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SETTING THE GLOBAL STANDARD

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September 11, 2023

By Electronic Submission

Comment Intake—Request for Information Regarding Medical Payment Products
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

**Re: Request for Information Regarding Medical Payment Products
(Docket No. CFPB-2023-0038)**

To Whom It May Concern:

This letter is submitted on behalf of the Receivables Management Association International, Inc. (RMAI) in response to the Consumer Financial Protection Bureau's (Bureau's) request for information from the public and interested parties on medical credit cards, loans, and other financial products used to pay for health care.

I. INTRODUCTION

RMAI is a nonprofit trade association that represents more than 600 companies that purchase or support the purchase of performing and nonperforming receivables on the secondary market. RMAI member companies work in a variety of financial services fields, including debt buying companies, collection agencies, law firms, originating creditors, brokers, and industry-related product and service providers. RMAI's Receivables Management Certification Program (also referred to as RMCP or Certification Program)[1] and its Code of Ethics[2] set the "gold standard" within the receivables management industry due to RMAI's rigorous uniform industry standards of best practice which focus on protecting consumers and businesses.

In addition to requiring that certified businesses comply with local, state, and federal collection laws and regulations, the RMCP goes beyond these requirements by mandating additional standards. RMCP-certified businesses are subject to vigorous and recurring independent, third-party audits to demonstrate their compliance with the Certification Program. This audit includes an onsite inspection of the certified companies to validate full integration of RMCP standards into their business operations. Following a company's initial certification, program review audits continue to be conducted every three years.

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[1] Receivables Management Association International, *Receivables Management Certification Program, Ver. 10* (Mar. 1, 2023), publicly available at https://perma.cc/7D8Q-KGVC (last accessed September 6, 2023).
[2] Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at https://perma.cc/BM6J-USGY (last accessed September 6, 2023).

Program certification also requires RMAI-certified businesses to engage a chief compliance officer, with a direct or indirect reporting line to the president, chief executive officer, board of directors, or general counsel of the business. The chief compliance officer must maintain individual certification through the RMCP by completing 24 credit hours of continuing education every two years.

A small portion of our membership is engaged in the purchase of healthcare related debt or support the purchase of performing and nonperforming healthcare receivables on the secondary market. However, we have witnessed several states propose legislation to regulate the collection of healthcare debt which contained very broad language that could be construed to cover debt having a primary purpose other than to provide healthcare goods or services. Based on our experiences in highlighting the challenges of an overly broad interpretation of healthcare debt, we are well suited to provide the Bureau with information on unintended consequences when credit cards, loans, and other financial products are used to pay for health care, but not exclusively for health care.

II. COMMENTS

A. General Questions.

Market-level inquiries

1. *What are the benefits, costs, and risks of medical payment products for consumers, health care providers, and companies offering these products?*

In the realm of healthcare, the associated financial burden can often be just as daunting as acute care medical services: they are rarely planned, and post-admission physical recovery restricts/reduces a patient's work life. Considering this, the availability of interest-free payment options serves as a critical lifeline for many consumers. These options allow individuals to break down their healthcare costs into manageable, interest-free installments, making medical expenses more affordable and less intimidating. By doing so, they alleviate some of the financial stress associated with healthcare, allowing patients to focus more on their recovery. Interest-bearing financial products in healthcare can exacerbate an already difficult situation. These programs can create a cycle of escalating debt for some consumers, making it harder to navigate an already complex and emotionally charged period in their lives. For this reason, we believe interest-free payment plans should continue to be promoted and utilized in the healthcare industry as a more consumer-centric and sustainable alternative to interest-bearing financial products.

Bad debt non-recourse programs can offer substantial benefits to hospitals by transforming potentially uncollectible patient accounts into immediate revenue. Non-recourse patient financing or debt purchase refers to a financial arrangement in the healthcare sector where a lending institution or specialized financial company purchases medical accounts from healthcare providers without holding the provider responsible for the patients' default on repayment. By selling these accounts to a third party, hospitals can instantly improve their cash flow, decrease administrative costs related to collection efforts, and better focus on their primary mission of providing healthcare. This approach eliminates the risk of ongoing attempts to collect debt, which can be time-consuming, expensive, and is a skill set that is not the primary mission of a hospital. Hospitals are not debt collectors and by opting for non-recourse write-offs, they move receivables collection to professionals, such as RMAI certified companies who are well-versed in compliant, consumer positive debt collection practices.

Recourse programs can be inherently riskier for healthcare institutions. In a recourse agreement, the hospital is often obligated to buy back uncollected debt, putting it at continued financial risk and making it responsible for any future collection efforts. Such an arrangement can make a provider financially liable as a lender, which may incentivize the provider to "force" patients into the program to minimize its own economic liabilities. This can tie up financial and human resources, diverting them away from healthcare provision and into the business of debt recovery, with which they are often not well equipped to handle.

4. *How concentrated is the medical payment product market, and what role do private equity firms play in this market?*

The patient financing market is marked by a high level of competition, featuring a multitude of players. This competitive landscape is advantageous for both hospitals and consumers. For hospitals, the competition among financing companies often results in better pricing models, flexible terms, and customized solutions tailored to specific healthcare environments. This allows medical institutions to choose a financing partner that aligns best with their operational needs and patient demographics, ultimately contributing to more effective revenue cycle management.

For consumers, a competitive market translates to an improved experience with more choices. With multiple financing options available, there is increased pressure on companies to offer consumer-friendly terms such as low or no interest rates, flexible repayment schedules, and straightforward, transparent contracts. This benefits patients by making healthcare more accessible and less financially burdensome, enabling them to focus on what really matters—getting the treatment they need. Overall, the competitive nature of the patient financing market serves as a catalyst for innovation, efficiency, and customer-centricity, benefiting all stakeholders in the healthcare ecosystem.

Several discerning Private Equity (PE) groups are strategically investing in healthcare account resolution companies that stand out not just for their contributions to the financial strength of healthcare providers, but also for their unwavering commitment to consumer satisfaction. Unlike broad-brush investment strategies, these PE firms are selectively partnering with companies that prioritize both fiscal responsibility and consumer well-being.

6. *What are the health equity impacts of medical payment products and related billing and collection policies and practices?*

It's a noteworthy fact that consumers in poorer areas often have more access to free care or more easily qualify for interest-free financing programs provided by hospitals. This is largely due to policies aimed at ensuring healthcare equity, including federal and state mandates that require hospitals to offer charity care or financial assistance programs to low-income individuals. Many hospitals also have a vested interest in serving their local communities and often extend no-interest financing options to residents who are less able to pay.[3]

The goal of these programs is to reduce the financial burden on patients who are already facing socioeconomic challenges, thereby making healthcare more accessible. By offering free or reduced-cost care and interest-free financing, hospitals improve community health over the long term, reducing the incidence of untreated conditions that could otherwise lead to emergency care, which is more costly for both the individual and the healthcare system.

Historically, credit has often been a limiting factor for many individuals, particularly those from economically challenged backgrounds. Their economic standing has, unfortunately, made it difficult, if not impossible, to obtain the credit necessary to address pressing healthcare needs. These more nuanced and empathetic financial options ensure that a larger demographic of consumers can now avail themselves to the credit facilities they need to address both urgent and elective healthcare services.

13. iii. *Are there different or other actions that agencies should consider for underserved communities, including Tribal communities and geographically isolated communities?*

iv. *What types of consumer complaints have States and localities received?*

Healthcare finance and collection companies have a significant role to play in ensuring equitable access to medical care across all communities. The financial aspects of healthcare should never be a barrier to receiving necessary medical attention. Therefore, it is crucial that these companies continue to seek out innovative and flexible solutions that cater to the diverse economic backgrounds and needs of all patients.

Additionally, these companies should make it a standard practice to regularly audit and reconcile balances. This not only ensures the accuracy of the bills but also helps to maintain trust between

[3] *See, e.g.,* Levinson, Hulver , and Neuman, "Hospital Charity Care: How It Works and Why It Matters," (Nov. 3, 2022), KFF https://www.kff.org/health-costs/issue-brief/hospital-charity-care-how-it-works-and-why-it-matters/, archived at https://perma.cc/NV6Z-5HMA.

the healthcare providers, finance companies, and patients. Mistakes can happen, and regular audits can catch these errors before they escalate into bigger issues that could jeopardize a patient's financial well-being or credit history.

Furthermore, it's imperative that healthcare finance and collection companies align with the charity care policies of the hospitals with which they work. Patients should be made aware of these policies and how to qualify for them, not only at the point of care but also at any time during the collection process.

Finally, the agencies should permit healthcare providers to engage in non-recourse debt sales as discussed above in II, A, 1 above. The practice instantly improves their cash flow, decreases administrative costs related to collection efforts, and allows healthcare providers in underserved communities, including Tribal communities and geographically isolated communities, to use their resources for their primary mission of providing healthcare.

14. ii. *Are there examples of regulation or enforcement at the State or local level to which the Federal government should look?*

Colorado House Bill 23-1126 was signed into law by Governor Polis on June 5, 2023. The bill prohibits the credit reporting of adverse information concerning medical debt, where medical debt does not include credit card debt, unless the card was issued specifically for the payment of health-care services or goods. However, due to grave concerns about how a medical debt credit reporting ban would impact consumers' creditworthiness, access to credit, medical debt burden, and economic stability, an accompanying study was added to the bill's provisions. The Colorado Department of Revenue is to deliver the conclusions of this study to the Legislature by January 1, 2028. We respectfully ask the CFPB to wait for the outcomes of this study before adopting similar standards on a federal level.

The federal Data is Contradictory

We believe such an inquiry is needed. Available data on the amount and impact of medical debt is inconsistent and contradictory. The "Affordable Care Act" (ACA) was passed in 2010 and was touted as "a step in the right direction, doing exactly what its name states: making health care more affordable for all Americans."[4] But it seems the opposite has happened and there is a belief that more Americans today are facing unmanageable medical debt than ever before. In a February 2022 report, the Bureau reported that "[m]edical debt is the most common collection tradeline reported on consumer credit records."[5] That same report found that there was a nearly two percent increase in the number of respondents reporting carrying medical debt between 2015 and 2018.[6]

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[4] Vivian Ho, *The Affordable Care Act: A New Way Forward*, AMA Journal of Ethics, (Nov. 2011).
[5] Consumer Financial Protection Bureau, *Medical Debt Burden in the United States*, p. 3 (Feb. 2022), Consumer Financial Protection Bureau.
[6] *Id.,* p. 7.

This data allows the conclusion that not only has the ACA failed to make healthcare "more affordable for all Americans," but the problem of rising medical debt is so severe that "more than 100 million people, or 41% of American adults, struggled to pay medical bills in 2022" according to a July 2023 article.[7]

But earlier this year we heard a different story from Washington. This past March, the Biden administration reported that because of ACA's "record-breaking enrollment numbers during the 2023 Marketplace Open Enrollment Period," Americans now benefit from "lower health care costs because of President Biden's American Rescue Plan (ARP) and Inflation Reduction Act (IRA)." In fact, "we have even more evidence that this law has lived up to its name, *providing a way for Americans to access quality, affordable health coverage*."[8] (emphasis added).

The Colorado Data is Contradictory

Colorado provides an example of the contradictory data. Colorado Senate Bill-93 was introduced on January 30 and signed into law on May 4, 2023. The bill's sponsors stated that "[m]edical debt is crushing hardworking Colorado families and limiting their ability to live the American Dream," citing the CFPB's February 2022 report, *supra.*[9] But in its 2022 Annual Report, Connect for Colorado, the state's ACA official health insurance marketplace, reported that more people have health insurance through "open enrollment" today than ever before.[10] In a March 2022 survey performed for The Robert Wood Johnson Foundation, 70% of Colorado respondents thought their healthcare costs were "affordable." And of that 70%, 40% responded that they thought their healthcare costs were "very affordable.""[11] In fact, only 11% of Colorado respondents believe their healthcare costs were "very unaffordable."[12]

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[7] Natasha Khwaja, *How State Courts Can Help Address America's Medical Debt Problem*, The Pew Charitable Trusts (Jul. 19, 2023) publicly available at https://www.pewtrusts.org/en/research-and-analysis/articles/2023/07/19/how-state-courts-can-help-address-americas-medical-debt-problem, archived at https://perma.cc/3RSM-QE5A.

[8] *Biden-Harris Administration Celebrates the Affordable Care Act's 13th Anniversary and Highlights Record-Breaking Coverage,* Press Release, US Department of Health and Human Services (Mar. 23, 2023) publicly available https://www.hhs.gov/about/news/2023/03/23/biden-harris-administration-celebrates-affordable-care-acts-13th-anniversary-highlights-record-breaking-coverage.html, archived at https://perma.cc/2FLN-URTB.

[9] *Cutter, Jaquez Lewis Bill to Protect Consumers From Harmful Medical Billing Practices Earns Committee Approval,* Colorado Senate Democrats, publicly available at https://www.senatedems.co/newsroom/cutter-jaquez-lewis-bill-to-protect-consumers-from-harmful-medical-billing-practices-earns-committee-approval, archived at https://perma.cc/8W5R-9EGT.

[10] https://c4-media.s3.amazonaws.com/wp-content/uploads/2023/01/13121653/C4HC_2022AnnualReport_FINAL.pdf, archived at https://perma.cc/MW6G-HQSB

[11] *How Coloradans Feel about Affordability and Healthcare Reform,* The Robert Wood Johnson Foundation, p. 8 (Mar. 2022) https://cohealthinitiative.org/wp-content/uploads/2022/03/CO-affordability-survey-cobranded-bilingual.pdf, archived at https://perma.cc/7PBU-TRGG.

[12] *Id.*

The data from Colorado only underscores the need for further investigation.

B. CFPB-Specific Questions.

1. *What actions should the CFPB consider taking to address problematic practices related to medical credit cards or loans, including debt collection and credit reporting practices?*

Define "Medical Debt."

To ensure clear and consistent interpretation, it is important that any definition of medical debt be one that was originated with and owed to a healthcare provider. While the credit and collections industry support consumer protections regarding surprise medical expenses from emergency room and other hospital visits, we have a concern that credit cards could be grouped together with all medical debt.

Consumer Privacy

Without a clear definition of "medical debt," we are concerned that any legislation could potentially lead medical debt to be construed in an overbroad manner to include not just direct payments due to hospitals and health care providers, but even charges for health-related items like over-the-counter cold medications, Band-Aids, "hot tubs,"[13] and even cats.[14] The purchase of such items using a credit card or other credit product can create a debt, but it is not one owed to a medical provider. In fact, in the case of a general-purpose credit card, for example, the credit grantor will have no information that the debt was incurred for medical reasons routinely purchased at places like Target, without asking the consumer to state then purpose of every purchase made with an extension of credit. To avoid such an overbroad interpretation, and to provide clarity on what is being referred to as "medical debt," we respectfully ask for a clear definition that "medical debt" is a debt arising from the receipt of health care services and owed directly to a health care facility or health care provider or its assignee.

Credit Cards

[13] *See, e.g.,* "How To Claim Your Hot Tub As A Medical Expense Deduction On Your Taxes," https://pooltechplus.com/how-to-claim-your-hot-tub-as-a-medical-expense-deduction-on-your-taxes/, archived at https://perma.cc/U6AE-N34Z; "Are Pools and Spas Tax Deductible as Medical Expenses?" https://www.verywellhealth.com/are-pools-spas-tax-deductible-as-medical-expenses-190499, archived at https://perma.cc/3EAT-9PL3

[14] "Kittens? Sex Toys? Pushing the Limits of Flexible Spending Accounts," Ron Lieber, The New York Times (Nov. 12, 2022) https://www.nytimes.com/2022/11/12/your-money/health-flexible-spending-account-uses.html, archived at https://perma.cc/PVR4-NU6C

The industry favors an explicit carve-out from the definition of medical debt for credit cards, as follows: "'Medical debt' means an obligation or alleged obligation of a consumer to pay any amount whatsoever related to the receipt of health care services, products, or devices provided to a person by a hospital or health care professional or an ambulance service. Medical debt does not include debt charged to a credit card."

Additionally, it is critical that all parties work diligently to ensure that fair and accurate information is portrayed publicly for and to the consumer. Our industry is a willing participant to any action that combats unethical behavior because it harms both consumers and legitimate businesses. Medical credit cards like CareCredit cards serve a beneficial purpose for consumers and are a way for people to pay for out-of-pocket costs not covered by insurance, like co-pays and deductibles, or elective procedures. Credit reporting of health care credit cards used for discretionary services and products can be useful in helping consumers build up their credit scores.

Restrictions on the collection of validly owed debt causes the availability of credit to decrease.[15] Credit is extended with the understanding that it will be paid back. While limiting accountability may at first blush seem to protect consumers, it leads to fewer credit extensions and higher interest rates on credit that is extended. In such circumstances, consumers will likely be forced to rely on high interest, installment, and payday loans as a detrimental alternative. Additionally, because of the elective nature of the products and services that can be purchased with health care credit cards, it is important that they continue to be credit reported, to accurately reflect any past due payments or charge-offs in the consumer's credit profile.

5. *To what extent are alleged debts placed on medical credit cards and loans sent to debt collectors? How do medical payment product companies' debt collection practices differ from those of health care providers, and are any issuer or provider debt collection practices posing risks to consumers?*

Because medical payment product offerings differ, they cannot be grouped together under a single definition. Each health care card product offers different payment plans and financing options. CareCredit, one type of medical care card, advertises the following financing options:

> No interest if Paid in Full Within 6, 12, 18 and 24 month financing options (sometimes called Deferred Interest) allows consumers to pay for purchases of $200 or more with minimum monthly payments made throughout the duration of the promotional period. While

[15] Fonseca, Strair and Zafar, *Access to Credit and Financial Health: Evaluating the Impact of Debt Collection*, p. 13, Federal Reserve Bank of New York, Staff Reports, (May 2017) (The authors observed a decrease in credit card and auto loan originations among consumers with the lowest credit scores following the enactment of 22 debt collection restrictions in 17 states.)

> interest accrues during the promotional period, it is not charged if the balance is paid in full by the end of the promotional period.[16]

Additionally, medical credit cards like CareCredit cards serve a beneficial purpose for consumers because they allow people to pay for out-of-pocket costs not covered by insurance, like co-pays and deductibles, or elective procedures. Credit reporting of health care credit cards used for discretionary services and products, unlike medical debt payments directly to health care providers, can be useful in helping consumers build up their credit scores.

Prohibitions and restrictions on the collection of validly owed debt causes the availability of credit to decrease.[17] While limiting accountability may at first blush seem to protect consumers, in reality it leads to fewer credit extensions and higher interest rates on credit that is extended. In such circumstances, consumers will likely be forced to rely on high interest, installment, and payday loans as a detrimental alternative. Additionally, because of the elective nature of the products and services that can be purchased with health care credit cards, it is important that they continue to be credit reported under the federal Fair Credit Reporting Act (15 U.S.C. § 1681, *et seq.*), to accurately reflect any past due payments or charge-offs in the consumer's credit profile.

8. *When hospitals write off a patient's debt as uncollectible or "bad debt" and cease attempts to collect, do they notify patients that collection attempts will cease? Would patients benefit from such notifications, and would such notifications reduce hospital revenue?*

Hospitals and collection agencies generally do an effective job of notifying consumers about collection activities, adhering both to internal procedures and external regulations such as the Fair Debt Collection Practices Act ("FDCPA," 15 U.S.C. § 1692, *et seq.*). The FDCPA sets stringent guidelines for how and when debt collectors can contact consumers, aiming to protect consumers from unfair or abusive practices. This multi-layered approach ensures that patients are well-informed about their financial obligations, providing ample opportunities for them to address any questions or concerns.

The ability for hospitals to collect debt is not just a financial necessity for the institutions involved, but also a critical factor in ensuring the sustainability of healthcare services for indigent, underserved and geographically isolated communities. Hospitals operate on thin margins and depend on timely payments to maintain operations, pay staff, and offer quality care to future patients. Often, the process of debt collection takes a long time due to factors like claim adjudication, where insurance providers review and assess claims before determining what they will pay. Additionally, long-term care scenarios can also contribute to the time it takes to finalize billing and commence the collections process.

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[16] https://www.carecredit.com/howcarecreditworks/prospective/, archived at https://perma.cc/PB54-EBNY
[17] *See* footnote 15, *supra.*
https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr814.pdf?sc_lang=en&hash=7FFC5C3E25C9F317D3B842F0A2604DC3, archived at https://perma.cc/C8WX-R5C4.

However, while it is essential for hospitals to recover owed funds, the approach to debt collection must be consumer-friendly and humane, considering the financial challenges that patients may face. Payment alternatives should strategically aim for flexibility, allowing for things like extended payment plans, sliding scales based on income, or zero-interest options. These alternatives can make it easier for patients to meet their financial responsibilities without adding the burden of insurmountable debt.

III. CONCLUSION

RMAI appreciates the opportunity to submit its observations concerning medical credit cards, loans, and other financial products used to pay for health care. RMAI values our long-standing working relationship with the Bureau and looks forward to assisting the Bureau in any capacity we can. Please do not hesitate to contact me if you need further clarification on RMAI's comments or if we can be of further assistance.

Sincerely,

Jan Stieger

Jan Stieger
Executive Director
Receivables Management Association International

cc: RMAI Board of Directors