



DON'T ADD FURTHER INSULT TO INJURY

MEDICAL DEBT & CREDIT REPORTS



National
Consumer Law
Center
*Fighting Together
for Economic Justice*

January 2023



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Center**
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for Economic Justice*

ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services; and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state governments and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

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I. INTRODUCTION

In 2019, the National Consumer Law Center (NCLC) issued a report, *Don't Add Insult to Injury: Medical Debt & Credit Reports*, detailing the severe burden medical debt places on consumers, particularly the consequences of the presence of medical debt on consumer credit reports. Over three years later, there have been many developments on the national and state level to help consumers facing overwhelming medical debt. On the national level, Experian, Equifax, and TransUnion announced that they would not report medical debt for one year; will remove paid-off medical debt; and will not include unpaid medical debt of less than \$500 on a consumer's credit report. On the state level, policies include those of five states that enacted laws restricting the reporting of medical debt for uninsured or underinsured patients, or patients who have a dispute with their insurance company, and four states that enacted restrictions on reporting medical debt when the consumer should have been reviewed for and provided discounted care.

While such national and state restrictions on the reporting of medical debt are a good start, much more needs to be done to address the core issue: the accumulation of crippling medical debt on consumers. With roughly 26 million people in the United States who do not have health insurance,¹ and many more who do not have sufficient health insurance to cover medical expenses, the burden of medical debt is an albatross around consumers' necks. The problem is compounded by the negative impact of unpaid medical debts on credit reports, which limits access to jobs, transportation, housing, and credit, impairing the consumer's ability to fully repay the debt. Medical debt needs to be reduced and reporting needs to stop.

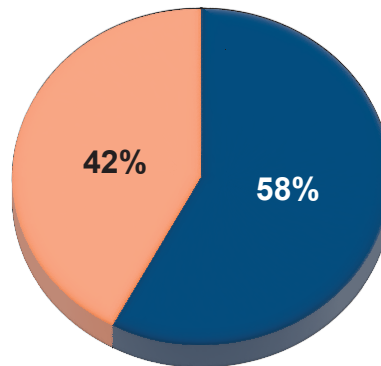
This update describes recent policy developments and proposed solutions that have come from state attorneys general, the Big Three credit bureaus, federal agencies, credit score developers, and federal and state legislators, and highlights recommendations for addressing the overwhelming burden on consumers that medical debt causes.

II. CONSUMERS FACE AN EPIDEMIC OF MEDICAL DEBT

The number of consumers whose medical debts have impacted their credit reports is staggering.

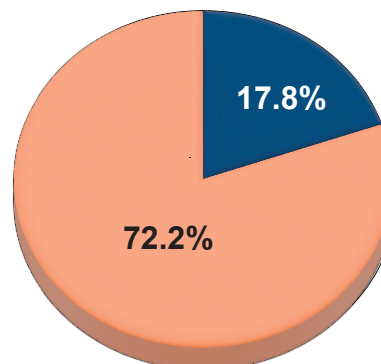
A shocking 58% of third-party collections items on consumers' credit reports in Q2 2021 were for medical debt.²

CHART 1 **Percentage of Third-Party Collections for Medical Debt**



An estimated 17.8% of individuals in the US had medical debt in collections in June 2020, which reflected care received even before the COVID pandemic.³

CHART 2 **Percentage of Americans with Medical Debt in Collections**



There was an estimated \$88 billion in medical debt on consumer credit records as of June 2021.⁴

III. HOW REPORTING OF MEDICAL DEBT HARMS CONSUMERS

Expenses for life-saving or medically necessary care are often unexpected, and can throw a family into an immediate financial crisis. This crisis is compounded when families cannot pay for these surprise expenses and the debt is reported to credit bureaus. The blemishes on a credit report (which employers and landlords as well as creditors may see) and the resulting lower credit scores can

Due to long-standing racial inequities in health and wealth, the medical debt crisis has impacted Black families more acutely than white families.

compromise a family's long-term financial stability by making access to mainstream credit, housing, and even employment more difficult.

Medical debts often become past due and are reported to credit bureaus because of payment delays due to billing or insurance disputes, consumer confusion, and the generally dysfunctional nature of healthcare

financing in the United States. Medical debts are almost always reported as debt collection items. The most commonly used credit scoring models treat unpaid medical debts negatively,⁵ even though medical debts are typically incurred involuntarily and may be riddled with problems such as billing errors and disputes with insurers over liability for accounts.⁶ Medical debt collections are also less predictive of the likelihood of default than other types of debt.⁷ The existence of medical debt on credit reports and the use of these outdated scoring models lowers credit scores,⁸ which can set families on a path to financial hardship that can last for years. Medical debt collections on a consumer's credit report can affect their ability to buy or rent a home, obtain an affordable rate on a car loan or insurance, and even their ability to find or retain employment.⁹

Due to long-standing racial inequities in health and wealth, the medical debt crisis has impacted Black families more acutely than white families.¹⁰ 27.9% of Black households carry medical debt compared to 17.2% of white non-Hispanic households.¹¹ Black and Hispanic communities, as well as young adults and low-income individuals, are disproportionately likely to have medical debt.¹²

IV. RECENT MAJOR MEDICAL DEBT DEVELOPMENTS

Since NCLC's 2019 report *Don't Add Insult to Injury*, significant federal and state protections have been put in place to help consumers avoid some of these blemishes on their credit reports.¹³

A. Recent Reforms at the Federal Level

No Surprises Act

The most significant development on the federal level since the Affordable Care Act in 2010 is the No Surprises Act, a federal law that went into effect in January 2022 that places limits on the costs of unanticipated out-of-network medical bills that can arise when a patient is unknowingly treated by an out-of-network provider.¹⁴ Because the Fair Credit Reporting Act (FCRA) requires accurate reporting of debts, medical debt that falls under the No Surprises Act should not be reported, because to report it as being owed would be inaccurate.

Voluntary Reforms by the Credit Bureaus

Two changes by the credit reporting industry will also help consumers. First, the Big Three nationwide credit bureaus— Experian, Equifax, and TransUnion— announced three voluntary measures:

- As of July 1, 2022, they will wait one year before reporting a medical debt to give consumers a chance to resolve insurance issues and billing errors; and
- they will remove medical debt that has been paid off; and
- Starting in the first half of 2023, they will not include unpaid medical debt of less than \$500.¹⁵

In addition, recent credit score algorithms developed by FICO weigh medical debt less heavily than other debts, and VantageScore announced that it will no longer consider medical debts in its credit scoring models, having determined that medical bills in collections are not good predictors.¹⁶

The CFPB issued two comprehensive reports involving medical debt and credit reporting. The first addressed the medical debt burden in the U.S. and discussed the harms caused by having past-due medical debt reported on credit reports.¹⁷ The CFPB stated the it will take steps to “determine whether policies should be implemented to eliminate unpaid medical billing data on credit reports altogether.”¹⁸ In a second report, the CFPB analyzed how the new reporting policies of Experian, Equifax, and TransUnion will affect people with unpaid medical debt on their credit reports. Nearly half of those with medical collections appearing on their credit reports will continue to see them there even after the changes fully go into effect.¹⁹

Action is still needed to keep consumers from incurring unaffordable medical debt in the first place (See *Comprehensive Two-pronged Reform* below) and to ensure that medical bills that are over \$500 do not harm families by wreaking havoc on their credit reports for years to come. The medical debts that remain on credit reports—unpaid debts over \$500—are more likely to harm patients who are financially and medically vulnerable, including people with disabilities and chronic conditions.²⁰ As the CFPB recently stated after analyzing how the actions by the Big Three credit bureaus will affect people who owe medical debt, “it is clear more work must be done to address medical debt credit reporting problems.”²¹

B. Reforms at the State Level

States have instituted a variety of protections through legislation and Attorney General enforcement actions.²² While the Big Three credit bureaus have voluntarily agreed they will not report medical debts on credit reports if the debt was fully paid, is less than a year old, or under \$500, it is not clear that they will not rescind these protections in the future or how enforceable these protections

are should a noncompliant medical debt appear. States should codify such protections or implement stronger protections.

In July 2022, the CFPB clarified in an interpretive rule that the scope of preemption provisions in the FCRA is narrow and targeted. States therefore should be able to pass laws to regulate the reporting of medical debt on credit reports.²³ The variety of approaches taken by the states are described below.

Maine, Maryland, and Washington enacted laws requiring a waiting period before medical debt can be reported to a credit bureau. For example, in 2019 **Washington** began prohibiting collection agencies from reporting medical debt to credit bureaus until at least 180 days after the collection agency receives the debt for collection or by assignment.²⁴ **Maine** has a similar prohibition, and also requires that once the credit bureau receives reasonable evidence that a medical debt has been settled or paid in full, it may not report that debt and must remove or suppress the debt from a credit report.²⁵ **California** joined them for 2022.

TABLE 1 States Prohibiting the Reporting of Medical Debt for a Period of Time After Billing

California	Medical debts may not be reported to credit bureaus for 180 days after initial billing. ^a Effective 1/1/22
Maine	Maine prohibits credit bureaus from reporting medical debt on a credit report for 180 days after the first delinquency. Additionally, once the credit bureau receives reasonable evidence that a medical debt has been settled or paid in full, it may not report that debt and must remove or suppress the debt from a credit report. ^b
Maryland	For 120 days after issuing an initial bill, a hospital may not report adverse information about a patient to a consumer reporting agency unless the hospital documents a lack of cooperation of the patient or the guarantor of the patient in providing information needed to determine the patient's financial obligation. ^c The law also requires hospitals to have a policy on the collection of debts owed by patients that prohibits a hospital from reporting to a consumer reporting agency or filing a civil action to collect a debt within 180 days after the initial bill is provided. ^d
Washington	Washington prohibits a collection agency from reporting medical debt to credit bureaus until at least 180 days after it has received the debt for collection or by assignment. ^e

a. Cal. Health & Safety Code § 127425(f).

b. Me. Rev. Stat. Ann. Tit. 10 § 1310-H(4) (2019).

c. Md. Code Ann., Health-Gen. § 19-214.2(d)(1).

d. Md. Code, Health-Gen. § 19-214.2(b)(5).

e. Wash. Rev. Code Ann. § 19.16.250(28)(c).

Not long after the effective date of Maine's new consumer protections around credit reporting, the Consumer Data Industry Association (CDIA) sued the state of Maine in federal court to invalidate the law as preempted by the FCRA.²⁶ The First Circuit rejected CDIA's challenge, stating "we conclude that Section 1681t(b) (1)(E) narrowly preempts state laws that impose requirements or prohibitions

with respect to the specific subject matters regulated under Section 1681c.”²⁷ CDIA has sought certiorari from the Supreme Court. CDIA’s opposition to the medical debt law is ironic given that Equifax, Experian, and TransUnion have voluntarily agreed to remove all paid medical debt from credit reports and not report medical debt for 365 days, which is an even stronger protection than the Maine law.

Even though Equifax, Experian, and TransUnion have announced that they will not report unpaid medical collection debt for 365 days,²⁸ this action is voluntary and states should consider legislation codifying this protection, extending it to a longer period of time, or even banning the reporting of medical debt. As detailed below, states should pass legislation prohibiting the reporting of medical debt on consumers’ credit reports altogether or, at least consider amendments to increase the time for reporting a medical debt to 365 days in light of the recent policies of the Big Three credit bureaus. The grace periods between billing and reporting a debt to a credit bureau give consumers time to resolve insurance issues and billing errors.

Short of prohibiting all reporting of medical debt, limiting the time period for reporting is not the only mechanism states have used to curtail the harmful reporting of medical debt on certain consumers’ credit reports. The following tables include other types of state laws that all aim to limit credit reporting of medical debt.

California, Colorado, Connecticut, and Texas restrict reporting of medical debt for patients who are uninsured or underinsured. While the federal No Surprises Act generally places limits on the financial obligation owed to out-of-network providers and the FCRA requires credit bureaus to ensure the information from providers is accurate, state laws can provide additional protections related specifically to credit reporting.

Even though Equifax, Experian, and TransUnion have announced that they will not report unpaid medical collection debt for 365 days, this action is voluntary and states should consider legislation codifying this protection, extending it to a longer period of time, or even banning the reporting of medical debt.

TABLE 2 States Restricting Reporting of Medical Debt for Uninsured or Underinsured Patients, or Patients Who Have a Dispute With Their Insurance Company

California	Hospitals ^a and emergency room physicians, their agents or assignees, or any other owner of patient debt (including a collection agency) ^b may not report adverse information to a credit agency about uninsured patients or patients who may have high medical costs (a person whose family income does not exceed 350 percent of the federal poverty level) ^c until 150 days after billing. ^d In the case of a pending insurance appeal, this period is extended until a final determination is made. ^e While California consumers are now also protected by a law that prohibits reporting adverse medical debt information to a credit reporting agency for 180 days, ^f the protection in this provision may be greater in the case of a long insurance appeal.
Colorado	If a hospital does not notify the patient of a debt that is not covered by insurance at least thirty days before beginning collection activity, ^g the hospital may not report adverse information about the patient to a consumer reporting agency. ^h The hospital must also “assist the person in correcting any adverse credit information because of [its] failure to provide” proper notice. ⁱ
Connecticut	It is an unfair trade practice for any health care provider to report to a credit reporting agency that a person who is enrolled in an individual or group health insurance policy or health benefit plan has failed to pay a bill for services, a facility fee, or a “surprise” ^j bill when a health carrier ^k has primary responsibility for payment. ^l
Texas	<p>A consumer reporting agency cannot furnish a consumer report containing information related to a collection account with a medical industry code if the consumer was covered by a health benefit plan at the time of service and the balance (after copayments, deductibles, and coinsurance) is owed to an emergency care provider or a facility-based provider for an out-of-network benefit claim.^m The Consumer Data Industry Association has asked a federal court to declare this Texas law preempted by the Fair Credit Reporting Act.ⁿ</p> <p>The CDIA continues to challenge a law in Texas that prohibits credit reporting if the consumer had health insurance and the debt is owed to an emergency care provider or a facility-based provider for an out-of-network benefit claim.^o The challenge is being made even though the No Surprises Act already prohibits billing for medical debt in those circumstances and requires the credit bureaus to ensure that the information reported is accurate.^p</p>

- a. Cal. Health & Safety Code § 127425(d).
- b. Cal. Health & Safety Code § 127455(c).
- c. Cal. Health & Safety Code §§ 127400(g).
- d. Cal. Health & Safety Code §§ 127425(d), 127455(c). California is not a party to the 2015 Attorney General settlement. Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance, *In re Equifax, et al.* (May 2015).
- e. Cal. Health & Safety Code § 127426(a), § 127456(a).
- f. [Cal. Health & Safety Code § 127425\(f\)](#).
- g. Colo. Rev. Stat. Ann. § 6-20-202(1)(b) (listing notice requirements).
- h. Colo. Rev. Stat. Ann. § 6-20-202(2)(a).
- i. *Id.*
- j. Conn. Gen. Stat. Ann. § 38a-477aa(a)(6) (defining “surprise bill”).
- k. Conn. Gen. Stat. Ann. § 38a-477aa(a)(5) (defining “health carrier”).
- l. Conn. Gen. Stat. Ann. § 20(r)(c).
- m. Tex. Bus. & Com. Code Ann. § 20.05(a)(5).
- n. Complaint, *Consumer Data Industry Association v. State of Texas*, Docket no. 1:19-cv-00876-RP (W.D.Tx. Sept. 9, 2019)(case is currently at the 5th Circuit on an interlocutory appeal of a denial of Defendant’s Motion to Dismiss).
- o. *Consumer Data Industry Association v. Texas through Paxton*, 564 F.Supp.3d 506, W.D.Tex.(Sep. 28, 2021).
- p. *Id.* (case is currently at the 5th Circuit on an interlocutory appeal of a denial of Defendant’s Motion to Dismiss).

Two states, **California** and **Texas**, prohibit certain healthcare professionals from reporting past due medical debt if a consumer is in a repayment plan.

TABLE 3 States Providing Protections for Consumers in Payment Plans

California	Hospitals ^a and emergency room physicians or their agents or assignees ^b may not report adverse credit information about a patient who has previously entered into an extended payment plan until the plan is declared inoperative. For a plan to be declared inoperative, a patient must miss all of the payments due over a 90-day period and the hospital must make reasonable efforts to notify the patient and offer the patient the opportunity to renegotiate the plan. ^c
Texas	Bills over \$200, after copayments and deductibles, from a facility-based physician ^d not covered by a patient's health benefit plan ^e must include a notice that: "if the patient finalizes a payment plan agreement within 45 days of receiving the first billing statement and substantially complies with the agreement, the facility-based physician may not furnish adverse information to a consumer reporting agency regarding an amount owed by the patient. . . ." ^f

- a. Cal. Health & Safety Code § 127425(g).
- b. Cal. Health & Safety Code § 127455(f).
- c. Cal. Health & Safety Code §§ 127425(g), 127455(f).
- d. Tex. Ins. Code Ann. § 1456.001(3) (defining "facility-based physician").
- e. Qualifying health benefit plans are detailed in Tex. Ins. Code Ann. § 1456.002.
- f. Tex. Ins. Code Ann. § 1456.004(a)(6).

Maryland enacted restrictions on reporting medical debt when the consumer would have been eligible for discounted care, and **Colorado** followed in 2021. Any negative reporting must be deleted if the consumer is found to be eligible for free, discounted, or subsidized care. **Maine** and **New Mexico** passed laws in 2021 to prohibit collection activity from patients who qualify for charity or indigent care. To the extent that credit reporting is held to be a form of debt collection activity, these laws will have an impact similar to those in Colorado and Maryland.

Maryland enacted restrictions on reporting medical debt when the consumer would have been eligible for discounted care, and Colorado followed in 2021. Any negative reporting must be deleted if the consumer is found to be eligible for free, discounted, or subsidized care.

TABLE 4 States That Have Expanded Medical Debt Consumer Protections for Patients Who Are Eligible for Discounted Care

Colorado	If a medical creditor learns that a patient should have been screened, and is eligible for discounted care or reimbursement from a public program, it must delete negative information on credit reports, ask a court to vacate or reduce any judgment to reflect the correct amount owed, refund to the patient any sums paid or seized in excess of the amount owed, and remedy any other extraordinary collection action. ^a Effective 6/1/2022.
Maine	If a debt collector has been notified, orally or in writing, by a creditor or the consumer of the consumer's actual or potential qualification for free or charity care (as defined), a debt collector may not collect or attempt to collect a debt for medical expenses against that consumer or against a consumer who would have been determined to be qualified for free or charity care but did not apply for good cause. If the notification is provided to a debt collector, the debt collector shall suspend collection efforts until the creditor has notified the debt collector and the consumer that the consumer is not qualified for free or charity care and, in that case, the debt collector may renew debt collection efforts. ^b Passed in 2021.
Maryland	A hospital shall have a policy that, if the hospital has obtained a judgment against or reported adverse information to a consumer reporting agency about a patient who later was found to be eligible for free care on the date of the service for which the judgment was awarded or the adverse information was reported, the hospital must seek to vacate the judgment or strike the adverse information. ^c
New Mexico	The Patients Debt Collection Protection Act prohibits debt collectors from pursuing certain collection actions against a patient that has been determined indigent including "activity intended to collect an unpaid medical debt." ^d Effective 12/28/2021

a. Colo. Rev. Stat. Ann. § 6-20-203.

b. Me. Rev. Stat. Ann. Tit. 32 §111013(11)(2021).

c. Md. Code Regs. 10.37.10.26(A-1)(2)(f).

d. N.M. Administrative Code, Ch. 10, Part 39.

South Carolina and **Utah** require that notice be provided about an unpaid medical debt to a consumer before reporting the debt to a credit bureau (South Carolina) or collecting the debt (Utah). Utah also requires notice that the debt may be reported if not paid. This forewarning gives consumers an opportunity to attempt to make payment arrangements before the debt is reported.²⁹

TABLE 5 States With Notice Requirements

South Carolina	A provider of health care services must give twenty days prior notice before submitting a debt to a credit bureau or credit reporting agency or filing a lien against real or personal property, and the consumer must be notified by mail of the creditor's intention. ^a
Utah	Before taking a collection action, a health care provider must give the patient notice via certified mail ^b of the balance owed and that it must be paid within 45 days (60 days if the patient is a Medicare beneficiary or retiree 65 years of age or older). ^c This notice must be given after the deadline (usually 30 days) for the insurer to pay the claim without penalty has expired, ^d or, in the case of a Medicare beneficiary or a retiree 65 years old or older, after Medicare has made a determination as to its liability for the claim. The notice must also explain that failure to pay in that time frame may result in a report to a credit bureau. ^e

a. S.C. Code Ann. § 37-5-117.

b. Utah Code Ann. § 31A-26-313(2)(a).

c. Utah Code Ann. § 31A-26-313(3)(b).

d. Utah Code Ann. § 31A-26-301.6(3)(a).

e. Utah Code Ann. § 31A-26-313(3)(c).

Maine, Maryland, Massachusetts, Missouri, and Ohio have enacted protections for certain patients, including when the payment of certain debts must be reported and how the debts of minor children, employees covered by workman’s compensation, and divorcing spouses can be reported.

TABLE 6 States With Protections Targeted at Particular Categories of Patients

Maine	Debt collectors may report overdue medical expenses for a minor child to a consumer reporting agency only in the name of the “responsible party identified in a court order or administrative order” and only if the debt collector is notified orally or in writing of the existence of the order. In addition, before reporting the debt, the debt collector must notify, or make a good faith effort to notify, the responsible party of the obligation to pay the overdue medical expenses. ^a
Maryland	A hospital’s policy on the collection of debts must include a provision that if a hospital reports adverse information to a consumer reporting agency about a patient who was later determined to be eligible for free care on the date of service, the hospital must seek to strike the information. ^b In addition, a hospital must report the fulfillment of a payment obligation within sixty days to any consumer reporting agency to which the hospital previously reported adverse information. ^c
Massachusetts	Health care providers are prohibited from sending information about unpaid charges to credit bureaus while a patient appeals the denial of insurance coverage or for thirty days after the appeal is resolved. ^d
Missouri	Under the worker compensation statute, no hospital, physician or other health care provider (other than one selected by the employee at their own expense) can report to any credit reporting agency any failure of an employee to pay for services, when an injury covered by the statute has occurred and the employee has given the hospital actual notice of the injury. ^e
Ohio	When a family court has ruled that a party must obtain health insurance coverage for children or a former spouse, and that party does not do so, then neither the health care provider nor a collection agency is allowed to report a medical debt to a credit reporting agency as being owed by the former spouse or the person who is responsible for the children. In addition, credit bureaus are prohibited from including the debt in the credit report of the former spouse or the person responsible for the children. These protections apply only if the former spouse, the children, or the person responsible for the children gives a copy of the order to the health care provider or collection agency and provides reasonable assistance in locating the responsible party and obtaining information about the health insurance. ^f

a. Me. Rev. Stat. Ann. tit. 10, § 1310(8).

b. Md. Code Regs. 10.37.10.26(A-1)(2)(f).

c. Md. Code Ann., Health-Gen. § 19-214.2(d)(2).

d. Mass. Gen. Laws Ch. 176O, § 14(f).

e. Mo. Ann. Stat. § 287.140(13)(1). Requirements for actual notice detailed at § 287.140(13)(2).

f. Ohio Rev. Code Ann. § 1349.01(D)(1).

V. COMPREHENSIVE, TWO-PRONGED REFORM

A. Recommendations to Reduce Debt and Reduce Reporting

State legislative enactments are a step in the right direction to protect consumers from the compounding negative impact of unpaid medical debts on credit reports by instituting protections about how and when debt can be reported to credit bureaus. However, states should also use their legislative power to reduce the

incidence of medical debt so reporting debt is less of an issue to begin with. The two problems are interrelated and will only grow as health care costs increase and if more consumers become uninsured.

Roughly 26 million people in the U.S. do not have health insurance.³⁰ While this represents a drop from prior years due to improved subsidies in the coronavirus relief bill, U.S. health care costs continue to rise, and the out-of-pocket expenses that drive medical debt for consumers are rising as well. In 2020, an individual spent an average of over \$12,000 per year on medical care, up 9.7% from the previous year.³¹ This represents an expanding medical debt crisis and underlines the need for state action.

NCLC's *Model Medical Debt Protection Act*³² addresses the increasing burden placed on consumers due to the crushing costs of medical care. Among other things, it requires robust Financial Assistance Policies (FAPs) that cover more patients, sets forth specific financial guidelines for free care and discounted care, and adds a number of procedural safeguards to protect consumers from aggressive or unfair debt collection practices.³³ Specifically, the Act outlines how states can increase debt protections by requiring free care for costs not otherwise covered by insurance for consumers below 200% of the Federal Poverty Level (FPL), sliding-scale discounted care for consumers between 200% and 600% of the FPL, limits on some debt collection practices, increased notice of protections, and enforcement options for violations.³⁴

State governments should use their power to reduce the incidence of medical debt so reporting debt is less of an issue to begin with.

Key Recommendation: Reduce the Incidence of Medical Debt

Medical debt and health care affordability are multifaceted problems. To address the core issue and lessen the incidence of medical debt, a broad range of possible solutions include:

- a) More comprehensive financial assistance policies (FAPs), to cover all hospitals (not just nonprofit hospitals) and a broader range of large health care providers.³⁵
- b) Stronger consumer protection rules for medical debt collection.
- c) Provider-oriented solutions, such as cost control measures, limits on facility fees, and restrictions on surprise medical bills.
- d) Insurance solutions, such as reducing financial burdens on the underinsured, limiting cost-sharing, limiting out-of-network billing, improving network adequacy standards to ensure that in-network care is available, and preserving strong coverage standards.

- e) Expanding the number of consumers with health insurance through Medicaid expansion and other measures.

Key Recommendation: Prohibit, or at least Reduce Medical Debt Reporting

In addition to protecting consumers from ruinous healthcare debts, federal and state entities should prohibit medical providers and debt collectors from reporting medical debts to credit bureaus for all medically necessary services. States should also prohibit credit bureaus from including such medical debt in a credit report.

As a lesser measure, states could restrict reporting of medical debt from certain healthcare providers (e.g., hospitals or ambulances). They could also restrict reporting of medical debts under a certain amount. The Big Three credit bureaus have voluntarily agreed to exclude medical debts under \$500. State law could codify this protection or set the threshold at a higher amount, e.g., \$1000 or more.

Further, states should prohibit credit bureaus from using medical debt in credit scoring calculations. While VantageScore has voluntarily done this with current scoring models, a state law would apply to all models and all credit bureaus calculating credit scores.

At a minimum, states should codify the one-year grace period that the Big Three credit bureaus have voluntarily adopted, or extend it to a longer time period, e.g., 18 months.³⁶ This would better protect consumers from billing and payment errors arising from the byzantine healthcare system consumers find themselves in.

States should also examine the Minnesota consent decree that has, among other things, disallowed 125 hospitals from reporting medical debt to credit bureaus entirely (see Appendix A). This agreement provides what may be the strongest and broadest consumer protections around the reporting of medical debt, and generally introduces rigorous processes to make sure that medical debt is dealt with and collected in a responsible manner.

On the federal level, the U.S. Senate and U.S. House have introduced bills over the years to address medical debt on credit reports. In 2019, a bill was introduced in the House that would prohibit the reporting of debts arising from medically necessary procedures.³⁷ The Comprehensive Credit Act, which was passed by the House in July 2020, contained a similar provision.³⁸ The Medical Debt Relief Act of 2021 was introduced in the Senate in February 2021 and essentially would codify two of the three reforms announced by the Big Three credit bureaus in 2022: the credit bureaus would be prohibited from adding medical

debt information to a consumer credit report if the debt was either (1) fully paid or settled, or (2) less than a year old.³⁹ The “Comprehensive Debt Collection Improvement Act,”⁴⁰ which passed in the House in May 2021, would provide debt collection reforms to protect vulnerable consumers and includes prohibitions on collection of medical debt for the first two years and credit reporting of debt arising from any medically necessary procedures. It is important to continue to introduce and support such federal legislation that focuses on protecting consumers from the burden of medical debt and negative credit reporting.

VI. CONCLUSION

At a time when millions of consumers are beset with medical debt, federal and state governments can and should take immediate measures to reduce medical debt and to protect consumers from harmful credit reporting and debt collection practices. Placing limits on the amount of medical debt lower-income consumers can incur and on the reporting of medical debt are straightforward reforms that can help millions of consumers restore financial stability for their families.

VII. ENDNOTES

1. Amanda Sitz, “[Number of uninsured Americans drops to an all-time low](#),” Associated Press (Aug. 2, 2022). Uninsured rates dropped after the passing of the coronavirus relief bill that lowered premiums and costs for plans through the Affordable Care Act’s health insurance markets.
2. Consumer Fin. Prot. Bureau, [Medical Debt Burden in the United States](#), at 5, 25 (Feb. 2022).
3. Raymond Kluender et al., [Medical Debt in the US](#), 2009–2020, JAMA 326(3) at 253 (July 20, 2021).
4. Consumer Fin. Prot. Bureau, *supra* note 2 at 5, 25.
5. Kenneth P. Brevoort & Michelle Kambara, [Data Point: Medical Debt and Credit Scores](#), Consumer Fin. Prot. Bureau (May 2014); *see also* an [explanation of FICO Scores versions](#). While version 9 & 10 do not factor in medical collections that have been paid and unpaid medical debt is weighted less heavily than other debt, most creditors use FICO Score 8 which weighs medical debt the same as other debt.
6. Mark Rukavina, [Medical Debt and Its Relevance When Assessing Creditworthiness](#), Suffolk University Law Review 46(3): 967-982, 2014; *see also* Consumer Fin. Prot. Bureau *supra* note 2 at 28.
7. Consumer Fin. Prot. Bureau, *supra* note 2.
8. Consumer Fin. Prot. Bureau, [Consumer Credit Reports: A Study of Medical and Non-Medical Collections](#), (Dec. 2014); *see also* Consumer Fin. Prot. Bureau, [Paid and Low-Balance Medical Collections on Consumer Credit Reports](#) (July 2022).
9. Consumer Fin. Prot. Bureau, [Paid and Low-Balance Medical Collections on Consumer Credit Reports](#), *supra* note 8.
10. Berneta L. Haynes, “[The Racial Health And Wealth Gap Impact Of Medical Debt On Black Families](#),” National Consumer Law Center (March 2022).
11. *Id.*
12. Consumer Fin. Prot. Bureau, *supra* note 2.
13. *See* Appendix A for major medical debt developments from 2005–2015.
14. The No Surprises Act was included in omnibus legislation that funded the government for 2021 and provided stimulus relief for the COVID-19 pandemic. H.R.133 - 116th Congress (2019–2020): [Consolidated Appropriations Act, 2021, H.R.133, 116th Cong.](#) (2020). *See also* [Requirements Related to Surprise Billing; Part I](#), 86 FR 36872; and [Requirements Related to Surprise Billing; Part II](#), 86 FR 55980; Consumer Fin. Prot. Bureau, “[What is a ‘surprise medical bill’ and what should I know about the No Surprises Act?](#)” (Feb. 2022).
15. *See* Consumer Fin. Prot. Bureau, [Paid and Low-Balance Medical Collections on Consumer Credit Reports](#) (July 2022).
16. VantageScore, “[VantageScore Excluding Medical Bills from Credit Scores](#)” (Aug. 12, 2022).
17. Consumer Fin. Prot. Bureau, *supra* note 2 at 47.
18. *Ibid.*
19. Consumer Fin. Prot. Bureau Newsroom, “[CFPB Publishes Analysis of Potential Impacts of Medical Debt Credit Reporting Changes](#),” (July 27, 2022).
20. Matthew Rae et al., “[The burden of medical debt in the United States](#),” Peterson-KFF Health System Tracker (March 10, 2022), (Adults with a disability are more likely than those without a disability to report owing over \$250 in medical debt (15% vs. 7%)).
21. Consumer Fin. Prot. Bureau Newsroom, *supra* note 18.
22. *See* Appendix A.
23. Interpretive Rule, 12 CFR Part 1022, [The Fair Credit Reporting Act’s Limited Preemption of State Laws](#) (June 2022); 87 FR 41042.

24. Wash. Rev. Code Ann. § 19.16.250(28)®.
25. Me. Rev. Stat. Ann. Tit. 10 § 1310-H(4) (2019). The Attorney General settlement contains a similar provision but only applies if the medical debt is paid by an insurance company.
26. Complaint, [Consumer Data Industry Association v. Arron Frey and William Lund](#), Case No. 1:19-cv-00438-GZS, (D. Me. Sept. 26, 2019).
27. *Consumer Data Indus. Ass’n v. Frey*, 26 F.4th 1, 12 (1st Cir. 2022).
28. TransUnion, “[Equifax, Experian, and TransUnion Support U.S. Consumers With Changes to Medical Collection Debt Reporting](#),” (Mar. 18, 2022).
29. This is similar to Reg. F 1006.30 that requires debt collectors to provide notice before reporting a debt to prevent “parking” of debt; reporting a debt without notice to the consumer and letting the debt sit on the report until the consumer checks their credit report—presumably to access new credit, housing, a job, or transportation. Most likely they are in such a desperate situation that they will blindly pay to get it off their report.
30. Sitz, *supra* note 1. Uninsured rates dropped after the passing of the coronavirus relief bill that lowered premiums and costs for plans through the Affordable Care Act’s health insurance markets.
31. [The National Health Expenditure Accounts Fact Sheet, 2020](#).
32. Chi Chi Wu, Jenifer Bosco, and April Kuehnhoff, “[Model Medical Debt Protection Act](#),” National Consumer Law Center (Sept. 2019).
33. Id.; see also National Consumer Law Center, “[What States Can Do: Medical Debt](#)” (2019) (short introduction to the model law); see also Andrea Bopp Stark and Jenifer Bosco, “[An Ounce of Prevention: A Review of Hospital Financial Assistance Policies in the States](#),” National Consumer Law Center (2019, updated Nov. 2021).
34. §
35. Bopp Stark and Bosco, *supra* note 74.
36. See S. 1581 [Medical Debt Relief Act of 2019](#) 116th Congress (2019–2020); S.214 Medical Debt Relief Act of 2021 (2021).
37. See H.R. 3622, the [Restoring Unfairly Impaired Credit and Protecting Consumers Act](#), Se®103(c), 116th Congress (2019–2020).
38. H.R.3621, [Comprehensive CREDIT Act of 2020](#), 116th Congress (2019–2020).
39. See S.214, Medical Debt Relief Act of 2021, *supra* note 77.
40. See H.R.2547, [Comprehensive Debt Collection Improvement Act](#), 117th Congress (2021–2022).

APPENDIX A

HIGHLIGHTS FROM 2005–2015

2005: MINNESOTA CONSENT DECREE In 2005, the Minnesota attorney general reached a settlement agreement with hospitals in Minnesota that may provide the greatest protections to consumers around medical debt on credit reports to date. It prevents signatory hospitals and their debt collection agencies or attorneys from reporting a patient to a credit reporting agency for any patient's failure to pay a medical bill.^a Nearly every hospital in Minnesota^b is bound by the consent decree, which has been renewed in 2007, 2012, and 2017.^c

2010: AFFORDABLE CARE ACT (ACA) The ACA, enacted in 2010, requires that nonprofit hospitals adopt financial assistance policies^d and restricts extraordinary collection actions (which include reporting adverse information to credit bureaus^e) until there is a determination of a patient's eligibility for financial assistance.^f However, the ACA protections apply only until that determination is made, may not be privately enforceable, and do not apply to for-profit hospitals or to physicians who are not employed by the hospital.^g

2015: MULTISTATE/NEW YORK ATTORNEY GENERAL SETTLEMENTS In 2015, the New York attorney general reached a settlement with the largest credit bureaus (Equifax, Experian, and TransUnion), quickly followed by a settlement with the same credit bureaus and a multistate group of 31 attorneys general. Collectively, these settlements require, among other things, that the credit bureaus wait 180 days before reporting medical debt on consumer credit reports.^h The six-month period allows time for patients to resolve most insurance claims or appeals, billing disputes, or other issues that can arise because a third party, the insurer, is involved.ⁱ The settlement also requires that, if an insurance company later pays a medical debt, the credit bureaus must remove or suppress

- a. [Ex. A: Agreement at ¶26](#), *In re Kittson Mem'l Hosp. Ass'n*, No. C1-05-10586 (Minn. Dist. Ct. 2017).
- b. In a conversation with Minnesota attorney general staff, NCLC learned that all but 1 or 2 of the 142 nonprofit hospitals that are members of the Minnesota Hospital Association (<https://www.mnhospitals.org/mn-hospitals/quick-facts>) are covered by the consent agreement. Government or for-profit (only 0.8% of hospitals in Minnesota in 2017) hospitals may not be covered. See Kaiser Family Foundation, "[Hospitals by Ownership Type](#)" (2020).
- c. [Ex. A: Agreement at 1](#), *In re Fairview Health Services*, No. 62-C7-07-5428 (Minn. Dist. Ct. 2017).
- d. 26 U.S.C. § 501(r)(4).
- e. 26 C.F.R. § 1.501(r)-6(b)(1)(ii).
- f. 26 U.S.C. § 501(r)(6).
- g. See Chi Chi Wu, Jenifer Bosco, and April Kuehnhoff, "[Model Medical Debt Protection Act](#)" at 2-3, National Consumer Law Center, (2019); see also 26 CFR § 1.501(r).
- h. [Settlement Agreement](#), *In re Investigation by Schneiderman of Experian Information Solutions, Inc., et al.*, Sec. III(A)(3)(a) (N.Y. March 2015); [Settlement Agreement](#), *In re Experian Information Services, LLC, et al.*, Compliance/Assurance of Voluntary Discontinuance, Sec. IV(E)(3)(a) (May 2015).
- i. Chi Chi Wu, "[Big Changes for Credit Reports, Improving Accuracy for Millions of Consumers](#)," NCLC Digital Library (July 27, 2017).

the medical debt collection information from a consumer report.^j In 2017, these protections were applied to consumers nationwide by the Big Three credit bureaus, even though the agreements with the 32 attorneys general (the New York attorney general had a separate settlement) did not cover every state.^k In 2022, the Big Three credit bureaus extended the waiting period to 365 days and announced they would remove all paid medical debt and debt under \$500 (see Recent Reforms at the Federal Level (IV)(A)).

j. [Settlement Agreement](#), *In re* Investigation by Schneiderman of Experian Information Solutions, Inc., et al. Sec. III(A) (3)(c) (N.Y. March 2015).

k. Matt Tatham, "[Medical Debt and Your Credit Score: Here's What You Need to Know](#)," Experian (Aug. 8, 2017).



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