September 17, 2019

VIA ELECTRONIC SUBMISSION

Kathy Kraninger, Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, D.C. 20552

Re: Proposed Rule to amend Regulation F, Docket No. CFPB-2019-0022

Director Kraninger:

The National Health Law Program (NHeLP) is a public interest law firm working to advance access to quality health care and protect the legal rights of low-income and underserved individuals and families. We appreciate the opportunity to provide these comments on the Proposed Rule amending Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA).

NHeLP supports strong protections for people facing debt collection, including collections of medical debt. We believe that a person's individual circumstances—including income, wealth, and class—should not be predictive of whether or not a person has access to health care, nor of a person's health outcomes. Persistent debt collection efforts and the manner in which debt collectors contact people about debt can negatively affect one's health. We oppose the Proposed Rule as it stands, because it does not go far enough to protect people facing debt collection.

RECOMMENDATIONS: We recommend the Proposed Rule include these changes and additions:

- allow debt collectors only three attempts to call and only one conversation by call per week, per person (not per debt);
- include a right for the recipient to end debt collector phone calls by saying "stop calling";
- do not allow debt collectors to leave "limited content" messages with third parties, and do not allow exemptions from third-party disclosure rules;
- do not allow debt collectors to send electronic communications (text and email) without consent, and require full compliance with the E-Sign Act;
- do not allow lawsuits, threats, or out-of-court collection of time-barred debt, and do not allow lawsuits on revived debt;
- do not include a safe harbor for collection attorneys, meaning collection attorneys should review original account documents and have admissible evidence.

I. Many people have medical debt.

Medical debt is a widespread and substantial burden for household budgets in the United States. The Consumer Financial Protection Bureau (CFPB) reported in 2014 that half of all debt in collections is medical debt.[1] Nearly one in four adults have past-due medical debt.[2] The rate is highest among those who did not graduate high school, where the rate is thirty-seven percent.[3] Even among those who have health insurance, twenty-three percent have past-due medical debt, whether due to deductibles and co-pays, services not covered by their insurance, out-of-network costs, or debt from before they gained insurance.[4] The prevalence of medical debt is highest among people of color: people in predominantly non-White zip codes are more likely to have medical debt than those in predominantly White zip codes.[5]

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[1] CFPB, *Consumer Credit Reports: A Study of Medical and Non-Medical Collections* (2014), https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.

[2] Michael Karpman & Kyle J. Caswell, Urban Inst., *Past-Due Medical Debt Among Nonelderly Adults 2012–15* at 4 (2017), https://www.urban.org/research/publication/past-due-medical-debt-among-nonelderly-adults-2012-15 (twenty-four percent of people aged eighteen to sixty-four nationwide reported past-due medical debt in 2015).

[3] *Id.* at 8.

[4] *Id*.

[5] Urban Inst., *Debt in America: An Interactive Map* (Dec. 6, 2017), https://apps.urban.org/features/debt-interactive-map/?type=medical&variable=perc_debt_med (last visited Aug. 21, 2019).

The concentration of medical debt is higher in states that chose not to expand Medicaid. In part, this discrepancy is because non-expansion states have higher rates of the uninsured. As of 2012, adults living in poverty in these non-expansion states reported higher rates of past-due medical bills than those in expansion states, and the gap has since widened.[6]

Health care costs directly impact other financial aspects of our lives. Nationally, thirty percent of adults report that paying for health care costs makes it difficult to pay for basic necessities like food, heat, and housing.[7]

Given the prevalence of medical debt in the U.S., as well as the concentration of medical debt in low-income communities, it is important that the Proposed Rule adequately address the reality of medical debt and take care not to harm the millions of people affected by medical debt.

II. Debt and debt collection have negative health consequences.

Many people do not first think about stress and worry as having tangible consequences for our health, but research shows that stress can absolutely contribute to worsened health outcomes. For instance, there is abundant evidence that chronic stress is associated with worsened health, including weakened immunity and susceptibility to disease, slower wound healing, and inflammation.[8] Maternal stress is even associated with lower birth weights.[9]

There is also a connection between debt and worsened health outcomes, which is backed up by research. Debt, medical or otherwise, is associated with worsened psychological and physical health, to the degree that some researchers name it as among the social

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[6] Aaron Sojourner & Ezra Golberstein, Health Aff., *Medicaid Expansion Reduced Unpaid Medical Debt and Increased Financial Satisfaction* (July 24, 2017), https://www.healthaffairs.org/do/10.1377/hblog20170724.061160/full/ (last visited Aug. 21, 2019).
[7] West Health Inst. & NORC at the University of Chicago, *Americans' Views of Healthcare Costs, Coverage, and Policy* 2 (Mar. 2018), http://www.norc.org/PDFs/WHI%20Healthcare%20Costs%20Coverage%20and%20Policy/WHI%20Healthcare%20Costs%20Coverage%20and%20Policy%20Issue%20Brief.pdf.
[8] Ronald Glaser & Janice K. Kiecolt-Glaser, *Stress-Induced Immune Dysfunction: Implications for Health*, 5 IMMUNOLOGY 243, 244–49 (2005).
[9] Vivette Glover, *Maternal Stress or Anxiety in Pregnancy and Emotional Development of the Child*, 871 BRITISH J. PSYCH. 105, 105 (1997), https://www.researchgate.net/publication/13889962_Maternal_stress_or_anxiety_in_pregnancy_and_emotional_development_of_the_child.

determinants of health, just like food access, housing, and education.[10] A person's subjective feeling of being more in debt, regardless of how they fare compared to the next person, is associated with worse cardiovascular health.[11] Unsecured debt, including medical debt, is linked to depression and worse psychological well-being.[12] This research illustrates that people internalize the stress of debt.

Given this framework, it is easy to understand the inverse relationship between debt collection efforts and good health. The psychological effect of constant, harassing phone calls and communications, like those from a debt collector, can be substantial. In 1991, a senator famously referred to unwanted calls as "the scourge of modern civilization. They wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone right out of the wall."[13] All of this suggests that more frequent reminders of debt, like collection attempts, could worsen health.

Because of the physical manifestations of stress brought on by debt, the Proposed Rule should go further to protect people from unneeded stress caused by debt collection efforts. The Rule should also give recipients of debt collection communications more control over how debt collectors can contact them.

III. Debt collection efforts affect future patient behavior.

In addition to the direct, negative consequences debt has on one's health, debt also affects future patient behavior. People often are aware they should seek medical attention, but do not, solely because of cost. Without stronger limitations on how frequently and disruptively debt collectors can communicate with consumers, the Proposed Rule has the potential to exacerbate this problem.

There is broad evidence that people ration their own health care to save money. Nationally, two in five adults reported skipping a recommended medical test or treatment

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[10] Elizabeth Sweet et al., *The High Price of Debt: Household Financial Debt and Its Impact on Mental and Physical Health*, 91 SOC. SCI. & MED. 94 (Aug. 2013) (among young adults) (attached as Ex. 1).
[11] *Id.* at 9.
[12] Karen A. Zurlo et al., *Unsecured Consumer Debt and Mental Health Outcomes in Middle-Aged and Older Americans*, 69 JOURNALS OF GERONTOLOGY, SERIES B: PSYCHOLOGICAL SCIS. & SOC. SCIS. 461, 467 (2014) (among adults over age fifty) (attached as Ex. 2).
[13] 137 Cong. Rec. 30,821 (1991).

in the last year due to costs.[14] Among households currently in medical debt, three out of five reported not seeing a doctor for a medical problem.[15]

People worried about costs sometimes forego even essential medical treatment. Decades of research into cost-sharing in Medicaid, Medicare, and private insurance shows that, when financial pressure is introduced, enrollees often skip necessary maintenance care.[16] This can lead to a health emergency—and more expensive care—later on.[17] For instance, a patient who tries to limit costs by taking their blood pressure medication less often becomes more likely to end up in the hospital with a heart attack.[18]

Even among insured patients with a cancer diagnosis, one in five use less than the prescribed amount of medication because of costs, and small but significant percentages avoid tests (nine percent), avoid procedures (seven percent), or skip appointments (four percent) because of costs.[19]

There is evidence that debt collection efforts make this problem worse. A 2004 study of patients at safety-net providers in Baltimore found that most patients with medical debt reported that the debt caused them to seek care from alternative providers, delay care, or avoid subsequent care.[20] This trend was more severe for people with less education and people experiencing homelessness, which the study said indicated "a more limited capacity to navigate the health system and greater susceptibility to intimidation or dissuasion from seeking needed care."[21] The study concluded with an explanation of why aggressive medical debt collection can be counterproductive:

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[14] West Health Institute, *supra* note 7, at 7.
[15] Nat'l Patient Advocate Found., *Medical Debt Fact Sheet* (Sept. 2017), https://www.npaf.org/wp-content/uploads/2017/10/Medical-Debt-Fact-Sheet_9.13.17_FINAL.pdf.
[16] *See* David Machledt & Jane Perkins, Nat'l Health Law Program, *Medicaid Premiums and Cost Sharing* 2–4 (Mar. 26, 2014), https://healthlaw.org/resource/medicaid-premiums-and-cost-sharing/; Sweet, *supra* note 10, at 9.
[17] *See* Machledt & Perkins, *supra* note 16, at 13 ("Simply put, sicker people with higher expenses are more likely to ration care when their costs go up and also more likely to suffer the consequences.").
[18] *Id.* at 4.
[19] S. Yousuf Zafar et al., *The Financial Toxicity of Cancer Treatment: A Pilot Study Assessing Out-of-Pocket Expenses and the Insured Cancer Patient's Experience*, 18 ONCOLOGIST 381, 383 (2013), http://theoncologist.alphamedpress.org/content/18/4/381.full.pdf (among insured patients).
[20] Thomas P. O'Toole et al., *Medical Debt and Aggressive Debt Restitution Practices*, 19 J. GEN. INTERNAL MED. 772, 775 (2004) (attached as Ex. 3). The authors added that collection of medical debt "should be linked to means testing with safeguards to ensure that it does not preclude subsequent health care delivery." *Id.* at 776–77.
[21] *Id.* at 775.

> Given the low likelihood of debt restitution from this urban poor sample, aggressively pursuing medical debt appears to mainly provide a strong deterrent to those patients who may want or need additional care at that facility. Ironically, the reported consequences of this practice were delayed and deferred treatment for 18.6% of respondents, preferential use of emergency department services by 10.4%, and going to a different provider for care where a diagnostic work-up and evaluation would need to be repeated by 24.5% of respondents. All of these scenarios increase the cost of subsequent health care episodes, which ultimately will be assumed by individual hospitals and providers, cost-shifted to full-pay patients, and result in unnecessary personal suffering and harm.[22]

The financial strain and stress brought on by overly aggressive debt collection efforts have the potential to make people skip medication or a trip to the doctor because of costs. The Proposed Rule should include stronger protections for people contacted by debt collectors.

IV. Constant debt calls serve little purpose.

When considering our recommended changes and additions, the Proposed Rule should also take into account that frequent calls and collection attempts serve no purpose other than to harass and annoy people into submission.

For many people with medical debt, the reality is that they will never be financially able to pay it off, no matter how many times they are contacted by a debt collector. Our health care system is saturated with stories like those of Carrie Barrett, a Memphis resident who owes $33,000 for an ER visit but makes $13,800 a year.[23] Ms. Barrett makes payments on her medical debt only by being "perpetually late" on her utility bill, letting her car insurance lapse, shorting other bills, and relying on payday loans.[24] There are many people who face large medical bills like Ms. Barrett. Among people who go into debt following a cancer diagnosis, for instance, a majority owe more than $10,000.[25]

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[22] *Id.* at 776.
[23] *E.g.*, Wendi C Thomas, *The US Hospitals Suing the Poor Over Bills They Can't Afford*, GUARDIAN, June 27, 2019, https://www.theguardian.com/us-news/2019/jun/27/us-hospitals-lawsuits-medical-bills (last visited Aug. 21, 2019).
[24] *Id.*
[25] Matthew P. Banegas et al., *For Working-Age Cancer Survivors, Medical Debt and Bankruptcy Create Financial Hardships*, 1 HEALTH AFF. 54, 56 (2016), https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2015.0830.

Additionally, disputes between insurers and providers, or mistakes in claims processing, often result in medical debt being attributed to the wrong person. One debt collector estimated that one in five medical claims received from providers was inaccurate.[26] The CFPB has previously noted that medical collection complaints are "much more likely to be about the existence, amount, or information pertaining to the debt" than other collections, indicating a higher rate of errors.[27] Consumer complaints are rife with stories of abuse, including situations where a patient and a medical provider agreed that a debt was in error but a debt collector refused to stop trying to collect it.[28] It can take months to resolve this type of problem.

It should be noted that the debt collection industry is structured in a way that protects and perpetuates abuse. Individual employees in the debt collection industry are typically paid on commission, are assigned several thousand accounts, and have high annual turnover.[29] Given these incentives, it is unsurprising that individual employees and debt collection firms operate as they do. The Proposed Rule should include reasonable limits on calls and communications by debt collectors.

V. Conclusion

NHeLP recommends that the Proposed Rule include stronger protections from debt collection attempts. Each of the recommendations (on p. 2 of this letter) will reduce the stress and worry caused by debt, including medical debt, by giving people more control and more protection from debt collection efforts. Without stronger protections, the Proposed Rule may have a tangible, negative effect on the health and behavior of people contacted by debt collectors.

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[26] Janna Herron, Bankrate, *How Will Unpaid Medical Bills Hurt Credit?* (Oct. 15, 2013), https://www.bankrate.com/finance/credit/will-unpaid-medical-bills-hurt-credit.aspx (last visited Aug. 21, 2019).
[27] CFPB *supra* note 1, at 6–7.
[28] U.S. Pub. Interest Research Grp. Educ. Fund, *Medical Debt Malpractice: Consumer Complaints About Medical Debt Collectors, and How the CFPB Can Help* 19–21 (Spring 2017), https://uspirgedfund.org/sites/pirg/files/reports/Medical%20Debt%20Malpractic%20vUS%20%281%29.pdf.
[29] CFPB, *Study of Third-Party Debt Collection Operations* 17 (July 2016), https://files.consumerfinance.gov/f/documents/20160727_cfpb_Third_Party_Debt_Collection_Operations_Study.pdf.

We appreciate your consideration of our comments. If you have questions about these comments, please contact Joe McLean (mclean@healthlaw.org) or Alicia Kauk (kauk@healthlaw.org).

Sincerely,

Jane Perkins
Legal Director