State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

September 11, 2023

Via Federal eRulemaking Portal

The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human Services
200 Independent Avenue, S.W.
Washington, D.C. 20201

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
P.O. Box 8016
Baltimore, MD 21244-8016

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G St., N.W.
Washington, D.C. 20552

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

RE: "Request for Information Regarding Medical Payment Products," 88 Fed. Reg. 44281 (July 12, 2023), CMS-2023-0106, CFPB-2023-0038, TREAS-DO_2023-0008

Dear Secretary Becerra, Administrator Brooks-LaSure, Director Chopra, and Secretary Yellen:

I submit this letter in response to the U.S. Department of Health and Human Services (HHS), Consumer Financial Protection Bureau (CFPB), and Department of Treasury's (collectively, Departments) Request For Information Regarding Medical Payment Products (RFI). As the Departments recognize, the skyrocketing cost of healthcare has forced many Americans to turn to medical payment products, such as medical credit cards, to obtain healthcare services. Originally conceived in the early 2000s as a way for people to finance elective medical care like cosmetic surgery, medical credit cards have since exploded in availability.[1] Now, primary care doctors—and even emergency care providers—accept and offer sign-ups for medical credit cards. Lacking adequate oversight, these medical credit cards often

[1] Zimmon, Allison J., *RX For Costly Credit: Deferred Interest Medical Credit Cards Do More Harm Than Good*. Boston College Journal of Law & Social Justice, Volume 35:319, https://lira.bc.edu/files/pdf?fileid=885c8c8a-82ce-4a97-a426-358c7edbcc6d.

contain misleading or consumer unfriendly terms, which disproportionately affect historically disadvantaged groups, including African Americans, Latino Americans, and Native Americans, and those who are uninsured or underinsured.

This letter specifically addresses the RFI's questions regarding: health equity concerns; consumer confusion; best practices for medical providers who offer medical payment products; consumer protections lost using these products; and concerns these products may erode patients' rights, including those under the No Surprises Act. California is uniquely qualified to comment on the RFI because it has enacted strong consumer protections to guard against patient harms from these products. This comment letter thus provides the Departments with a potential road map on how to regulate these products.

I. Absent Oversight, Medical Payment Products Exacerbate Health Disparities.

The high cost of medical care is a crushing financial reality for many Americans and members of historically disadvantaged groups suffer the most. A 2023 California Health Care Foundation survey found that 20% of Californians reported owing debt to a bank, collection agency, or other lender, while 19% reported having medical bills on a credit card, and 19% reported paying medical bills directly to a provider.[2] Seventeen percent of Californians reported having bills that are past due or that they cannot pay.[3] A staggering 50% of adults in Los Angeles County reported taking on credit card debt in order to pay medical bills.[4] Disparities in medical debt mirror other well-established disparities. More than a third of Californians have medical debt, and 52% of Latino Californians and 48% of African American Californians report medical debt, as opposed to 28% of white Californians and 27% of Asian Californians.[5] Californians with lower incomes are far more likely to report having medical debt than those with higher incomes. In a June 2023 report, the Los Angeles County Department of Public Health found that adults who identified as Latino (12.4%), African American (11%), and American Indian, Alaskan Native, Native Hawaiian, Pacific Islander, or multiracial (12.7%) are more likely to report having "burdensome" medical debt.[6] Burdensome medical debt also impacts households with children (12.6%) more than those without children (9.2%),[7] and impacts uninsured adults (26.3%) more than adults with either public or private health insurance (<10%).[8] Thus, medical debt and the specter of medical debt burdens many Californians, particularly those who are in

[2] *Id.*
[3] *Id.*
[4] *Id.* at 9.
[5] 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.
[6] L.A. Cty. Dept. of Pub. Health, Medical Debt in LA County: Baseline Report and Action Plan 10 (June 2023), http://publichealth.lacounty.gov/chie/reports/Medical_Debt_Report_English.pdf.
[7] *Id.* at 10.
[8] *Id.* at 12.

minority groups or are economically disadvantaged. Given these struggles, many Californians may turn to medical payment products.

A. Patients in Dire Need Are Not in a Position to Make Complex Financial Decisions

Economically disadvantaged Americans may opt for medical credit cards to cover healthcare, when it is presented as the only option. Meanwhile, medical providers offer these products to ensure payment. For example, a dentist recently justified CareCredit's hefty 10-15% service fees, saying some patients cannot afford treatment without financing and may have poor credit, otherwise the provider may not be paid.[9] Medical credit cards bridge this gap at the expense of both patients and providers—patients pay high interest rates and providers pay large fees. Thus while such products may appear to be a lifeline to pay for care in the short-term, users risk being saddled with high interest rates or getting trapped into years of debt.

While some patients may voluntarily choose to finance elective procedures through medical credit cards, others, such as low-income patients, must choose between life-saving care and potential financial ruin. And they are often confronted with this choice when vulnerable, such as while awaiting a medical procedure–drowsy, in pain, or generally stressed.[10] Additionally, patients might feel pressured to sign up for a medical credit card because it is the only option offered. Misleading terms and conditions add to this stress.

The most onerous of these products—and the most prevalent—are deferred interest credit cards.[11] Unlike traditional loans where interest is assessed on the current balance, deferred interest credit cards assess interest, but delay the payment of the interest until the end of the set deferral period—usually six to twelve months. If the patient successfully pays off the balance within the deferral period, then no interest is owed. However, if any balance remains at the end of the deferral period, the patient will owe the remaining balance plus the entirety of the accrued interest based on the initial transaction.[12] Confusing or mistaking deferred interest as "no interest" or "0% APR," many patients do not anticipate the retroactive interest, especially if a medical provider misled them into believing the promotional period was a "no interest"

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[9] https://www.reddit.com/r/Dentistry/comments/158fc5x/carecredit_provider_fees_what_do you_guys_do/.

[10] Brenden Rearick, *Health Care Providers Are Pushing Medical Credit Cards — Here's Why You Should Avoid Them* (July 25, 2023), https://www.nasdaq.com/articles/health-care-providers-are-pushing-medical-credit-cards-heres-why-you-should-avoid-them.

[11] *See* Chi Wu, Deceptive Bargain; the Hidden Time Bomb of Deferred Interest Credit Cards, Nat'l Consumer Law Ctr. 5 (December 2015), https://www.nclc.org/images/pdf/pr-reports/report-deferred-interest.pdf.

[12] LaToya Irby, *Everything You Need to Know About Medical Credit Cards*, (March 30, 2022). https://www.thebalancemoney.com/basic-facts-about-medical-credit-cards-4144806.

promotion.[13] For example, one patient complained of receiving an "$860 interest charge on a $900 balance" without any warning.[14] As a 2015 CFPB report noted, almost one-third of consumers who paid deferred interest, paid off their full balance within two billing cycles of the end of deferral, calling "into serious question the notion that consumers understand the ways in which the product works."[15] Those without the resources to pay off their balance quickly may face a sudden, unanticipated, and unaffordable increase in their balance. Low-income communities are particularly vulnerable, as people with credit scores below 619 incur deferred interest at a much higher rate than the general public.[16]

On top of the stress of financing expensive medical care and deciphering the terms and conditions of medical payment products, language barriers also exacerbate medical debt inequalities. In a 2023 report by the CFPB, many consumers with limited English proficiency did not understand that their medical provider enrolled them for a medical payment product because the medical provider failed to provide requisite language access services.[17] More generally, a 2021 nationwide study found that limited English proficiency is an independent driver of health disparities and exacerbates other social determinants of health.[18] Limited English proficiency is also associated with lower quality care and worse health outcomes.[19] Providing terms and conditions in the patient's language of choice is the bedrock for patients' informed evaluation of medical payment products. The Departments must eliminate or reduce language barriers to address health equity issues regarding medical payment products.

B. California's Protections Against Medical Payment Products Are a Model Framework for the Departments

Unfortunately, since many people do not know they have the right to complain or seek relief, the full extent of the harm caused by medical payment products is unknown.[20] Moreover, the deep shame that medical debt inflicts on people causes them to stay quiet, even if they know

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[13] *Id.* at 1.

[14] CareCredit Reviews – 762 Reviews, Sitejabber (accessed Aug. 15, 2023), https://www.sitejabber.com/reviews/carecredit.com.

[15] Consumer Fin. Prot. Bureau, *The Consumer Credit Card Market Report* 200 (Dec. 3, 2015), https://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf.

[16] 34% and 20%, respectively. Consumer Fin. Prot. Bureau, *supra* note 14, at 13.

[17] Consumer Fin. Prot. Bureau, Medical Credit Cards and Financing Plans 12 (citing Consumer Fin. Prot. Bureau, Complaint 3325167 (July 31, 2019). (May 2023), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.

[18] Jason Espinoza & Sabrina Derrington, *How Should Clinicians Respond to Language Barriers That Exacerbate Health Inequity?*, 23 AMA J. Ethics 109, 109 (2021), https://journalofethics.ama-assn.org/article/how-should-clinicians-respond-language-barriers-exacerbate-health-inequity/2021-02.

[19] *Id.*

[20] *Id.*

they have rights for redress.[21] Due to these challenges, California has enacted laws to help ensure that patients understand the terms of these products, which may assist future federal rulemaking.

To "protect consumers from predatory [financial] products that may be facilitated by [licensed medical providers]" and "reduce the situations in which a patient is asked to agree to services and pay for those services by signing up for a new financial product that the patient may not fully understand," California revised Business and Professions Code section 654.3 in 2019.[22,] Among its many protections, medical providers are prohibited from:

- Enrolling patients for a medical credit card or loan that contains a deferred interest provision.[23]
- Completing any portion of an application for a third-party credit card or enrolling the patient for those products if the application was not entirely completed by the patient.[24]
- Enrolling patients for a third-party credit card or loan if the patient is sedated or unconscious.[25]
- Enrolling patients for a third-party credit card in any treatment area unless the patient agrees to fill out the application in the treatment area.[26]
- Charging treatment to a third-party medical credit card or loan without first providing the patient with a treatment plan containing a list of services to be charged, as well as a number of enumerated disclosures regarding insurance share of cost and the right to seek treatment that is covered by the patient's insurance plan.[27]
- Enrolling patients for a third-party medical credit card or loan without obtaining the patient's signature confirming they received a list of enumerated disclosures informing the patient of the nature of the credit product and their rights.[28] If the provider communicated primarily with the patient in one of California's Medi-Cal

[21] Karen Pollitz & Cynthia Cox, *Medical Debt Among People With Health Insurance*, Kaiser Family Found. (Jan. 07, 2014), https://www.kff.org/private-insurance/report/medical-debt-among-people-with-health-insurance; Manuel Tobias, *Dental Patients Face Years of Debt, Inflated Bills*, Cal Matters (last updated Feb. 27, 2020), https://calmatters.org/projects/dental-patients-face-years-of-debt-inflated-bills.

[22] Cal. S. Comm. Report S.B. 639, 2019-2020 Regular Sess., at 1 (Aug. 19, 2019); Cal. S. Comm. Report S.B. 639, 2019-2020 Regular Sess., at 2 (Sept. 06, 2019).

[23] Cal. Bus. & Prof. Code, § 654.3(b)(1).

[24] Cal. Bus. & Prof. Code, § 654.3(e).

[25] Cal. Bus. & Prof. Code, § 654.3(j)(1).

[26] *Id.*

[27] Cal. Bus. & Prof. Code, § 654.3(h).

[28] Cal. Bus. & Prof. Code, § 654.3(f).

Threshold Languages, such as Spanish or Korean, the provider must translate these disclosures into that language.[29, 30]

- Charging treatment to a third-party medical credit card or loan more than 30 days before the treatment is rendered.[31]
- Retaining any amount of payment charged to a third-party medical credit card or loan for treatment or services that were not rendered.[32] The provider must refund the patient's account within 15 days of the patient's request.[33]

Section 654.3 was a first step towards protecting California consumers from the risks of medical payment products, and its provisions can serve as a template for future federal rulemaking. CFPB and HHS should further protect consumers and patients nationwide by implementing greater restrictions on how providers steer patients to these products. Future regulation should ban medical providers from assisting or aiding patients in the enrollment of these products in any way, prohibiting the enrollment of these products in medical offices and facilities even when initiated or completed by patients, and increase the cooling-off period between application and use of medical payment products.

II. Medical Credit Cards Should Be Restricted to Payment of Medical Care and the Debt Should Be Classified as Medical Debt

Medical debt, which is debt owed to a provider by a patient, and is held by the provider, offers patients significant protections from collections. California's Health Care Debt and Fair Billing Act shields Californians with medical debt by restricting hospitals from selling patient debt unless specified conditions are met and prohibiting credit reporting or initiating civil actions for 180 days after initial billing.[34] On an industry-wide level, the three major credit reporting agencies have also agreed to not include medical debt on credit reports.[35] However, once a patient uses a medical credit card to finance her medical care, it is no longer classified as medical debt, and the patient loses any protections against credit reporting or billing. Despite being called "medical credit cards," the debt accrued is classified as consumer debt. By using medical credit

[29] The Medi-Cal Threshold Languages are established by California law and serve as language access requirements for managed healthcare plans under the Medi-Cal program. *See* Cal. Welf. & Inst. Code, § 14029.91; 42 C.F.R. § 438.10(d)(1)-(3). These languages are periodically published online. *See e.g*. Cal. Health & Hum. Serv., Quarterly Threshold Languages by Month of Eligibility and County (last visited Aug. 3. 2023), https://data.chhs.ca.gov/dataset/quarterly-certified-eligible-counts-by-month-of-eligibility-county-and-threshold-language/resource/ff63939e-6675-474c-ad01-56f1f240e68d.

[30] Cal. Bus. & Prof. Code, § 654.3(i).

[31] Cal. Bus. & Prof. Code, § 654.3(c)(1).

[32] Cal. Bus. & Prof. Code § 654.3(f).

[33] *Id.*

[34] Cal. Health & Safety Code § 127425; Cal. Civ. Code §§ 1788.14(e), 1788.185.

[35] *Medical Debt Collection – Know Your Rights*, Department of Financial Protection & Innovation https://dfpi.ca.gov/2023/02/13/medical-debt-collection-know-your-rights/.

cards, patients lose vital debt collection protections. Additionally, the debt is reported immediately to credit agencies.[36]

As discussed above, low-income patients are more prone to use medical credit cards, and providers are hesitant to finance such patients. To protect such patients, the Departments should designate debt held in medical payment products as medical debt. To accomplish this, the Departments must restrict the use of medical credit cards to medical payments. This is crucial, as medical credit cards are expanding the scope of their services. Consumers can now purchase ordinary goods such as groceries, health and beauty items at select retailers.[37]

III. The Departments Should Propose Legislative Change to Protect Patients from Medical Payment Products

As Americans' collective medical debt soared to $195 billion in 2019, the Departments should step in by using their existing powers and proposing legislative change.[38] The Departments should focus their attention on provider compliance in offering financial assistance and reduction of deductibles in health plans.

A. Medical Providers Should Be Required to Screen for Charity Care Before Offering Medical Payment Products

Medical providers often fail to screen patients adequately for financial assistance.[39] One study suggests that nearly half of nonprofit hospital organizations routinely send medical bills to patients who qualify for charity care.[40] Numerous studies also suggest that, despite being required by federal law to make charity care available to patients, nonprofit hospitals spend less on charity care as a percentage of their overall expenses than their for-profit or public

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[36] John Miller, *When does the CareCredit Credit Card report to the credit bureaus?* https://wallethub.com/answers/cc/when-does-carecredit-credit-card-report-to-credit-bureaus-2140808198/.

[37] *CareCredit credit card network expands to include 8,500+ Walgreens® and Duane Reade® stores in the U.S., Puerto Rico and Virgin Islands* https://www.carecredit.com/pressrelease/carecredit-expands-into-walgreens-duane-reade/ (September 23, 2019); *Does Walgreens Take CareCredit?* https://differencewalla.com/walgreens-carecredit.

[38] *1 in 10 Adults Owe Medical Debt, With Millions Owing More Than $10,000* (March 10, 2022). https://www.kff.org/health-costs/press-release/1-in-10-adults-owe-medical-debt-with-millions-owing-more-than-10000/#:~:text=The%202020%20survey%20suggests%20Americans,variation%20from%20year%20to%20year.

[39] *E.g.*, Cons. Fin. Prot. Bureau, Dept. of Health & Human Svcs., Dept. of the Treasury, Request for Information Regarding Medical Payment Products 30 (2023) (requesting information on potential actions the CFPB could undertake).

[40] Jordan Rau, *Patients Eligible for Charity Care Instead Get Big Bills*, KFF Health News (Oct. 14, 2019), https://kffhealthnews.org/news/patients-eligible-for-charity-care-instead-get-big-bills.

counterparts.[41] These hospitals also regularly take aggressive collection actions against patients.[42]

For medical providers, the ease and convenience of medical payment products offer a tempting alternative to assessing financial assistance such as charity care, or putting the patient on a payment plan. Less scrupulous providers may even sign up patients without their consent or knowledge, fail to adequately explain the products' terms, or actively misrepresent the terms.

As a template for federal legislation and regulation, existing California state law requires that all hospitals, whether public or private:

- Provide patients with a written notice that informs them about the availability of the hospital's discount payment and charity care policies, including information about eligibility, and contact information for someone who can explain these policies.[43]
- Conspicuously post in publicly visible locations its policy for financially qualified and self-pay patients.[44]
- Make all reasonable efforts to obtain from the patient or the patient's representative information about whether health insurance or sponsorship may cover the charges for care.[45]

Like California, federal regulations should protect patients who may qualify for financial assistance from medical payment products. Options available to the Departments include:

- The Treasury Department should interpret Internal Revenue Code § 501(r)(6) and 26 Code of Federal Regulations § 1.501(r)-6 to include signing patients up for medical payment products without screening patients for financial assistance eligibility first as an "extraordinary collection action" – thus compelling tax-exempt hospitals to do so.
- To achieve even broader coverage of mandatory screening, HHS should exercise its authority as the administrator of Medicare, Medicaid, the Children's Health Insurance Program, and similar federal programs, to require that all hospitals accepting payment from such programs screen every patient for eligibility for financial assistance.

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[41] *See* Michael Karpman, Most Adults with Past-Due Medical Debt Owe Money to Hospitals, Urban Inst. (Mar. 13, 2023), https://www.urban.org/research/publication/most-adults-past-due-medical-debt-owe-money-hospitals; Ge Bai et al., *Analysis Suggests Government and Nonprofit Hospitals' Charity Care Is Not Aligned With Their Favorable Tax Treatment*, 40 Health Affairs 629, 629 (2021), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.01627.

[42] Karpman, *supra* note 41.

[43] Cal. Health & Safety Code § 127410(a).

[44] Cal. Health & Safety Code § 127410(c).

[45] Cal. Health & Safety Code § 127420(a).

- CFPB should use its authority to prevent unfair, deceptive, or abusive acts and practices under the Consumer Financial Protection Act, 12 U.S.C. § 5531, to require that healthcare providers screen patients for eligibility for financial assistance before enrolling them in any medical payment product.
- CFPB should require that providers of medical payment products undertake reasonable efforts to ensure that consumers are not charged for services that should be covered by insurance or provider financial assistance. "Reasonable efforts" could be defined to include receiving a certification from the provider that the patient in question was screened for and found ineligible for financial assistance.
- CFPB should utilize the Fair Debt Collection Practices Act to hold providers of medical credit cards accountable.[46] The Fair Debt Collection Practices Act requires credit card issuers to "consider the ability of the consumer to make the required payments" before "open[ing] any credit card account for any consumer under an open end consumer credit plan." Consideration of the consumer's ability to make required payments should be defined to include their eligibility for financial assistance.
- The Departments should implement punitive provisions against non-compliant providers and medical payment product companies. In addition to civil penalties, such provisions against providers might include chargebacks, whereas consequences for non-compliant medical payment product companies might include invalidating a patient's debt if the patient was improperly screened prior to being enrolled in the medical payment product.

These proposed measures could help ensure that patients are not required to assume debt for medical care that may be covered by insurance or that may fall within the provider's financial assistance policy.

B. The Departments Should Reduce Cost Sharing or Implement Monthly Cost Sharing Limits to Reduce Reliance on Medical Payment Products

By enacting regulations limiting patient financial responsibility, the Departments can reduce patient expenditures on healthcare and thereby reduce reliance upon medical payment products. Reducing cost sharing limits may be a practical route. In 2022, Texas A&M University researchers published a study of medical care utilization of employees enrolled in high deductible health plans.[47] According to this study, employees who earned less than $75,000 per year were less likely to use primary care and preventative care services than their higher earning

[46] 15 U.S.C. § 1665(e).

[47] Benjamin Ukert, PhD and Stephen Esquivel-Picket, PhD, *Disparities in Health Care Use Among Low-Salary and High-Salary Employees* AJMC, Volume 28, Issue 5, (May 9, 2022) https://www.ajmc.com/view/disparities-in-health-care-use-among-low-salary-and-high-salary-employees.

counter parts, resulting in more utilization of acute and inpatient health services.[48] Restated, patients avoid care because they are underinsured, meaning "their health care costs and deductibles were especially high compared to their incomes."[49] The increased use of high deductible health plans is driving the increasing numbers of underinsured Americans.[50] Deductibles increased from an average of $533 in 2009 to $1,655 in 2019, and high-deductible health plan enrollment increased from 25.3% in 2010 to 47% in 2018.[51] The median American income in 2021 was $70,784.[52] The Internal Revenue Service's 2024 limit for high deductible health plans is $8,050 for individuals and $16,100 for a family.[53] Thus, for half of all American households, the maximum out of pocket limit for high deductible health plans exceeds 22% of annual household income—a financially suffocating amount for healthcare.

Given the high burden of maximum out of pocket expenses, the Departments should endeavor to lower annual deductibles, which would reduce the financial burden of healthcare, and in turn reduce use of medical payment products. The Departments should evaluate moving insurance policies from annual deductibles to monthly cost-sharing limits.[54] Under a monthly annual cost limit, deductibles could be pro-rated on a monthly basis to 1/12th of the current annual deductible. This may help patients, including those suffering from acute illnesses, to access necessary care "without staring down a deductible that is more than their monthly take-home pay."[55] By moving to a monthly maximum, the reduced financial burden of healthcare could also reduce reliance on medical payment products.

IV. Medical Credit Cards May Be Used to Circumvent the No Surprises Act

Medical credit cards may circumvent the protections of the No Surprises Act. In addition to the federal protections against surprise billing, since 2016, Californians have been protected by Assembly Bill 72 (AB 72). AB 72's protections mirror the No Surprises Act, and increased network participation among providers and reduced the cost of care to Californians. Both the No Surprises Act and AB 72 have yielded positive protections and results for patients, but medical credit cards could be used circumvent these protections.

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[48] *Id.*

[49] David Blumenthal and Sara Collins, *Millions of Americans have health insurance that isn't 'good enough'*, STAT News (November 4, 2022), https://www.statnews.com/2022/11/04/millions-americans-health-insurance-isnt-good-enough/.

[50] Paul Shafer, *supra*. *Rethinking Annual Deductibles: The Case for Monthly Cost-Sharing Limits*, Health Affairs (October 16, 2020).

[51] *Id.*

[52] https://www.census.gov/library/publications/2022/demo/p60-276.html

[53] https://www.irs.gov/pub/irs-drop/rp-23-23.pdf.

[54] Paul Shafer, Michal Horný & Stacie B. Dusetzina, *Rethinking Annual Deductibles: The Case for Monthly Cost-Sharing Limits*, Health Affairs (October 16, 2020), https://www.healthaffairs.org/content/forefront/rethinking-annual-deductibles-case-monthly-cost-sharing-limits.

[55] *Id.*

First, medical credit card companies advertise that medical credit cards can be used to pay surprise bills. A CareCredit commercial first published on April 28, 2022 specifically suggests that CareCredit cards can be used to pay "unexpectedly high" or "surprise" bills.[56] Second, in anticipation of potential insurance disputes, some medical providers have started to collect expected co-insurance from patients prior to submitting claims to patient's insurance company.[57] This practice may infringe upon the protections of the No Surprises Act if the bills exceed the patient's actual co-insurance responsibility. A medical provider who engages in this practice, and offers medical credit card sign ups, may have patients sign up for these credit cards to pay the expected co-insurance. This allows the provider to receive payment immediately at a higher rate than allowed by the No Surprises Act. Meanwhile, patients are subject to surprise billing and lose medical debt protections. Third, the No Surprises Act does not encompass unexpected medical bills caused by rising medical prices, higher deductibles, and underinsurance, which may ultimately force patients to turn to medical credit cards.[58] Thus, by scrutinizing medical credit cards, the Departments may strengthen the No Surprises Act's protections.

V. Conclusion

I strongly support the Departments' effort to address medical payment products and explore options to expand patient protections, including protections similar to or greater than those offered to patients in California. I appreciate your consideration of these comments and look forward to a continued partnership. Please do not hesitate to contact my office if you have any follow up questions or concerns.

Sincerely,

ROB BONTA
California Attorney General

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[56] https://www.youtube.com/watch?v=hgqIX7HOJik.

[57] *More hospitals want patients to pay in advance. Is that radical transparency—or unfair to patients?* (Updated March 20, 2023) https://www.advisory.com/daily-briefing/2021/10/13/advance-payment.

[58] Aaron Carroll, *What's Wrong With Health Insurance? Deductibles Are Ridiculous, for Starters* (July 7, 2022), https://www.nytimes.com/2022/07/07/opinion/medical-debt-health-care-cost.html.