninsured adults (26.3%) more than adults with either public or private health insurance (<10%).² It also disproportionately impacts Californians from historically marginalized groups. For example, 52% of Californians with incomes below 200% federal poverty level report

¹ Lucy Rabinowitz Bailey et al., *The 2023 CHCF California Health Policy Survey*, Cal. Health Care Found., 16 (Feb. 16, 2023), <https://www.chcf.org/publication/2023-chcf-california-health-policy-survey/#related-links-and-downloads>.

² *Id.* at 12.

medical debt.³ Moreover, Black (53%) and Latinx Californians (46%) are more likely to report debt than White Californians (33%). Californians who speak Spanish (59%) are also more likely to report medical debt than those who speak English (38%).⁴

The CFPB and California share the same interests in protecting consumers by ensuring that consumer reports accurately reflect a consumer's ability to repay a loan. I welcome this opportunity to discuss our mutual concerns and to submit suggestions for further improvements to the Proposed Rule. Specifically, I propose an expanded definition of "medical information" to include all forms of medical bill payment made by or on behalf of patients for medical care, services or devices. I speak to the feasibility of financial institutions such as credit card companies limiting the reporting of medical debt to consumer reporting agencies. I also appreciate the CFPB clarifying that the Proposed Rule will set a floor for consumer protections, thus allowing states to implement additional protections. 89 Fed. Reg. at 51,686, n.45; 51,736; 51,696 n.142.

I. The Proposed Rule Should Expand the Definition of Medical Information to Include All Forms of Medical Bill Payments and Expenses

This section addresses the CFPB's requests for comment on whether it should "consider information about debts generally incurred to pay for medical bills and expenses to be 'medical information' that is 'derived' from a health care provider or consumer." 89 Fed. Reg. at 51,690. While some adults may not owe money directly to providers of medical or dental care, they may have paid those providers by taking on other forms of debt, including credit cards or personal bank loans. It is thus necessary to expand the definition of "medical information" to include these forms of financial obligations incurred by health care consumers for their medical care. Failing to do so is detrimental to those who report they delay or postpone care due to cost.⁵

A. Medical Debt Impacts Consumers Regardless of Payment Method

I agree with the CFPB's determination that the definition of "medical information" should be interpreted to cover medical debt owed directly to a health care provider or the provider's agent or assignee for providing health care. 89 Fed. Reg. at 51,690. However, the definition should be expanded to include all forms of payments made by or on behalf of consumers to health care providers. Many Californians who cannot pay for health care are turning to credit cards they are unable to pay down.⁶ The share of consumers who put medical or dental bills on a credit card is growing, now accounting for 25% of Californians, up from 19%

³ *Id.* at 16.

⁴ Jen Joynt et al., *The 2024 CHCF California Health Policy Survey*, Cal. Health Care Found., 33 (Jan. 31, 2024), <https://www.chcf.org/wp-content/uploads/2024/01/2024CHCFCAHealthPolicySurvey.pdf>.

⁵ Rabinowitz Bailey, *supra* note 1.

⁶ Michael Karpman et al., *How Many Adults Have Past-Due Medical Bills on Credit Cards?*, Urb. Inst., (Sept. 2023), <https://www.urban.org/sites/default/files/2023-08/How%20Many%20Adults%20Have%20Past-Due%20Medical%20Bills%20on%20Credit%20Cards.pdf>.

just one year ago.⁷ This number is even higher for historically marginalized groups. For example, 34-50% of low-income and minority Californians take on credit card debt to pay for health care.⁸ “Health care providers may have incentives to reduce their administrative costs for billing and collections by promoting credit cards or loans that can sometimes make patients worse off financially.”⁹ The Proposed Rule’s limited definition fails to protect these vulnerable consumers who use credit cards and other payment products to pay for their medical care.

B. The Proposed Rule Should Interpret Medical Debt Information to Include All Purchases Made by or on Behalf of Patients for Health-Related Services, Products or Goods, Regardless of the Method of Financing These Purchases

I urge the CFPB to interpret “medical debt” to include all purchases for medical services, products, and devices irrespective of financing. The focus of this definition of “medical debt” should remain on the medical goods or services being purchased rather than the means of payment which could include financing. Specifically, the definition of “medical debt” should include third party loan products, such as medical payment products and credit cards used to purchase or finance medical services, products, or devices.

Updating the definition of “medical debt” as recommended here will ensure the Proposed Rule has enhanced consumer protection. For example, the Medical Debt Relief Act defines “medical debt” as “a debt related to, in whole or in part, transactions, accounts, or balances arising from the receipt of medical services, products, or devices.”¹⁰ Interpreting “medical information” to include all payments for medical bills and expenses made by a consumer is also consistent with the Fair Credit Reporting Act (FCRA).

Section 603(i) of the FCRA defines “medical information” as information in any form “created by or derived from a health care provider or the consumer” relating to payment for the provision of health care to an individual. Consumers create medical information by seeking out and obtaining medical services, products or devices, thereby creating payment obligations that may or may not be owed to a healthcare provider. Consumers also create the payment obligation through intermediary payment methods by opening up a credit card or medical payment product where they bear the financial obligation. To ensure inclusion of any information derived from the consumer, the CFPB should update its definition of “medical information” to include all direct financing options a consumer uses to pay a health care provider, including general credit cards

⁷ Jen Joynt et al., *The 2024 CHCF California Health Policy Survey*, Cal. Health Care Found., 33 (Jan. 31, 2024), <https://www.chcf.org/wp-content/uploads/2024/01/2024CHCFCAHealthPolicySurvey.pdf>; Lucy Rabinowitz Bailey et al., *The 2023 CHCF California Health Policy Survey*, Cal. Health Care Found., 16 (Feb. 16, 2023), <https://www.chcf.org/publication/2023-chcf-california-health-policysurvey/#related-links-and-downloads>.

⁸ L.A. City. Dept. of Pub. Health, *Medical Debt in LA County: Baseline Report and Action Plan*, 9 (June 2023), http://publichealth.lacounty.gov/chie/reports/Medical_Debt_Report_English.pdf.

⁹ Karpman, *supra* note 8, at 3.

¹⁰ H.R. 6003, 118th Cong. (2023).

and medical payment products such as installment loans and medical credit cards.¹¹ The updated recommendation includes not only debt obligations owed to a “health care provider or [its] agent or assignee” but also any payment method or debt obligations incurred for medical services, devices, drugs or products rendered or obtained. 89 Fed Reg. at 51,690.

While the current Proposed Rule will greatly benefit many consumers with medical debt, modifying the proposal with the above recommendations will further alleviate the harm to particularly vulnerable individuals who are most prone to using payment products like credit cards to pay for their medical bills. This update will better protect vulnerable consumers by removing all forms of medical debt from consumer’s credit report, irrespective of the financing or payment method.

II. Financial Institutions Have the Tools Available to Limit Reporting of Medical Purchases to Consumer Reporting Agencies.

This section responds to the CFPB’s request for comment about the feasibility of financial institutions being able to distinguish “between loan obligations and disbursements that pay for medical expenses and those that do not.” 89 Fed. Reg. at 51,690. Financial institutions have the capacity to distinguish medical debt information from other purchases, and can thus readily exclude medical debt information from what they report to consumer reporting agencies.

Credit card companies and providers of other financial products currently have the capacity to exclude medical debt from credit reports. While credit card companies and other lenders may express concerns about operationalizing this new requirement, the card issuers’ merchant category code system already addresses similar requirements or categories of debt. Current credit cards allow consumers to pay certain purchases in a fixed payment plan for purchases over \$100.¹² Credit card companies can utilize similar technology such as merchant category codes to distinguish health care purchases from general purchases and exclude them from credit reporting agencies. For example, merchant category codes are used by Flexible Spending Account credit cards to automatically substantiate qualified expenses.¹³ The extensive coding methods currently used by financial institutions serve as a foundation to enable financial institutions to identify and distinguish medical purchases.

Given the importance of safeguarding consumers from the harm caused by the inclusion of medical debt in consumer reports, including medical debt credit cards and other third-party payment sources will expand protection to consumers and address the burden of medical debt and coercive consumer reporting practices.

¹¹ See above referenced definition from the Medical Debt Relief Act, where a medical debt is defined as “a debt related to, in whole or in part, transactions, accounts, or balances arising from the receipt of medical services, products, or devices.” H.R. 6003, 118th Cong. (2023).

¹² Ben Luthi, *Is Chase’s My Chase Payment Plan a Good Deal?*, Investopedia (Aug. 22, 2021), <https://www.investopedia.com/my-chase-plan-adds-more-flexibility-for-card-payments-5198210>.

¹³ *Process Health Savings Account (HSA) or Flexible Spending Account (FSA) cards*, Stripe, [https://support.stripe.com/questions/process-health-savings-account-\(hsa\)-or-flexible-spending-account-\(fsa\)-cards](https://support.stripe.com/questions/process-health-savings-account-(hsa)-or-flexible-spending-account-(fsa)-cards) (last visited Jul. 11, 2024).

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III. Conclusion

I strongly support the CFPB's thorough efforts to advance protections at a federal level to protect consumers from medical debt unfairly impacting their credit score. I appreciate your consideration of these comments.

Sincerely,

A handwritten signature in blue ink that reads "Rob Bonta". The signature is fluid and cursive, with the first name "Rob" and the last name "Bonta" clearly legible.

ROB BONTA
Attorney General