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Medical Debt Regulation

Shawn Gretz

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JUNE 11, 2024

FACT SHEET: Vice President Harris Announces Proposal to Prohibit Medical Bills from Being Included on Credit Reports and Calls on States and Localities to Take Further Actions to Reduce Medical Debt

FACT SHEET: Vice President Harris Announces Proposal to Prohibit Medical Bills from Being Included on Credit Reports and Calls on States and Localities to Take Further Actions to Reduce Medical Debt | The White House

Whitehouse- Recommendation #1

- **Leverage public dollars to purchase and eliminate medical debt;**

  American Rescue Plan funds are being used to eliminate an estimated $7 billion in medical debt for up to nearly 3 million of Americans

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Whitehouse- Recommendation #1

- Leverage ~~public dollars~~ tax dollars to purchase and eliminate medical debt;

Table A1. Use of Public Funds for Medical Debt Relief as of March 11, 2024

	Date Announced (1)	Source of Funds (2)	Funds ($, Millions) (3)	Debt Relief ($, Millions) (4)	Source (5)
Panel A. Programs Passed					
Cook County, IL	July, 2022	ARPA	12.0	1,000	Cook County Government
Akron, OH	March, 2023	ARPA	0.5	50	Public News Service
Cleveland, OH	April, 2023	ARPA	1.9	181	City of Cleveland
New Orleans, LA	May, 2023	ARPA	1.3	130	City of New Orleans
Pittsburgh, PA	August, 2023	ARPA	1.0	115	City of Pittsburgh
Toledo, OH	October, 2023	ARPA & Local Taxes	1.6	240	Mercy Health
Oakland County, MI	October, 2023	ARPA	2.0	200	Oakland County
Columbus, OH	October, 2023	ARPA	0.5	335	City of Columbus
Kalamazoo, MI	November, 2023	ARPA	0.5	89	MLive Media Group
St. Paul, MI	December, 2023	ARPA	1.0	100	MPR News
New York, NY	January, 2024	Local Taxes	18.0	2,000	NYC.gov
Connecticut	February, 2024	ARPA	6.5	650	Becker's Hospital Review
Arizona	March, 2024	ARPA	30.0	2,000	Office of the Governor, AZ
Wayne County, MI	March, 2024	ARPA	7.0	700	Michigan Advance
Ingham County, MI	March, 2024	State & Local Taxes	0.5	50	Ingham County
Total Passed			**84.3**	**7,840**	
Panel B. Programs Under Consideration					
New Jersey	March, 2023	ARPA	10.0	1,000	NJ Spotlight News
Los Angeles, CA	October, 2023	Local Taxes	24.0	2,000	County of Los Angeles
Pennsylvania	February, 2024	State Taxes	4.0	400	Spotlight PA
Orange County, FL	February, 2024	ARPA	4.5	450	Orlando Weekly
Chicago, IL	February, 2024	ARPA	10.0	1,000	Illinois.gov
Total Under Consideration			**52.5**	**4,850**	
Total			**136.8**	**12,690**	

Whitehouse- Recommendation #1

tax dollars

- Leverage ~~public dollars~~ to purchase and eliminate medical debt;

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Whitehouse- Recommendation #1

- Leverage ~~public dollars~~ tax dollars to purchase and eliminate medical debt;

The New York Times

Paying Off People's Medical Debt Has Little Impact on Their Lives, Study Finds

A nonprofit group called R.I.P. Medical Debt has relieved Americans of $11 billion in hospital bills. But that did not improve their mental health or their credit scores, a study found.

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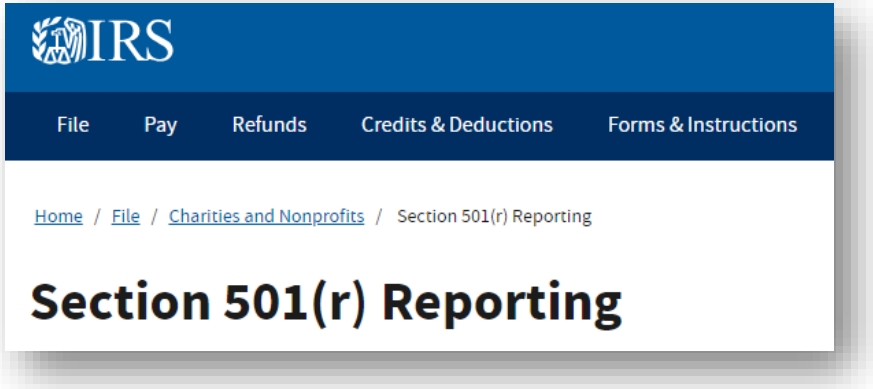
Whitehouse- Recommendation #2

- **Prevent accumulation of medical debt and protect patients from aggressive debt collectors by expanding access to charity care**; and

Despite receiving roughly $60 billion in tax breaks, too many nonprofit hospitals are failing to provide sufficient financial assistance – or failing to make known the availability of financial assistance – to low-income patients.



Whitehouse- Recommendation #3

- **Protect patients and consumers by limiting coercive debt collections practices by health care providers and third-party debt collectors.**

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CFPB Proposes to Ban Medical Bills from Credit Reports

Rule would remove as much as $49 billion of medical debts that unjustly lowers credit scores for 15 million Americans

JUN 11, 2024

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[CFPB Proposes to Ban Medical Bills from Credit Reports | Consumer Financial Protection Bureau (consumerfinance.gov)]

Administration Priorities The Record

JUNE 11, 2024

FACT SHEET: Vice President Harris Announces Proposal to Prohibit Medical Bills from Being Included on Credit Reports and Calls on States and Localities to Take Further Actions to Reduce Medical Debt

BRIEFING ROOM › STATEMENTS AND RELEASES

CFPB Proposes to Ban Medical Bills from Credit Reports

Rule would remove as much as $49 billion of medical debts that unjustly lowers credit scores for 15 million Americans

JUN 11, 2024

[CFPB Proposes to Ban Medical Bills from Credit Reports | Consumer Financial Protection Bureau (consumerfinance.gov)]

Rhetoric -

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1. *“Due to the complexity of medical billing, information about medical debt is often plagued with inaccuracies and errors.”*

2. *“Research has shown that medical debt has limited predictive value for credit underwriting purposes.”*
AND in several instances Director Chopra has said “no” predictive value.

3. “pressure consumers into paying medical debts that they may not owe.”

4. “health care providers and debt collectors exploit these complications and charge inflated or unearned bills.”

Senate Banking Committee

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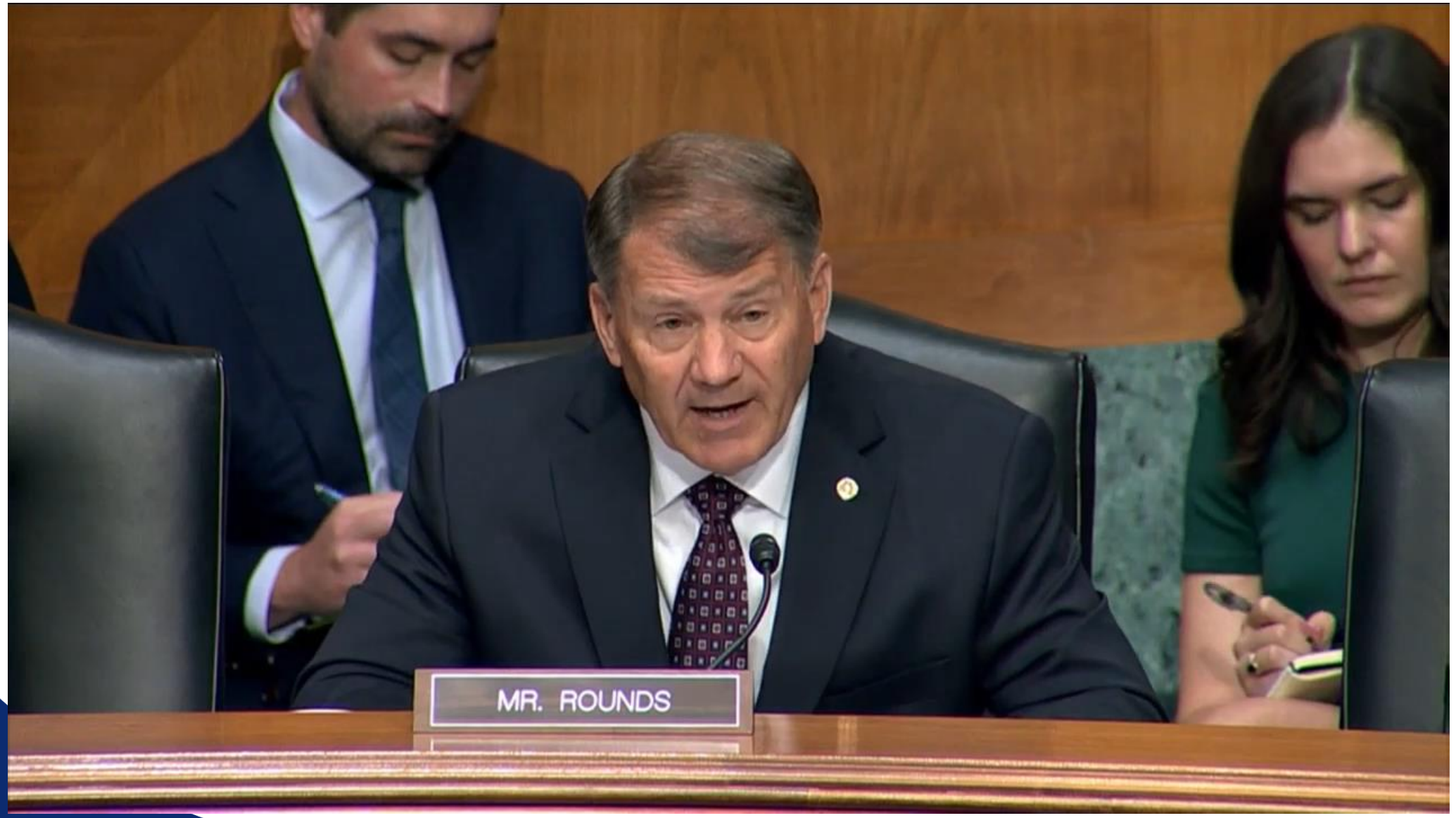

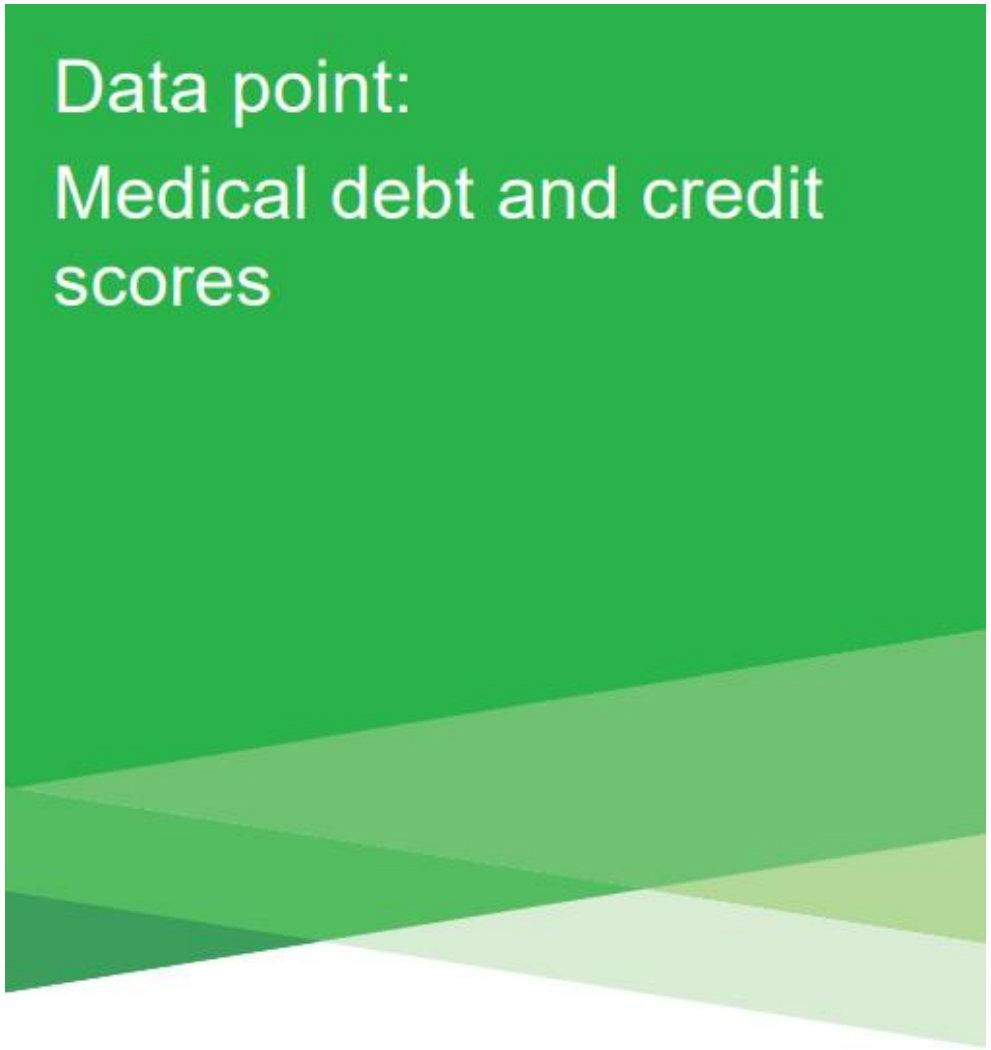

201405_cfpb_report_data-point_medical-debt-credit-scores.pdf (consumerfinance.gov)

Rhetoric - “Not”, “Limited”, or “Less” Predictive Value

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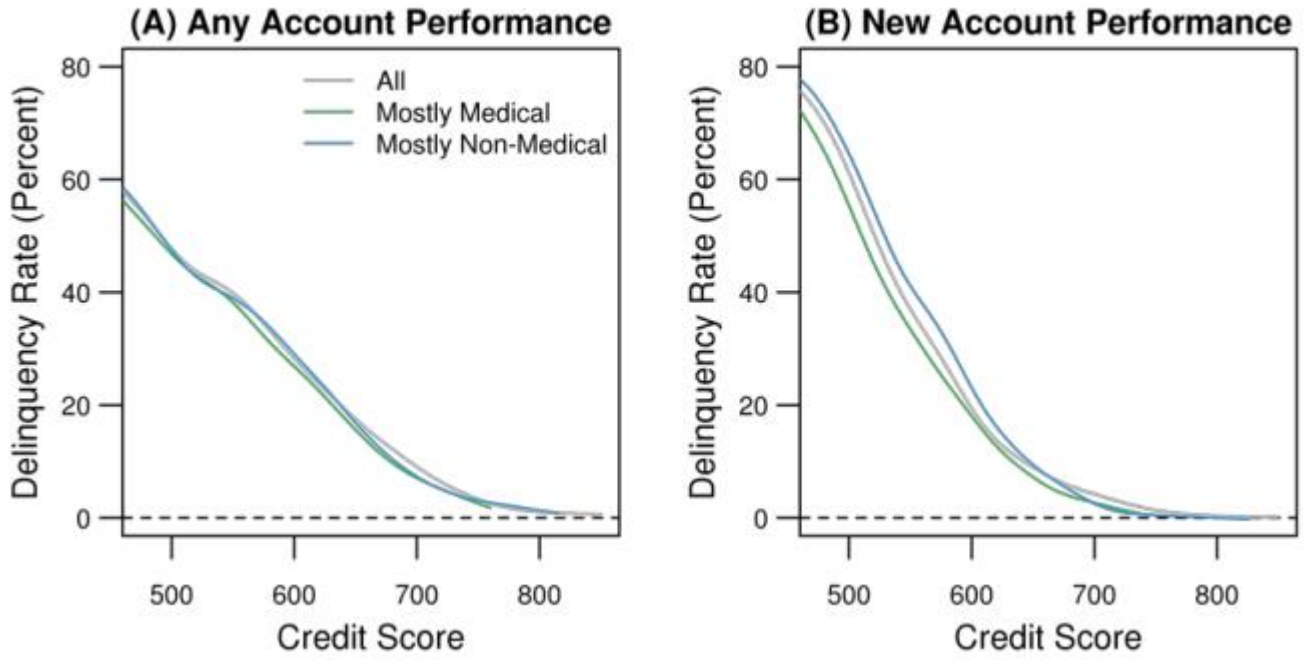
FIGURE 2: PERFORMANCE BY CREDIT SCORE, MEDICAL VS. NON-MEDICAL COLLECTIONS



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Fair Credit Reporting Act (ftc.gov)

Regulation Change

CFPB is proposing targeted amendments to Regulation V as follows:

- Remove the financial information exception which broadly permits creditors to obtain and use medical financial information (including information about medical debt) in connection with credit eligibility determinations, while retaining select elements of the exception related to income, benefits, and loan purpose; and
- Limit the circumstances under which consumer reporting agencies are permitted to furnish medical debt information to creditors in connection with credit eligibility determinations.

Notice of Proposed Rulemaking: Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) (consumerfinance.gov)

Definition of Medical

(j) *Medical debt information* means medical information that pertains to a debt owed by a consumer to a person whose primary business is providing medical services, products, or devices, or to such person's agent or assignee, for the provision of such medical services, products, or devices. Medical debt information includes but is not limited to medical bills that are not past due or that have been paid.

Medical Debt NPRM - Draft Redline (consumerfinance.gov)

What's Next?

The CFPB seeks comment on this preliminary conclusion regarding medical debt information, as well as on whether any adjustments to the proposed rule would be "necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes).

By When – August 12th

Implementation is 60 days

"The CFPB requests additional data from health care providers and debt collectors that can be used to quantify potential impacts on entities other than hospitals."

Medical Debt NPRM - Draft Redline (consumerfinance.gov)

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What to Comment?

EMERGENCY MEDICINE ASSOCIATES
600 NE 92nd Avenue
Vancouver, Washington 98664
360.514.2142 – Office
360.514.6820 – Fax
EMAofficestaff@gmail.com

Subject: CFPB-2024-0023-0001

Dear Esteemed Legislators,

As President of Emergency Medicine Associates, PC, serving at PeaceHealth Southwest Medical Center (PHSW) in Vancouver, WA, I am intimately aware of the complexities of providing top-tier emergency medical care in our region. PHSW stands as a crucial institution in southwest Washington, and we are southwest Washington's only certified center for strokes, heart attacks, and trauma. Our team of dedicated emergency medicine physicians is committed to delivering exceptional care, despite financial constraints, driven by our deep-rooted connection to the community, collaboration with skilled specialists, and the gratitude we receive from our hospital and its patients.

I am writing to express our concerns regarding CFPB-2024-0023-0001, which proposes "…that a consumer reporting agency generally may not furnish to a creditor a consumer report containing information on medical debt that the creditor is prohibited from using". At Emergency Medicine Associates (EMA), we are acutely aware of the financial strain medical expenses can impose on patients. In partnership with PeaceHealth Southwest, we actively work towards offering cost-effective care, incorporating a comprehensive charity care policy, and constantly refining our approach to alleviate financial burdens, particularly for those demonstrating significant need. We resort to legal measures only sparingly, impacting a small fraction of our patient population.

However, it is crucial to acknowledge the challenging economic landscape in which medical practices operate. Reduced clinic revenue, as a downstream consequence of legislative changes such as CFPB-2024-0023-0001, could critically impair our ability to attract and retain top medical talent and support staff. This, in turn, jeopardizes the quality of healthcare services we can provide. The erosion of wages may lead to a migration of skilled doctors to more financially stable environments, leaving our community bereft of essential medical expertise and compromising patient health.

The consequences of credit reporting measures, which we employ only sparingly, remains an essential recourse for our practice. It is primarily employed to address cases where individuals are capable but unwilling to settle their medical dues. Patients who are able to pay their medical bills but choose not to place undue financial burden on the healthcare system as a whole. Adverse credit reporting provides one of the few guardrails in our economy that ensure fair and equitable compensation to professionals as they conduct their business. Removing this option could lead to significant financial challenges for EMA and other medical practices in southwest Washington, with ripple effects on the quality of care we can provide.

In light of these considerations, I respectfully urge you to reconsider the progression of CFPB-2024-0023-0001. It is imperative that we find a balanced approach that protects the financial health of medical providers while also being sensitive to the economic challenges faced by patients. The continued provision of high-quality medical care in southwest Washington depends on finding this equilibrium.

Thank you for your attention to this matter. We are committed to working collaboratively towards solutions that serve the best interests of our patients, our practice, and the wider community.

Sincerely,

Joshua Hurwitz, MD
President
Emergency Medicine Associates
600 NE 92nd Ave
Vancouver, WA 98664
Office: 360.514.2142

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From: jones immediatecarenc.com
To: 2024-NPRM-MEDICAL-DEBT
Subject: Docket No. CFPB-2024-2023
Date: Tuesday, June 18, 2024 12:42:00 PM

Attention: Consumer Financial Protection Bureau

I would like to express my opposition to the proposed ruling to prevent medical debt from appearing on consumer credit reports. We are concerned about the impacts this will have on our business and our ability to recover money owed to us from debtors. As a medical practice this change will have a negative impact to our financial success. I urge you to not make this change and help protect medical practices in their pursuit to collect medical debt balances.

Gilbert Kirk Jones, MD
Immediate Care of Goldsboro

#1 - "Sensitive" – Page 3

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The CFPB entire proposal is around centers around what CFPB considers "Sensitive" medical information.

A. Rulemaking Goals

Information about a person's medical history and health is sacrosanct and among the most intimate and sensitive categories of data. Recognizing the uniquely sensitive nature of such information, Congress acted to limit the use and sharing of medical information in the financial system.[1] Congress did so in order to "establish strong privacy protections for consumers' sensitive medical information," in line with the overarching privacy protection purpose of the Fair Credit Reporting Act (FCRA).[2] As part of these protections, Congress restricted a creditor's ability to obtain or use a consumer's medical information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.[3] A number of concerns have been raised about whether a regulatory exception that permits creditors to consider sensitive medical information about a consumer's debts and certain other types of medical information is consistent with the congressional intent to restrict the use of medical information for inappropriate purposes.

Notice of Proposed Rulemaking: Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) (consumerfinance.gov)

Response - “Sensitive”

HIPAA § 164.501- Definitions -
Payment means:
(1) The activities undertaken by:
(i) Except as prohibited under § 164.502(a)(5)(i), a health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or
(ii) A health care provider or health plan to obtain or provide reimbursement for the provision of health care; and
(2) The activities in paragraph (1) of this definition relate to the individual to whom health care is provided and include, but are not limited to:
(vi) Disclosure to consumer reporting agencies of any of the following protected health information relating to collection of premiums or reimbursement:
(A) Name and address;
(B) Date of birth;
(C) Social security number;
(D) Payment history;
(E) Account number; and
(F) Name and address of the health care provider and/or health plan.

Page 126 & 4*****

eCFR :: 45 CFR 164.501 -- Definitions.

#2 – Congress Intention 1022.30 (c)(3)(iii)

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(iii) In connection with a consumer's application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.

Response - 1022.30 (c)(3)(iii)

A: In 2003, Congress did in fact pass Fact Act –
This act gave the right to have medical information to make credit decisions. In particular they specifically made the example of –
"In connection with a consumer's application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency."
CFPB is changing this example and is not the intended purpose of congress.

Page 51 & 116***

#3 – Point of Service Collections

The CFPB discusses that many a majority of healthcare already collects payment at the time of service and such, it should not be an issue that point of service collections increases -

***Page 73, 102, 103

[177] According to an HFMA survey, 96 percent of health care industry respondents reported having pre-payment or point-of-service collection policies and procedures. Healthcare Fin. Mgmt. Ass'n, *Analyzing pre-payment and point-of-service collections efforts* (Aug. 15, 2021), https://www.hfma.org/technology/analyzing-pre-payment-and-point-of-service-collections-efforts/.

Response – POS Collections

A: The CFPB's assumption that the existence of point-of-service collection policies translates to 96% of patients making such payments is fundamentally flawed. While the HFMA survey indicates that 96% of healthcare industry respondents have pre-payment or point-of-service collection policies, this does not directly correlate to the same percentage of patients actually making these payments. The existence of a policy does not guarantee its uniform application or effectiveness across all patient interactions. Various factors, such as the patient's financial situation, type of service patients present for such as ER, the complexity of billing processes, and the timing and clarity of payment requests, can significantly influence the actual rate of point-of-service collections. Therefore, the CFPB's assumption oversimplifies the practical challenges and realities faced by healthcare providers in managing patient payments, leading to an inaccurate representation of the situation.

***Page 73 &75

#4 – CFPB's own lack of Understanding

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It is the CFPB's understanding that health care providers and debt collectors they contract with currently use three types of collection practices to collect medical debt: contacting consumers by mail, phone, or other means; debt collection litigation; and furnishing medical collections information to consumer reporting agencies. The impact analysis considers how health care providers and debt collectors may respond to the proposed rule by switching to the first two collection practices if furnishing becomes a less effective means of inducing payment.

Response – CFPB Understanding

A: The lack of responses from consumer is the reason why the vast majority consumers flow to collection from medical providers. After a patient has been seen, they have little incentive to follow through with the financial commitment.

Our outbound communications attempts after dates of service include -

- 3 statements
- final notice
- & multiple outbound phone attempts

Accounts are forwarded to a collection agency to attempt to communicate with patients.

Collection agencies not only help us communicate with a consumer but also communicate additional programs that may be available including –

- Financial assistance
- Presumptive financial assistance analysis
- Insurance scrubs for correct payers
- Probate asset and liabilities
- Long termed payment plans
- Settlement offers

#5 – Small Fraction Paid

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"Because medical debt information generally would no longer be included on consumer reports provided for credit eligibility determinations, the proposed rule may reduce the effectiveness of this means of inducing payment on post-service billed amounts owed by the patient.

However, post-service billed amounts paid out of pocket by patients is a small fraction of overall health care revenue and thus the overall impact on revenue is likely to be limited.

***Page 83

[169] It is possible for debt collectors to furnish to consumer reporting agencies and pursue debt litigation for the same account. As discussed in *Costs to Medical Debt Collectors*, only 2.5 percent of medical collections on consumer reports are ever reported as paid. *See* Consumer Fin. Prot. Bureau, *Paid and Low-Balance Medical Collections on Consumer Credit Reports* (July 27, 2022), https://www.consumerfinance.gov/data-research/research-reports/paid-and-low-balance-medical-collections-on-consumer-credit-reports/.

Response Small Fraction Paid

A: The stated 2.5% of accounts paid according to the CFPB is drastically understated in several regards. The overall collection performance has been the following -

Gross	3 Months Collection Rate %	6 Months Collection Rate %	12 Months Collection Rate %	18 Months Collection Rate %
XYZ Hospital	8.80%	13.30%	20.00%	33.50%
ABC Hospital	8.90%	12.00%	15.60%	22.60%

You will notice a significant increase in recovery rate when an account reaches the credit bureaus. This performance will be lost if the removal of the credit bureaus is allowed and will harm XYZ.

#6 – Predictive

"…..Previous CFPB research showed that medical collections tradelines are less predictive of serious delinquency than nonmedical collections. "

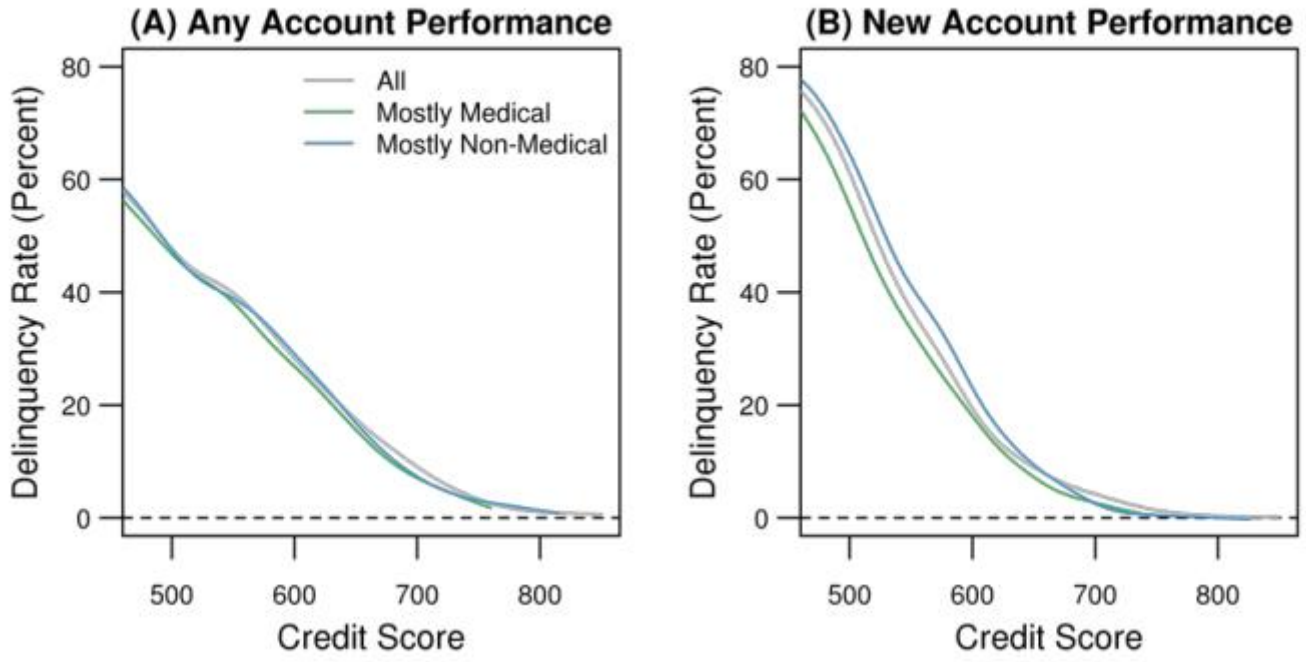
***Page 89

Response - Predictive

A: Medical debt does in fact provide a signal for creditworthiness and future delinquency as the 2013 study the CFPB has previously reported. Stripping a valid signal from the calculation of creditworthiness risks shifting the costs of subsequent defaults from those taking on riskier loans to the general pool of borrowers, and those likely to suffer the most from this shift are poor individuals with marginal credit.

***Page 89

FIGURE 2: PERFORMANCE BY CREDIT SCORE, MEDICAL VS. NON-MEDICAL COLLECTIONS



#7 – Inaccuracies with Data

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"Furthermore, the summary statistics for consumers in the full sample are similar to those for the over-$500 sample, but consumers in the over-$500 have nearly two fewer medical collections reported within 180 days of an inquiry in the sample. Though this at first may seem counterintuitive, this is because consumers with several medical collections often have at least one medical collection valued under $500 which removes them from the over-$500 subsample."

***Page 144

Response - Inaccuracies with Data

Limitations: There are additional properties of the CFPB analysis that limit its usefulness and generalizability in the regression analysis performed in XI. Technical Appendix . For example, individuals with multiple debt issues were more likely to be excluded from the dataset because the analysis eliminated individuals with any medical debt issues below $500 (even if they also had debts above $500), making the resulting population both narrower and potentially biased, particularly as the remaining individuals with multiple debt issues (all above $500) were weighted more heavily in the analysis.

The XI. Technical Appendix can not quantify the number of consumers who never applied for credit because they owed medical providers.

These two limitations of the regression analysis prohibit usefulness of the study.

#8 – Litigate More

Potential Increased Use of Litigation to Collect Medical Debt

“The potential for revenue losses described above may affect the rate at which health care providers or the debt collectors they work with choose to file debt collection lawsuits against consumers.”

***Page 76, 105, and 107

Response - Litigate More

A: The CFPB's proposed rule to remove medical debt collections from consumer reports and potentially increase litigation by hospital systems is problematic for several reasons. First, litigating medical debt is both costly and resource-intensive for all parties including hospital systems, collection attorneys, and patients. Pursuing legal action involves fixed and variable costs, such as attorney fees and court filing fees, which can strain the financial resources of healthcare providers already operating on thin margins. The increase in costs reduces the amount spent directly on patient care and only increase the overall cost of healthcare. Second, the increased frequency of lawsuits would also impose administrative burdens and divert attention from patient care. Third, several jurisdiction and/or states do not allow for medical debt litigation thereby preventing this as an option.

#9 – Thin Credit Files

[210] A thin credit file is a consumer report that contains fewer than five credit accounts. Jennifer White, Experian, *What is a Thin Credit File?* (May 25, 2022), https://www.experian.com/blogs/ask-experian/what-is-a-thin-credit-file-and-how-will-it-impact-your-life/.

Response – Thin Credit File

A: As defined on page 91, thin credit files will impact the medical provider community as well. Medical providers regularly rely on credit reports information for validating medical identity theft situations. Medical providers often use the credit bureaus for presumptively qualifying patients for financial assistance. Medical providers regularly use the credit bureaus for updating demographic information. Medical providers regularly use demographic information for validations of insurance providers.

It is highly likely that furnishers will discontinue sending medical information to credit bureaus and as such will degrade the information from the ***Page 15*** 15 million Americans who today have their information on the credit bureaus. This will cause thin credit bureau reports to be a larger occurrence. Medical collections tradelines still constitute a majority (57 percent) of all collections on consumer credit reports.

Page 67 & 91***

Additional Data - Providers

To quantify health care providers' exposure to unpaid medical bills, the CFPB used data from the Hospital Cost Reporting Information System (HCRIS), which is administered by the Centers for Medicare and Medicaid Services. The HCRIS data contain annual cost reports filed by Medicare-certified hospitals in the United States.

The data comprise information on hospitals, their revenues, operating costs, and bad debt expenses not reimbursable by Medicare. While almost all hospitals file these cost reports, the data do not include unpaid medical debts owed to health care providers that are not hospitals.

*****Each non-hospital should be submitting their own data for the amount of impact this could make to them especially by "provider" organizations.*

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State Legislation Trends

CFPB Affirms Ability for States to Police Credit Reporting Markets

The Fair Credit Reporting Act does not stop states from enacting laws to tackle credit reporting problems related to medical debt, tenant screening, and other consumer risks

JUN 28, 2022

States that have Already Removed Medical Debts from Credit Reports -

- New York
- Colorado
- Minnesota
- New Jersey
- Illinois
- Connecticut
- Rhode Island, and
- Virginia

Changes to the Statements Sent to Patients

- California
- Nevada
- Washington
- New Mexico
- Delaware

Statue of Limitation Changes

- Florida – 3 Years
- South Carolina – 3 Years

Financial Assistance Requirements Above and Beyond 501r Using Federal Poverty Limits

- Washington
- Oregon
- Illinois
- New Mexico
- New York

Restrictions on Collection Actions

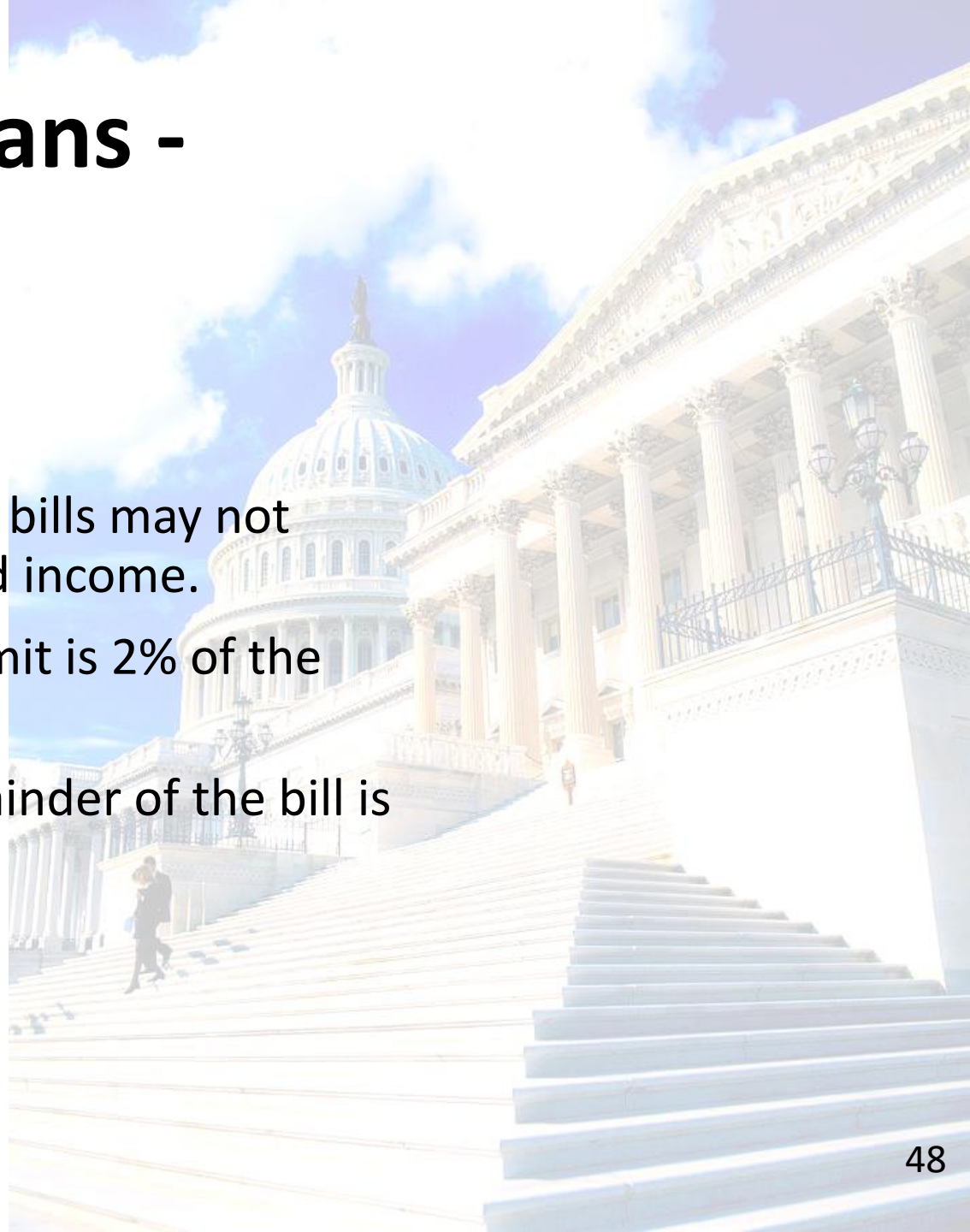
New Jersey –

- Interest cap - 3%
- 120 Days after 1st statement before sent to collections.
- If insurance review is pending cannot communicate with patients

Income Based Repayment Plans -

Colorado

- Payment plans that are established to pay the bills may not exceed 4% of the patient's monthly household income.
- For bills from health care professionals, the limit is 2% of the monthly household income.
- Once 36 payments have been made, the remainder of the bill is forgiven.



**** I am not a lawyer, people seeking legal advice should contact their attorney.