AMA
AMERICAN MEDICAL ASSOCIATION

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

Re: Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information, Docket No. CFPB-2024-0023

Dear Director Chopra:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to offer our comments on the Consumer Financial Protection Bureau's (CFPB) notice of proposed rulemaking: Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V). The AMA appreciates the CFPB's proposals that would prohibit creditors from obtaining or using medical information related to debts, expenses, assets, or collateral, in connection with a credit eligibility determination, unless a specific exception otherwise applies to the creditor's consideration of the medical information. We also appreciate that, under the proposal, consumer reporting agencies would be prohibited from furnishing to a creditor a consumer report containing medical debt information in connection with a credit eligibility determination. The AMA applauds CFPB's recognition of the public health impacts of medical debt and the continued efforts to mitigate these effects. These proposals, if finalized, will be an important step towards reducing the financial impact on patients and physicians.

An estimated 100 million people in the United States (41 percent of adults) have debt related to unpaid medical bills, totaling between $195-220 billion.[1] Of this 100 million, approximately 20 million people owe money directly to their, hospital, physician, or other non-physician provider.[2] The remaining 80 million people reflect those who have other debts associated with their health care (i.e., credit card debt, loans from family and friends, etc.) The CFPB estimates that $88 billion of total medical debt is reflected on Americans' credit reports.[3] A 2021 Census Bureau analysis estimated that 15 percent of households in the United States owed medical debt.[4] Medical debt is the leading cause of bankruptcy in the United States and can take many forms, including past due payments owed directly to a hospital, ongoing

[1] Levey, Noam N. 100 Million People in American Are Saddled with Health Care Debt. Kaiser Health News. June 16, 2022. https://kffhealthnews.org/news/article/diagnosis-debt-investigation-100-million-americans-hidden-medical-debt/.
[2] Rakshit, S. et. al. The burden of medical debt in the United States. Peterson-KFF Health System Tracker. February 12, 2024. https://www.healthsystemtracker.org/brief/the-burden-of-medical-debt-in-the-united-states/#:~:text=This%20analysis%20shows%20that%2020,%24220%20billion%20in%20medical%20debt.
[3] Shultz, Blake N., et. al. Hospital Debt Collection Practices Require Urgent Reform. Health Affairs. May 2, 2022. https://www.healthaffairs.org/content/forefront/hospital-debt-collection-practices-require-urgent-reform.
[4] *Supra*. Note 2.

payment plans, money owed to a bank or collector that has been assigned or sold the debt, credit card debt, and/or money borrowed from family or friends.[5] Medical debt can often be masked as other forms of debt when someone falls behind on other expenses (i.e., food, housing, household goods) to pay down their medical bills.[6] Those with unaffordable medical bills are more likely to skip or delay needed care, cut back on basic household expenses, take money out of retirement or college savings, or increase credit card debt.[7] Besides negative financial impacts, other consequences patients face include being contacted by collectors or experiencing negative credit score impacts, which make it difficult to buy a vehicle, get a job, or buy or rent a home. Additionally, there are consequences associated with care: one in seven adults with health care debt say they have been denied care due to unpaid medical bills.[8]

**Unpaid Medical Bills on Credit Reports Have Little to No Predictive Value Regarding One's Ability to Repay Other Loans**

Unpaid medical bills on credit reports have little to no predictive value because two-thirds of these bills are a one-time or short-term medical expense from a hospital stay or accident. Medical debt is not usually part of a pattern of debt but rather because of an unpredictable medical issue. The expense from the medical issue often lasts longer than the medical issue itself, as 63 percent of people who have medical debt say that they no longer need to receive the medical treatment that led to the initial bills. Even 46 percent of people with medical debt say that the illness or injury that led to the bills occurred more than a year ago.[9] These often short-term medical issues should not affect someone's ability to get loans, mortgages, or improve their credit score. Equifax, Experian, and TransUnion, three nationwide credit reporting organizations, have already taken many medical bills off of credit reports, supporting the idea that medical bills on credit reports do not have much value to credit companies.[10] Fair Isaac Corporation (FICO®) and VantageScore, two major credit scoring companies, have decreased the degree to which unpaid medical bills impact a consumer's score. VantageScore said that unpaid medical bills are not a good predictor of a consumer's creditworthiness, and it decided in 2022 that its credit scoring model will no longer consider unpaid medical bills when calculating scores.[11] FICO found that consumers with unpaid medical debt are less likely to default on credit accounts in the future than people with unpaid non-medical collections, so FICO changed their algorithm to differentiate between unpaid medical and non-medical debt, with unpaid medical debt having a smaller impact on the FICO score as unpaid non-medical debt.[12] Since unpaid medical bills have little to no predictive value regarding one's ability to repay other

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[5] Kona, Maanasa and Vrudhi Raimugia. State Protection Against Medical Debt: A Look at Policies Across the U.S. Commonwealth Fund. September 7, 2023. https://www.commonwealthfund.org/publications/fund-reports/2023/sep/state-protections-medical-debt-policies-across-us.

[6] Rae, Matthew, et. al. The burden of medical debt in the United States. Peterson-KFF Health System Tracker. March 10, 2022.

[7] *Ibid*.

[8] Lopes, Lunna, et. al. Health Care Debt in the U.S.: The Broad Consequences of Medical and Dental Bills. KFF. June 16, 2022. https://www.kff.org/health-costs/report/kff-health-care-debt-survey/.

[9] "The Burden of Medical Debt: Results from the Kaiser Family Foundation/ New York Times Medical Bills Survey." *Kaiser Family Foundation*, Jan. 2016, www.kff.org/wp-content/uploads/2016/01/8806-the-burden-of-medical-debt-results-from-the-kaiser-family-foundation-new-york-times-medical-bills-survey.pdf.

[10] "Equifax, Experian, and Transunion Support U.S. Consumers with Changes to Medical Collection Debt Reporting." *TransUnion*, 18 Mar. 2022, newsroom.transunion.com/equifax-experian-and-transunion-support-us-consumers-with-changes-to-medical-collection-debt-reporting/.

[11] "VantageScore Excluding Medical Bills from Credit Scores." *VantageScore*, 10 Aug. 2022, www.vantagescore.com/press_releases/vantagescore-excluding-medical-bills-from-credit-scores/.

[12] Dornhelm, Ethan. "The Impact of Medical Debt Collections on FICO Scores." *FICO Blog*, 13 Jul. 2015, www.fico.com/blogs/impact-medical-debt-collections-icor-scores.

loans, the AMA strongly supports the CFPB prohibition on the use of medical debt in credit eligibility determinations.

**Removal of the Financial Information Exception to the Creditor Prohibition on Obtaining or Using Medical Information**

The CFPB rule proposes to remove the financial information exception from Regulation V, while retaining certain elements of the exception relating to income, benefits, and the purpose of a loan. The proposed rule would specify that medical information related to income and benefits includes, among other things, "the dollar amount and continued eligibility for disability income, workers' compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment." Similar to the existing financial information exception, under the proposed rule, a creditor would be required to: (1) use such information in a manner and to an extent "no less favorable than it would use comparable information" and (2) not take into account the "consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis" as part of its credit eligibility determination.

The AMA supports the CFPB's proposal to remove the financial information exception for several key reasons. First, the removal aligns with the original intent of the Fair Credit Reporting Act to safeguard consumer privacy, particularly concerning sensitive medical information. By eliminating this exception, the rule prohibits creditors from inappropriately using medical debt information, which is often plagued with inaccuracies and errors due to the complexity of medical billing and reimbursement processes. Given that medical debt does not reliably predict a consumer's ability to repay other forms of credit, its inclusion in credit eligibility determinations is both unnecessary and potentially harmful. The AMA recognizes that medical debt can disproportionately impact vulnerable populations, including those with chronic illnesses, disabilities, and low-income individuals. Therefore, the removal of the financial information exception helps to mitigate these adverse effects.

Additionally, the AMA agrees that the proposed rule's retention of elements related to income and benefits is appropriate. This provision ensures that necessary financial information, such as disability or workers' compensation income, can still be considered by creditors without compromising the privacy and sensitivity of medical information. By maintaining these elements, the rule balances the need for accurate credit assessments with the protection of consumer privacy.

Further, the AMA agrees with CFPB's preliminary interpretation of the statute's use of the phrase "provision of health care" because it ensures that medical information related to debts accurately reflects the consumer's direct financial obligations to health care providers. This interpretation stipulates that the information must pertain specifically to debts arising from services provided directly by health care professionals. To ensure that sensitive medical data are not misused by creditors for non-health care-related purposes and to protect patients from being unfairly penalized, this approach limits the classification of medical information to debts that are directly owed to health care providers, their agents, or assignees. This prevents the mischaracterization or improper assignment of such debts.

The AMA agrees that including "agents and assignees" in the definition protects patients from third-party debt buyers and collectors and ensures that any entity handling medical debt must adhere to the same standards of privacy and accuracy as the original health care provider. It also acknowledges the unique nature of medical debt that, as explained earlier, often arises from unexpected and unavoidable medical expenses and treats it differently from other forms of consumer debt.

The AMA also recognizes the broader implications of this interpretation as it helps maintain trust between patients and physicians. Patients are more likely to seek necessary medical care when they know their financial information will be handled with care and used appropriately.

**Medical Credit Cards**

While overall this proposed rule to eliminate medical debt from credit reports is a positive step, it does not fully address the other complexities of medical debt. Specifically, the proposed definition of medical debt fails to account for medical credit cards, which play a significant role in exacerbating debt burdens for many patients. Medical credit cards often come with high-interest rates and can lead to substantial debt accumulation, adding to the financial strain faced by patients.

We urge the CFPB to amend its proposed rule to also apply to medical debts on general-purpose credit cards, medical credit cards, and medical payment products. Negative information regarding those debts is just as harmful as medical debt collection items on credit reports. This information should not be reported for the same reasons that medical debt generally should not be on credit reports—these debts are incurred for expenses that are involuntary and unexpected, and for which there is little ability for the consumer to negotiate prices or shop around.

**Tenant and Employment Screening**

In addition to affecting access to credit, medical debt on credit reports can also hinder the ability of patients to secure rental housing and employment. Credit reports that include medical debt are not a good predictor of a responsible tenant or employee. However, credit reports of prospective employees or tenants are examined by 90 percent of landlords[13] and 51 percent of employers.[14] Yet the proposed rule only applies to credit reports for creditors, not to specialty credit reports for employers or landlords. This leaves patients who have medical collection items on their credit reports vulnerable to denials of housing and employment.

As discussed above, studies show that medical debt is not a good predictor of creditworthiness. It is even less likely to predict whether someone will be a good tenant or worker. Moreover, as discussed above, medical debt disproportionately burdens Black and Latino individuals as well as individuals with disabilities. In fact, the U.S. Department of Housing and Urban Development recently released guidance noting the "significant and recognized limitations of credit scores as a predictor of likelihood to pay rent," and given the disparities in credit scores for protected classes such as race and disability, "overreliance on credit history poses a significant risk of having an unjustified discriminatory effect based on race or other protected characteristics."[15]

Using credit reports that include medical debt to determine whether or not to accept a prospective tenant can lead to people struggling to find somewhere to live or even turning to predatory landlords who charge

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[13] "TransUnion Independent Landlord Survey Insights." *My Smart Move*, 7 Aug. 2017, www.mysmartmove.com/blog/landlord-rental-market-survey-insights-infographic.

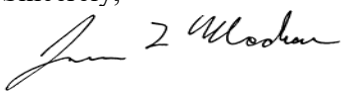
[14] "Why Employers Check Credit and What They See." *NerdWallet*, 9 Feb. 2024, www.nerdwallet.com/article/finance/credit-score-employer-checking.

[15] U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Guidance on Applications of the Fair Housing Act to the Screening of Applicants for Rental Housing (Apr. 29, 2024), www.hud.gov/sites/dfiles/FHEO/documents/FHEO_Guidance_on_Screening_of_Applicants_for_Rental_Housing.pdf.

high prices for low-quality housing. Of housing counselors and attorneys surveyed, 84 percent noted that their clients were denied private housing because of their credit score.[16] Medical debt should not impact someone's ability to get a home or a job, and the AMA urges the CFPB to extend the ban on medical debt on credit reports to tenant and employment screening to prevent this from occurring.

We thank you for the opportunity to provide input on this proposed rule. If you have any questions regarding this letter, please contact Margaret Garikes, Vice President of Federal Affairs, at margaret.garikes@ama-assn.org.

Sincerely,



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[16] Wu, Chi Chi, et al. "Digital Denials." *National Consumer Law Center*, Sept. 2023, www.nclc.org/wp-content/uploads/2023/09/202309_Report_Digital-Denials.pdf#page=56.