

August 7, 2024



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By Electronic Submission

Comment Intake—2024 NPRM FCRA Medical Debt Information
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau,
1700 G Street NW, Washington, DC 20552

**Re: Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)
RIN 3170-AA54
(Docket No. CFPB-2024-0023)**

To Whom It May Concern:

This letter is submitted on behalf of the Receivables Management Association International (RMAI) in response to the Consumer Financial Protection Bureau's (Bureau's) request for comment on a proposed rule amending Regulation V, which implements the Fair Credit Reporting Act (FCRA), concerning medical information.

I. INTRODUCTION

RMAI is a nonprofit trade association that represents over 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 banks, credit unions, non-bank lenders, debt buying companies, collection agencies, law firms, 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 Ethics² 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. Several of our standards have been adopted at the state level and were recently used as framework by the Uniform Law Commission in their Uniform Consumer Debt Default Judgment Act.³

Rolled out in 2013, RMAI's Certification Program sets high and robust industry standards that seek to go above and beyond the requirements of state and federal law for the protection of consumers.⁴ While the program was first designed to certify debt buying companies, it has been expanded to

¹ Receivables Management Association International, *Receivables Management Certification Program, Ver. 12* (Mar. 1, 2023), publicly available at <https://perma.cc/7D8Q-KGVC> (last accessed July 16, 2024).

² Receivables Management Association International, *Code of Ethics* (August 13, 2015), publicly available at <https://perma.cc/BM6J-USGY> (last accessed July 16, 2024).

³ Uniform Consumer Debt Default Judgment Act, Prefatory Note ("this act seeks to incorporate provisions from . . . standards set by Receivables Management Association International, a debt collections trade organization.") archived at <https://perma.cc/T5TZ-CRC5>.

⁴ RMCP's Mission Statement reads in part, the certification program "is an industry self-regulatory program administered by RMAI that is designed to provide enhanced consumer protections through rigorous and uniform industry standards of best practice."

include certifications for law firms, collection agencies, and vendors (e.g., brokers and processors). Currently, over 500 businesses and individuals hold these internationally respected certifications. Presently, all the largest debt buying companies in the United States are RMAI certified, and we estimate that approximately 80 to 90 percent of all charged-off receivables that have been sold on the secondary market are owned by an RMAI certified company.

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 pre-certification audit and first full-compliance audit, independent program review audits continue to be conducted every three years. The audits are reviewed by an Audit Committee which has consumer representation. Beginning March 1, 2024, BBB National Programs is administering RMAI's Remediation Committee which is the committee that handles any unresolved audit deficiencies.

RMCP 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 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. Recently, RMAI has witnessed several states propose legislation to regulate the collection of healthcare debt using expansive language which could be construed to cover debt having a primary purpose other than to provide regulated or licensed healthcare goods or services. We believe these laws can be used by bad actors to convince unsuspecting consumers to incur "medical debt" related to products and services that are neither licensed, regulated or even recognized for the prevention, cure or treatment of an illness or disease. Therefore, our members are well suited to provide the Bureau with comment concerning its proposed rule.

II. COMMENTS

A. Proposal to eliminate the financial information exception – Judgments - 12 CFR 1022.30(d)

The Public Record for Civil Judgments Does Not Contain Information that a Payment Obligation is Owed (or was once owed) Directly to a Health Care Provider for the Provision of Health Care.

RMAI agrees with the Bureau's interpretation of FCRA section 603(i) "to mean that for information on a debt to be medical information under the FCRA, the information must relate to a debt arising from a payment obligation that the consumer owes (or at one time owed) directly to a health care provider for the provision of the health care underlying the payment obligation." 89 Fed. Reg. 51682, 51690 (June 18, 2024).

We understand this interpretation would capture medical debt sold or resold to a debt buyer or placed with a collection agency for collection.

However, the Bureau's discussion that the proposed rule "include[s] medical information in the form of a civil judgment arising from a debt collection action as to a medical debt directly owed to a health care provider or debt buyer . . ." encourages inaccuracies that will cause creditors harm. *Id.*

First, we do not believe it apparent on the face of a civil judgment whether the judgment arises from "the provision of the health care underlying the payment obligation." *Id.* Civil judgments appear in public records and typically contain the name of the plaintiff, the name of the defendant, the court that entered the judgment, the judgment amount and the date of the judgment. For example, attached Schedule 1 is information contained in a judgment search against publicly available records of the New Jersey Supreme Court. We searched the plaintiff as "RWJ" knowing this is the first three letters of the name of a health care provider.⁵ Examining the information contained in one judgment responsive to that search (see Schedule 1) a person can ascertain the name of the creditor, the name of the judgment debtor, the court which entered the judgment, the amount of the judgment, the date of the judgment and whether the judgment is "open" or "closed." Missing from the judgment search is information indicating whether the judgment debt arose from "provision of the health care underlying the payment obligation." Thus, a creditor who learns of this "civil judgment through other means," such as the example search here, could not determine whether the judgment debt arose from "provision of the health care underlying the payment obligation."

When a search returns information like that appearing in Schedule 1, one may assume the judgment debt arose from "provision of the health care underlying the payment obligation," if the researcher has prior knowledge that the judgment creditor is a "health care provider." However, the judgment could also represent a failed business transaction with a sole proprietor or a former employee's defalcation. We imagine judgments arising from a failed business transaction or a defalcation would be relevant to creditors. In fact, certain lending policies require "delinquent credit, including judgments and liens, to be paid off at or prior to" an extension of credit.⁶

As noted, the proposed rule would capture medical debt sold or resold to a debt buyer. Assuming the debt buyer's name does not include a reference to health care, nothing in the public record would allow one to assume the civil judgment encompasses the "provision of the health care underlying the payment obligation." Thus, where the underlying medical debt was purchased by a debt buyer and then reduced to judgment, a creditor would consider the judgment because nothing in the public record would contain information that the "obligation that was sold was created by a health care provider and at one time was owed to the health care provider."

Second, because the proposed definition limits coverage to debts owed or originally owed "to a person whose primary business is providing medical services, products, or devices, or to such person's agent or assignee," this information is also not available in the public records for civil judgments.

This information cannot be obtained without an individualized inquiry into the claims asserted in the civil lawsuit that led to the judgment *and* an individualized inquiry of the primary business of judgment creditor, which would likely involve a direct inquiry to the judgment creditor concerning

⁵ See <https://www.rwjbh.org/>, archived at <https://perma.cc/M7C5-ZZEL>. The search was performed on July 16, 2024.

⁶ Fannie Mae, Lender Letter LL-2017-02 (June 13, 2017) available at <https://singlefamily.fanniemae.com/media/15986/display>, archived at <https://perma.cc/DKX9-XWSX>.

its business practices. The burden on creditors to perform such an inquiry is substantial and outweighs any public benefit.⁷

Third, the proposed rule’s definition of medical information “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 . . .” *Id.*, at 51735. The proposed definition leaves no doubt that coverage extends only to a debt that was originally owed to a health care provider for health care services. The Bureau’s discussion takes a different route and states coverage extends to “medical information in the form of a civil judgment arising from a debt collection action as to a medical debt directly owed to a health care provider or debt buyer . . .” *Id.*, at 51690. Here “health care provider or debt buyer” are used as nouns and can be interpreted to mean the rule is intended to include medical debt owed to a debt buyer even if it originally was *not* “owed to a person whose primary business is providing medical services, products, or devices.”

We propose the Bureau strike the reference to civil judgments. However, if the Bureau will not strike civil judgments, we request the Bureau clarify its interpretation of civil judgments as follows:

Further, it would include medical information in the form of a civil judgment **which includes, other than the name of the judgment creditor, publicly available information that such civil judgment arises** from a debt collection action as to a medical debt directly owed to a health care provider or **to such person’s assignee-debt buyer**, whether provided on a consumer report, by the consumer on a credit application, or if the creditor learns of the civil judgment through other means.

This revision would relieve creditors of some individualized investigations of civil judgments and align civil judgments with the Bureau’s interpretation that “medical information on a consumer’s debt must relate to a debt the consumer owes (or owed) directly to a health care provider.” However, the “primary business” inquiry remains unresolved and would continue to create confusion and uncertainty and cause extraordinary hardship on creditors who would be left to make individualized inquiry of the judgment creditor’s (or original creditor’s) “primary business.”

B. The Proposed Medical Debt Information Definition Should Provide Greater Clarity for Consumers, Creditors, and Consumer Reporting Agencies.

The Proposed Definition Could Capture Persons Whose Primary Business is the Unlicensed or Unregulated Provision of “Medical Services.”

First, the proposed definition uses the terms “medical services, products, or devices” but the terms are never defined. Our experience is that persons can differ in their understanding of the services

⁷ Kluender, Raymond, Neale Mahoney, Francis Wong, and Wesley Yin, *The Effects of Medical Debt Relief: Evidence from Two Randomized Experiments*, NBER Working Paper Series, No. 32315, April 2024 (“We find no average effects of medical debt relief on the financial outcomes in credit bureau data in either of our experiments. We estimate a precise null effect on the number of accounts past due, our primary outcome for the credit report analysis.”) available at https://www.hbs.edu/ris/Publication%20Files/Kluender%20et%20al.%20Medical%20Debt%20Relief_7d9d6551-36ce-483b-9861-3e9bda764145.pdf, archived at <https://perma.cc/WM6N-HGL8>.

and goods these terms can encompass. For example, some believe pools and hot tubs are medical goods.⁸

Second, we believe the phrase “a person whose primary business is providing medical services, products, or devices,” was intended to encompass regulated or licensed persons who provide medical services, products or devices. It was not intended to cover unlicensed or unregulated providers of “complementary and alternative medicine” (“CAM”) which the National Center for Complementary and Integrative Health has defined as “a group of diverse medical and health care systems, practices, and products that are not presently considered to be part of conventional medicine.”⁹ However, the proposed rule could be construed to cover unlicensed or unregulated CAM providers whose primary business is providing unlicensed, unregulated or untested CAM services, goods and devices. The concern is not the use of all CAM, but untested, unlicensed or unregulated CAM provided by a person who is neither licensed nor regulated to provide health care services.¹⁰

Existing health care law does provide clarity to resolve both issues and we suggest the Bureau adopt such definitions. We propose the following:

(j) Medical debt information means medical information that pertains to a debt owed by a consumer to a person whose primary business is a **health care provider** 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. A **“health care provider”** means a provider of services (as defined in 42 U.S.C. 1395x(u)) or a provider of medical or health services (as defined in 42 U.S.C. 1395x(s)).

III. CONCLUSION

RMAI appreciates the opportunity to submit its comments concerning the proposed rule. 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.

⁸ 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>.

⁹ See e.g., Ventola CL. *Current Issues Regarding Complementary and Alternative Medicine (CAM) in the United States: Part 1: The Widespread Use of CAM and the Need for Better-Informed Health Care Professionals to Provide Patient Counseling*. P T. 2010 Aug;35(8):461-8. PMID: 20844696; PMCID: PMC2935644, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2935644/>, archived at <https://perma.cc/2SVY-45GM>.

¹⁰ Cohen, Michael H. and Harry Nelson, *Licensure of Complementary and Alternative Practitioners*, AMA Journal of Ethics (June 2011) (“From the state’s perspective, health care licensure protects patients from unskilled or unscrupulous practitioners. From the standpoint of health care professionals and groups, licensure offers legitimacy, credibility, and greater access to patients.”) available at <https://journalofethics.ama-assn.org/article/licensure-complementary-and-alternative-practitioners/2011-06>, archived at <https://perma.cc/L9FT-2Q3G>.

Sincerely,

Michael E. Becker

Michael Becker
Executive Director
Receivables Management Association International

cc: RMAI Board of Directors

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Name **Judgment #** **Docket #**

Judgment Number: **DJ 067345 22- RWJUH AT HAMILTON VS PITTS GREGORY**

Docket Number: **DC 002010 06**

Venue-Id: **MER**

Filing Location: **MERCER**

Court: **SCP**

Judgment Status: **Open**

Status Date: **05/31/2022**

Judgment Amount: **\$1155.70**

Court Costs: **\$38.00**

Interest: **\$0.00**

Attorney Fee: **\$38.11**

Other Amount: **\$0.00**

Processing Location: **MERCER**

Judgment Enter Date: **05/31/2022**

Time: **10:32AM**

Judgment Filing Date: **05/02/2006**

Party/Debt Summary

Debt ID: **1** Debt Status: **Open** Debt Amount: **\$1939.97** Attorney Fee: **\$0.00** Cost: **\$0.00** Interest: **\$0.00** Other Amount: **\$0.00** Debt Enter Date: **05/31/2022**

Name (Last, First MI, Suffix)	Role	Alternate Names	Party Debt Status	Status Date
RWJUH AT HAMILTON	CREDITOR		Open	05/31/2022
PITTS, GREGORY	DEBTOR		Open	05/31/2022

Document Summary

Document Type STAT FOR DOCKET	Document File Date 05/31/2022	Document Status
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