

September 11, 2023

Via www.regulations.gov

Director Rohit Chopra
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Secretary Xavier Becerra
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Secretary Yellen
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

**Re: Request for Information Regarding Medical Payment Products,
CFPB-2023-0038 / CMS-2023-0106 / TREAS-DO-2023-0008**

Dear Director Chopra, Secretary Becerra, and Secretary Yellen:

The National Consumer Law Center (NCLC) (on behalf of our low-income clients), Americans for Financial Reform Education Fund, and Georgia Watch submit the following comments in response to the Request for Information Regarding Medical Payment Products (RFI) issued by the Consumer Financial Protection Bureau (CFPB), the Department of Health and Human Services (HHS), and the Department of the Treasury (Treasury).¹ We appreciate that the CFPB, HHS, and Treasury are engaging in an extensive examination of medical payment products and their impact on vulnerable consumers.

These comments focus on:

- Harms to consumers that may result from the use of medical payment products;
- The need for improved consumer protections through regulatory and legislative changes; and
- The need for further research to better understand the evolving landscape of medical payment products.

¹ The Request for Information is posted at <https://www.regulations.gov/document/CFPB-2023-0038-0001>, and published at 88 Fed. Reg. 44,281 (July 12, 2023). These comments were written by NCLC attorneys April Kuehnhoff, Chi Chi Wu, Jen Bosco, and Berneta Haynes.

These comments build on prior reports and comments filed by NCLC. In February 2023, NCLC surveyed consumer advocates about client experiences with medical credit cards. The survey results were initially shared in response to the CFPB's Request for Information for its 2023 study regarding the consumer credit card market pursuant to the Credit CARD Act (NCLC 2023 Comments to CARD Act RFI).² These survey results were also published as a report (Health Care Plastic).³ We have attached these documents to the comments as Appendix A and B.

The comments below follow the organization of the RFI and retain the question numbers of the relevant sections. Since these comments do not respond to every question, question numbers may not proceed in order.

1. Responses to General Questions: Market-Level Inquiries

Q1. What are the benefits, costs, and risks of medical payment products for consumers, health care providers, and companies offering these products?

Risks to consumers using medical payment products include:

- Financing amounts that should be covered by the patient's existing Medicaid or other insurance;
- Financing amounts where the patient should have been screened for Medicaid eligibility;
- Financing inflated amounts due to medical billing errors or chargemaster pricing;
- Financing medical products or procedures that are not undertaken or completed;
- Financing amounts that should be covered by financial assistance;
- Financing amounts that should not have been charged because of the protections of the No Surprises Act;
- Financing amounts at a higher rate of interest than would otherwise be available to the consumer through other payment options;

² National Consumer Law Center and Consumer Federation of America, Comments in Response to CFPB Request for Information Regarding the Consumer Credit Card Market (Apr. 24, 2023), available at: <https://www.nclc.org/resources/nclc-cfa-comments-in-response-to-cfpb-request-for-information-regarding-the-consumer-credit-card-market/>.

³ April Kuehnhoff and Chi Chi Wu, National Consumer Law Center, Health Care Plastic: The Risks of Medical Credit Cards (Apr. 2023), available at: <https://www.nclc.org/resources/health-care-plastic-the-risks-of-medical-credit-cards/>.

- Triggering deferred interest if they are unable to pay off the balance during a promotional period;
- Incurring interest on the balance when they could have entered into an interest free payment plan with the medical provider;
- Receiving inaccurate information about a medical financial product from medical facility staff;
- Falsification of income by medical providers that qualifies consumers for a larger extension of credit than they can afford;
- Being sued by a medical payment product provider; and
- Having negative information about a medical payment product reported on a credit report while an account marked as a medical debt would not have been reported due to the voluntary measures by the nationwide consumer reporting agencies (CRAs), i.e., Equifax, Experian and TransUnion.

For more information about these and other risks to consumers, see Health Care Plastic.

Q2. What are the terms of medical payment products, including interest rates and fees?

Terms and conditions of different medical payment products can vary significantly between lenders⁴ and for different consumers using the same providers depending on the amount financed or the repayment details.⁵ With respect to medical credit cards such as CareCredit, they often have higher

⁴ See, e.g., AccessOne, Choice Agreement and Initial Disclosure (Mar. 2023), available at: <https://www.myaccessone.com/Applications/ShowDisclosureByClient?companyId=1&clientId=204> (APR of up to 18%); Curae, Pricing Information Addendum, available at: <https://curae.com/wp-content/uploads/2018/05/Curae-Cardholder-Agreement-and-Pricing-Addendum.pdf> (APR of up to 36% with a “penalty APR” of 29.99%); Alphaeon Credit, Current Credit Card Agreement (Aug. 2023), available at: <https://d.comenity.net/ac/alphaeoncosmetic/public/credit-card-agreement> (28.99% APR); Citizens Bank, PrimaHealth Credit Disclosures (Aug. 2023), available at <https://www.citizensbank.com/disclosures/primahealth-credit.aspx> (29.99% APR; PrimaHealth Credit is the platform borrowers use to access their line of credit from Citizens Bank); Bread Financial (Comenity Capital Bank), Credit Card Agreements, available at: <https://d.comenity.net/ac/credit-card-agreement> (28.99% APR for HealthiPlan and Dental First; use drop-down menu to select agreements); MedCredit Financial Services, About Us (8% APR), available at: <https://medcredit.securedocview.com/Terms.aspx>; Synchrony Bank, CareCredit Credit Card Account Agreement (June 2023), available at: <https://www.carecredit.com/YourTerms/> (29.99% APR); Wells Fargo Health Advantage, Credit Card Agreement, available at: https://retailservices.wellsfargo.com/pdf/ccra/wells_fargo_health_advantage.pdf.

⁵ See, e.g., AccessOne, Choice Agreement and Initial Disclosure (Mar. 2023), available at: <https://www.myaccessone.com/Applications/ShowDisclosureByClient?companyId=1&clientId=204> (terms vary based on the amount financed and how quickly the consumer can repay the balance); Synchrony Bank, CareCredit Credit Card Account Agreement (June 2023), available at: <https://www.carecredit.com/YourTerms/> (some individuals may qualify for deferred interest of 6-24 months and where the full balance is paid off during this period they do not have to pay interest on the balance).

APRs (e.g., 29.99%)⁶ than a general purpose credit card (e.g., U.S. Prime Rate plus 11.99% or 20.49%).⁷

It is not always easy for consumers to assess or compare the true cost of financing with different medical payment products. We provide two examples below of ways that consumers might learn about medical payment products and their terms and conditions.

Example 1

A consumer without dental insurance goes to the dentist with significant tooth pain. The dentist informs the consumer that she needs a root canal but will not proceed unless the consumer pays upfront. Someone who works at the dentist's office informs the consumer that there is interest-free financing available for dental procedures like hers without disclosing that the product is a deferred-interest credit card or explaining how deferred interest works.⁸ The dentist provides the consumer with an iPad to sign up for a CareCredit medical credit card⁹ while sitting in the dentist's chair.¹⁰ The consumer does not receive a copy of the terms and conditions from the dentist's office.¹¹ Indeed, the consumer does not understand that she is applying for a credit card and thinks that she is taking out a loan with the dentist's office.¹² After the procedure, the consumer is set up with automatic

⁶ Synchrony Bank, CareCredit Credit Card Account Agreement (June 2023), available at: <https://www.carecredit.com/YourTerms/>.

⁷ Citibank, Costco Credit Card Disclosures, available at: https://www.citi.com/CRD/PDF/CMA/pricingTables/PIT_PID520-CostcoADA-2.pdf. See also Adam McCann and Alina Comoreanu, "WalletHubAverage Credit Card Interest Rates," WalletHub (Aug. 21, 2023), available at: <https://wallethub.com/edu/cc/average-credit-card-interest-rate/50841> (average credit card interest rates 22.60% for new offers and 20.68% for existing accounts); Letter from Senator Elizabeth Warren, et al, United States Senate, to Director Rohit Chopra, Consumer Financial Protection Bureau (June 29, 2023) available at: <https://www.warren.senate.gov/imo/media/doc/2023.06.29%20Letter%20to%20CFPB%20re%20medical%20credit%20cards1.pdf>. ("For those patients who are assessed interest, the rates can be much higher than the rates paid by the average credit card user. According to Synchrony, borrowers who do not fully pay off their cards in the promotional period face an average interest rate of 26.44 percent, with the maximum interest rate as high as 29.99 percent. By contrast, the average interest rate across all credit cards as of September 2022 was 16.27 percent.").

⁸ See Health Care Plastic at 4, 22 (47% of survey respondents reported that their clients were told that credit was 0% interest but was actually deferred interest).

⁹ See CareCredit, Using In-Office Devices, available at: <https://www.carecredit.com/providercenter/resourcescenter/use/device/>.

¹⁰ See Health Care Plastic at 24.

¹¹ See Health Care Plastic at 4 (50% of survey respondents reported that their clients never received disclosures about the credit card terms when signing up). *Contrast* CareCredit, Using In-Office Devices, available at: <https://www.carecredit.com/providercenter/resourcescenter/use/device/> (stating in the Frequently Asked Questions that medical office staff should provide a copy of the paper application with the terms and conditions before the consumer begins the application on the in-office device).

¹² See Health Care Plastic at 20-21.

payments for only the minimum payment amount.¹³ When she fails to pay the full amount during the promotional period as a result of these minimum payments, she is charged retroactively for the deferred interest and becomes aware for the first time of the interest rate of 29.99% and late fees.¹⁴

Example 2

A consumer who is a patient at Atrium Health Wake Forest Baptist might learn about medical financing with the medical provider's partner AccessOne through the medical provider's Billing and Insurance page by following a link called "Patient Financing Through AccessOne."¹⁵ That webpage states "AccessOne offers interest-free and low-interest options with lower minimum payments."¹⁶ This vague information echoes the general information available on AccessOne's patient website, which states "zero to low interest rates."¹⁷

If the patient clicks through to learn more information about AccessOne,¹⁸ the patient can click on links for "Payment Plan Benefits," "Initial Disclosure," or "Payment Estimator."

The "Initial Disclosure" link takes the consumer to the terms and conditions, which disclose an APR of 14.25% for "low interest" payment plans with a balance of under \$10,000, as well as finance

¹³ See NCLC 2023 Comments to Credit CARD Act RFI at 6-7 (excerpt of CFPB Complaint No. 3848078, filed September 16, 2020). See also Chi Chi Wu, National Consumer Law Center, Deceptive Bargain: The Hidden Time Bomb of Deferred Interest Credit Cards at 9 (Dec. 2015) www.nclc.org/resources/deceptive-bargain-the-hidden-time-bomb-of-deferred-interest-credit-cards/.

In some cases, the consumer might know enough to make payments that will pay off the entire balance. They may be paying diligently until something happens, e.g., they lose their job and cannot make payments.

¹⁴ Synchrony Bank, CareCredit Credit Card Account Agreement (June 2023), available at: <https://www.carecredit.com/YourTerms/>.

¹⁵ This example explores one possible way that the consumer might learn about AccessOne. Other methods include: information from the medical provider at the time of service, information in a medical bill, and information in a payment portal.

Other medical payment providers also market their products through patient billing portals. Noam Levey and Aneri Pattani, "How Banks and Hospitals Are Cashing in When Patients Can't Pay for Health Care," National Public Radio (Nov. 17, 2022), available at: <https://www.npr.org/sections/health-shots/2022/11/17/1136201685/medical-debt-high-interest-credit-cards-hospitals-profit> ("Synchrony, which historically marketed its CareCredit cards in patient waiting rooms, is now also inking deals with medical systems to enroll patients in loans when they go online to pay bills.").

¹⁶ Atrium Health Wake Forest Baptist, Patient Financing Through AccessOne, available at: <https://www.wakehealth.edu/patient-and-family-resources/billing-and-insurance/patient-financing-through-accessone>.

¹⁷ AccessOne, Empowering Patients, available at: <https://accessonepay.com/patients/>.

¹⁸ AccessOne, Patient Portal, available at: <https://www.myaccessone.com/wfbh>.

charges, and late fees.¹⁹ Moreover, the document discloses that “APR will vary with the market based on the Prime Rate” and that the APR “will not fall below 8% or exceed a maximum rate of 18%.” These disclosures are far less conspicuous than the “interest free” and “zero interest” promotions listed elsewhere.

The “Payment Estimator” link takes the consumer to a form to calculate the amount of monthly payments and the number of payments. Here is a screenshot of the information produced using \$9,000 as the amount to finance.

Amount to Finance or Add-on Charges:

AccountID

Calculate

Estimated monthly payment amount with our interest free plan:	\$375.00
Estimated number of timely monthly payments to stay interest free:	24
Estimated monthly payment amount with our low interest plan:	\$202.50
Estimated number of monthly payments with our low interest plan:	64

The information presented by the “Payment Estimator” does not specify the relevant APR for the low interest plan, nor does it alert the consumer that the interest rate is variable. Only patients that use the Payment Estimator learn that if they cannot afford to pay \$375 per month, they cannot access the interest free plan.

In 2022, investigative journalists highlighted the percentage of patients enrolled in AccessOne payment plans that pay the highest available interest rate at four different hospital systems:

- **UNC Health** – on February 15, 2022, 46% of enrolled patients were in the plan with the highest available interest rate (13%), which was up from 9% of enrolled patients in February 2020;
- **Atrium Health** – “as many as half” of enrolled patients were in the high-interest plan in 2021;
- **AU Health** – two-thirds of enrolled patients were paying the highest interest rate in January 2022; and

¹⁹ AccessOne, Choice Agreement and Initial Disclosure (Mar. 2023), available at: <https://www.myaccessone.com/Applications/ShowDisclosureByClient?companyId=1&clientId=204>.

- **University of Kansas Health System** – “shield patients from interest” in their contract with AccessOne.²⁰

Q3. How much debt do consumers carry on medical credit cards and loans in total, and what is the average individual debt level?

In a letter from Wells Fargo to Senator Warren on January 23, 2023, Wells Fargo reported that the Wells Fargo Health Advantage Card had an annual volume of less than \$200 million with fewer than 65,000 active cardholders.²¹ That letter also reported that at the end of November 2022, the average balance was just under \$3,000.²²

In a letter from Synchrony to Senators Warren, Markey, Sanders, Murphy, and Brown on January 26, 2023, Synchrony reported that as of September 30, 2022 there were 6.3 million active CareCredit accounts and that the average balance at that time was \$1,779.²³ This represents a total of more than \$11 billion in medical debt.

We are unaware of equivalent publicly-available data on other medical payment products.

Q4. How concentrated is the medical payment product market, and what role do private equity firms play in this market?

According to one report on the medical patient financing industry, Synchrony Financial’s CareCredit Card has an 18.4% market share and LendingClub has a 1.3% market share.²⁴

At least one medical payment company - AccessOne - is reported to be majority owned by a private equity investor - Frontier Capital.²⁵

²⁰ Noam Levey and Aneri Pattani, “How Banks and Hospitals Are Cashing in When Patients Can’t Pay for Health Care,” National Public Radio (Nov. 17, 2022), available at: <https://www.npr.org/sections/health-shots/2022/11/17/1136201685/medical-debt-high-interest-credit-cards-hospitals-profit>.

²¹ Companies’ Responses to Senators’ 2022 Questions, available at: <https://www.warren.senate.gov/imo/media/doc/Medical%20Credit%20Card%20Companies%20Responses.pdf>.

²² *Id.*

²³ *Id.*

²⁴ IbisWorld, Medical Patient Financing 26 (Dec. 2021).

²⁵ Noam Levey and Aneri Pattani, “How Banks and Hospitals Are Cashing in When Patients Can’t Pay for Health Care,” National Public Radio (Nov. 17, 2022), available at: <https://www.npr.org/sections/health-shots/2022/11/17/1136201685/medical-debt-high-interest-credit-cards-hospitals-profit>

Q5. Are there specific populations or geographic regions that experience disproportionately higher utilization of medical payment products?

Health Care Plastic documented several problematic stories that appear to involve older consumers:

- "Seniors were being told that the financing agreement was a repayment agreement with the dental office. They did not understand that it was an extension of credit." - Legal services attorney from California.
- "[N]ever took 1 of 2 dentures, yet full amount for both dentures was charged by doctor and put on card; took many attempts, phone/letters, in person follow-up to get that corrected" - Legal services attorney from Indiana.
- "[M]any people also report not getting the procedures (or things like dentures) which they were charged for" - Legal services attorney from Massachusetts.
- "One of our cases: A 70+ year old senior . . . is targeted by a Facebook advertisement for a bogus 'Smile Grant' program (<https://smilegrantprogram.com/apply-for-grants>). She has been looking for dentures that fit her. She clicks on the targeted ad and is directly contacted soon after by a local dentist office. She goes in for 'free consultation' and is given documents to sign while in the dentists chair . . . She is scheduled for two additional appointments, during which she is pressured to pay a deposit of \$2,000. She then receives a notice in the mail from Proceed Finance, which says that she has taken out a loan for \$20,000. The promised "grant" appears to just be an illusory discount after an upsell for the procedure." - Legal services attorney from California
- "Many are Medi-Cal recipients who were upsold services by their Medi-Cal accepting dentists, who told them that they need implants (not covered by Denti-Cal) or porcelain crowns (not covered by Denti-Cal)." - Legal services attorney from California. [Although not directly referencing seniors, survey respondents explained that consumers were frequently steered to uncovered dental implants instead of dentures.]

Health Care Plastic also documented survey responses involving practices in immigrant communities or involving clients with limited English proficiency:

- "Based on our experiences working with low-income populations and populations with limited English proficiency, we suspect that many families across PA are susceptible to the predatory practices employed by medical credit cards. We already see numerous cases where they are never informed of financial assistance, and if they are, they are only told to sign papers and wait. It would not be a surprise if they are being signed up for medical credit cards under the guise of a payment plan." - Health care advocate from Pennsylvania.
- "We see [medical credit cards] fairly frequently from dentists in low income areas of East Boston mostly immigrant patients with emergency dental needs." - Legal services attorney from Massachusetts.

- One advocate who described consumers being upsold to products not covered by Medi-Cal explained that the dentists engaging in this practice, “are often mom and pop shops located in immigrant communities and serve Spanish-speaking populations.” - Legal services attorney from California.

More than a third of survey respondents (38%) reported that their clients were only presented with information about medical credit cards in English even though the client has limited English proficiency.²⁶

Q6. What are the health equity impacts of medical payment products and related billing and collection policies and practices?

Q6(i). Do medical payment products affect members of specific underserved communities differently, including members of Tribal communities and geographically isolated communities?

While we are not aware of any statistics about the impact of medical payment products on specific communities, it is important to learn more about the impact of medical payment products on different communities because medical debt disproportionately impacts communities of color.²⁷ Additionally, communities of color are more likely to be uninsured.²⁸ Lack of insurance or high out-of-pocket costs for those who are insured may increase the likelihood of turning to medical payment products to cover medical bills.

Q8. What incentives do financial services companies offer health care providers, including revenue-sharing or other financial or non-financial incentives?

Health care providers generally pay a fee to lenders to participate in their medical credit card programs, in the form of a percentage of the amount financed. In a letter from Wells Fargo to Senator Warren on January 23, 2023, Wells Fargo reported that:

²⁶ Health Care Plastic at 4.

²⁷ See, e.g., Urban Institute, Debt in America: An Interactive Map (last updated June 23, 2022), available at: <https://apps.urban.org/features/debt-interactive-map/?type=medical&variable=medcoll>; Berneta Haynes, National Consumer Law Center, The Racial Health and Wealth Gap: Impact of Medical Debt on Black Families (Mar. 2022), available at: <https://www.nclc.org/resources/the-racial-health-and-wealth-gap/>.

²⁸ See, e.g., Samantha Artiga, et al., KFF, Health Coverage by Race and Ethnicity, 2010-2021 (Dec 20, 2022), available at: <https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-by-race-and-ethnicity/>.

As with other credit cards, providers agree to pay Wells Fargo a percentage of the amount financed to participate in the program (fee). Our standard agreement with a provider does not contain financial incentives, although a handful of providers pay a reduced fee based on volume.²⁹

The CFPB's report on medical credit cards noted that, "[e]stimates from 2008 put CareCredit's processing fee rate at 13.5 percent. This is often significantly higher than credit card merchant rates of \$2 or less.³⁰

In a letter from Synchrony to Senators Warren, Markey, Sanders, Murphy, and Brown on January 26, 2023, Synchrony reported that:

CareCredit's agreements with providers are confidential. However, the agreements do not include provisions for paid endorsements, nor do they have provisions for referral fees.³¹

Q9. How do medical payment products and health insurance coverage interact?

Health Care Plastics discusses consumers who were signed up for medical credit cards despite having insurance, including Medicaid.³² The report also documents problems with upselling and steering to products that were not covered by Medicaid.³³

Q9(ii). Does a patient's use of a medical payment product exempt them from certain consumer protections, provider requirements, or group health plan or health insurance issuer requirements?

Financial Assistance

²⁹ Companies' Responses to Senators' 2022 Questions, available at: <https://www.warren.senate.gov/imo/media/doc/Medical%20Credit%20Card%20Companies%20Responses.pdf>.

³⁰ Consumer Financial Protection Bureau, Medical Credit Cards and Financing Plans 10, n.32 (May 2023) (citing Consumer Reports, "Credit Cards and Finance Lines for Medical Care" (July 2008)), available at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.

³¹ *Id.*

³² Health Care Plastic at 17-18.

³³ *Id.* at 17-18, 27.

Once a consumer has paid a medical debt using a medical credit card (or a standard credit card), it will likely be difficult to get the medical provider to process any financial assistance application or reimburse any amount that should have been covered by financial assistance.³⁴

In a letter from Synchrony to Senators Warren, Markey, Sanders, Murphy, and Brown on January 26, 2023, Synchrony reported in response to a question asking if “CareCredit bar[s] hospitals from billing patients who may be eligible for free reduced-price care”:

Payment card networks do not have a role in determining which patients a hospital bills or how much they are billed for particular components of their care . . .

Our template multiyear agreement for health systems contains the following recital:

“The [CareCredit] Program is designed to be offered to Health System patients pre-service, at point of service, and post-service, and operate alongside (and not part of or in lieu of) Health System’s existing patient assistance or financial assistance programs.”

According to its contractual agreement with one hospital system, AccessOne provided different Patient Payment Options for those eligible for the hospital’s financial assistance program.³⁵ We provide a screenshot of the relevant terms below. It is unclear why someone who is eligible for financial assistance is entering into any kind of repayment agreement.

³⁴ See Dollar For, Comments in Response to Request for Information Regarding Medical Payment Products (Sept. 11, 2023), available at: <https://www.regulations.gov/docket/CFPB-2023-0038/comments> (collecting consumer stories).

³⁵ AccessOne Medical Charge Account Agreement between AccessOne MedCard, Inc. and AU Health System, Inc. ¶ 1.5(a)(iii), Appx. C (Oct. 7, 2019), available at: <https://s3.documentcloud.org/documents/23897552/accessone-au-health-contract.pdf>. See also AccessOne Medical Charge Account Agreement between AccessOne MedCard, Inc. and UNC Health Care System ¶ 1.5(a)(iii) (June 12, 2019), available at: <https://s3.documentcloud.org/documents/23897548/accessone-unc-contract.pdf> (providing for interest-free, fixed monthly payments in any amount determined by hospital; plan designated for those eligible for hospital financial assistance).

Exhibit C

AccessOne Choice Outreach

The AccessOne Choice Outreach Program permits the Providers to offer the following interest-free, fixed monthly payment options to patients who qualify for financial assistance:

- For Charges up to \$10,000, 1% of initial principal balance;
- For Charges greater than \$10,000 up to \$20,000, 0.75% of initial principal balance; and
- For Charges greater than \$20,000, 0.5% of initial principal balance.

The Providers determine which, if any, Charges are to be placed in the AccessOne Choice Outreach Program.

Insurance Appeal

A consumer who has paid for health care services using a medical payment product could still appeal an insurance coverage denial. However, a patient often needs letters or documentation from providers to win an insurance appeal, and a provider who has already been paid may be less willing to dedicate additional time to helping the patient appeal. Also, even if the patient prevailed, it would be more complicated to get reimbursed since a successful appeal may mean that the insurer would send payment to the provider, and the patient would need to be reimbursed by the provider. Moreover, the consumer may have paid a higher amount (*i.e.*, chargemaster prices) than the negotiated lower rates that the insurer pays the provider. The consumer also might have incurred interest or fees due to missed payments to the medical payment product provider. Thus, even a successful insurance appeal might not make the consumer whole.

Credit Reporting

Falling behind on a medical credit card payment will also impact a consumer's credit score since credit card companies typically furnish information on a monthly basis to one or more credit bureaus soon after the account is opened.³⁶ In contrast, Equifax, Experian, and TransUnion have voluntarily decided to wait one year before reporting medical debts. They also eliminated unpaid medical debts

³⁶ Cf. Consumer Financial Protection Bureau, Quarterly Consumer Credit Trends: Payment Amount Furnishing & Consumer Reporting 7 (Nov. 2020) (discussing furnishing practices by credit card issuers), available at: https://files.consumerfinance.gov/f/documents/cfpb_quarterly-consumer-credit-trends_report_2020-11.pdf.

of less than \$500 from credit reports in 2023 and removed paid medical debts.³⁷ Additionally, VantageScore announced that credit scoring models will not take medical debt into consideration.³⁸

As a result of these changes, past due medical debt that is charged to a credit card, including a specialty medical credit card, and reported delinquent by the card issuer will likely have a more negative impact on someone's credit report and credit score than medical debt furnished to a credit bureau by a provider, debt collector, or debt buyer. Such impact could occur as soon as 30 days after the first missed payment, unlike the one year grace period for other medical debts.

No Surprises Act and Other Protections Against Balance Billing

The No Surprises Act protects consumers from surprise medical bills, *i.e.*, bills from out-of-network healthcare providers for which the consumer's insurer did not pay the full amount charged by the provider.³⁹ The Act bans surprise bills for emergency services, for non-emergency services by out-of-network providers who work at an in-network facility, and air ambulance services from out-of-network providers. Similar protections exist for Medicaid and Medicare patients.⁴⁰ However, if a consumer pays a surprise medical bill using a medical financing product, they will lose these protections against balance billing and surprise medical bills.

Some patients might be able to withhold payment for an illegal surprise bill under 15 U.S.C. § 1666i (right to assert claims and defenses against a merchant). However, as discussed in the response to Question 12.ii, such challenges could prove difficult for consumers.

Q11. What are some best practices for health care providers who offer medical payment products in avoiding adverse financial and health impacts for patients?

Providers should inform consumers of treatment options that are covered under their insurance, including Medicaid, and not steer them to uncovered options. Providers should screen the patient for government insurance eligibility. If they are not eligible, providers should ideally connect the patient with their state's health care marketplace or health care navigators.

³⁷ Experian, Press Release: Equifax, Experian, and TransUnion Support U.S. Consumers With Changes to Medical Collection Debt Reporting (Mar. 18, 2022), available at: <https://www.experianplc.com/media/latest-news/2022/equifax-experian-and-transunion-support-us-consumers-with-changes-to-medical-collection-debt-reporting/>.

³⁸ VantageScore, Press Release: MAJOR CREDIT SCORE NEWS: VantageScore Removes Medical Debt Collection Records From Latest Scoring Models (Aug. 10, 2022), available at: <https://www.vantagescore.com/major-credit-score-news-vantagescore-removes-medical-debt-collection-records-from-latest-scoring-models>.

³⁹ No Surprises Act of the 2021 Consolidated Appropriations Act, Pub. L. No. 116-260, § 109, 134 Stat. 2578 (Dec. 27, 2020),

⁴⁰ 42 U.S.C. § 1396a(a)(25)(C); 42 C.F.R. § 447.15 (Medicaid); 42 U.S.C. § 1395cc(a)(1)(A)(Medicare).

Providers and their staff should not be involved in the actual application process for consumers signing up for medical payment products since this can raise several problems, such as failing to make adequate Truth-in-Lending disclosures or encouraging fraud like falsifying consumer income in credit applications.⁴¹

Instead, providers that want to offer information about medical payment products should be limited to referring consumers to a list of different medical payment products that consumers might want to consider and reminding consumers that their bank or credit union may also provide additional options. These lists can provide links where interested consumers can apply directly with the credit card company or other lender.

If providers do offer medical payment products (or a list of possible medical payment products), they should do all of the following before offering such products (or a list of such products):

- Apply all insurance to the medical bill;
- Wait for any insurance appeals to be processed;
- Assist patients without insurance in connecting with resources to help them apply for free or reduced cost medical insurance programs;
- Screen all patients for eligibility for any charity care or financial assistance and inform people who are found eligible that all (or a portion) of the costs will be covered;
- Provide information about how to apply for financial assistance to those not pre-screened as eligible;
- Allow patients that demonstrate eligibility for other means tested benefits (e.g., food stamps) to qualify for any financial assistance without submitting a formal application; and
- Provide information about payment plans with the provider that may be accessed without signing up for a medical payment product.

Providers should not offer information about medical payment products at times when the consumer will have diminished capacity to consent (e.g., in the emergency room, while sedated, when in significant pain, during a mental health crisis, etc.).⁴²

Even after a consumer makes a payment (whether or not a medical product was used), the medical provider should refund any patient who later is determined to be eligible for full or partial financial assistance.

⁴¹ See Health Care Plastic at 26.

⁴² See *id.* at 24.

Q11(ii). What actions should the agencies take to develop and encourage uptake of these established best practices?

HHS should promote these best practices by conducting research and issuing a report that identifies these best practices and outlines their implementation.

HHS should also issue guidance to remind providers that offering medical credit cards or payment products to patients with certain public insurance (e.g., Medicaid, CHIP, Medicare/Medicaid dual-eligibles, etc.) may violate rules that prohibit balance billing of these patients, or other HHS rules or provider agreements.

Q12. To what extent are patients using medical payment products to pay bills that are incorrect, or that could be covered or defrayed by lower-cost alternatives?

As noted above in response to question 9, Health Care Plastic discusses consumers who were signed up for medical credit cards despite having insurance, including Medicaid.⁴³ The report also documents problems with upselling and steering to products that were not covered by Medicaid, when an alternative procedure would have been covered.⁴⁴

Q12(i). What billing errors may patients commonly encounter?

KFF's recent Health Care Data Survey provides data about billing errors:

The KFF Survey found that a majority (53%) of adults with health care debt, and 43% of all adults, say they have received a medical or dental bill they thought contained an error. [] About two-thirds of these adults say the error involved being billed for something that should have been covered by their health insurance. Other provider errors were also reported, including being billed for services never received or for bills that had already been paid.

The vast majority (79%) of adults with health care debt who say they received a bill that contained an error took some action to dispute the mistake with their insurer or provider, and in many cases they succeeded in resolving the mistake. However, 51% of all adults with health care debt who received an erroneous bill either could not successfully fix the disputed bill or did not even try to dispute it in the first place. [] In addition, about a third (32%) of adults with health care debt who received a bill they thought had an error say they have had

⁴³ *Id.* at 17-18.

⁴⁴ *Id.* at 17-18, 27.

a disputed bill sent to collections, which can have a significant impact on their credit score and their future access to credit, loans and financing.⁴⁵

Q12(ii). How does using a medical payment product affect patients' rights to dispute incorrect bills?

If the medical payment product is a credit card, the consumer should have the right to withhold payment by raising claims and defenses that they have against the medical provider (*i.e.*, the merchant).⁴⁶ Such claims may be based on services that were never provided, or that were shoddy or incomplete, as well as billing errors. However, such disputes may be challenging for consumers to raise, especially for consumers with limited English proficiency or those with limited literacy or education. There could possibly be problems in resolving disputes when the credit card lender and the provider have a referral relationship.

To prevent some of these issues, as discussed below, we recommend that the CFPB prohibit lenders from placing a charge on an account or issuing funds before a medical procedure is completed or the medical product is delivered. Medical credit card lenders should also inform consumers that they have the right to cancel financing arrangements with no penalty before beginning the procedure

We also recommend that the CFPB remind credit card lenders that patients are entitled to withhold payment based on billing errors or shoddy services, and that they must conduct a reasonable investigation of such disputes; the Bureau should require the lenders to provide special outreach materials informing patients of this right. The CFPB should require that medical payment product companies cease working with medical providers that have a pattern of engaging in abusive practices.

⁴⁵ Karen Pollitz and Kaye Pestaina, KFF, Could Consumer Assistance be Helpful to People Facing Medical Debt? (Jul 14, 2022), available at: <https://www.kff.org/policy-watch/could-consumer-assistance-be-helpful-to-people-facing-medical-debt/>. See also National Consumer Law Center, Collection Actions § 9.5.6.3 (5th ed. 2020) (collecting previous research about medical billing errors).

⁴⁶ 15 U.S.C. § 1681i.

Q13. What actions should agencies consider taking to better understand the effects of medical payment products on consumers and the health care industry, educate consumers and providers about the risks of these products, and collect complaints?

Q13(i). What are some sources of data on medical payment products? What additional data are needed to understand the impact of medical payment products on patients and the health care industry?

Sources of data include:

- Terms and conditions for medical payment products;
- Consumer complaints through the CFPB complaint portal and other sources (e.g., Better Business Bureau, Attorney General offices, etc.);
- Focus groups with consumers and consumer advocates about experiences with particular medical payment products;
- Contractual agreements and reports between medical payment product providers and medical providers;
- Reports about entities that are subject to government supervision;
- Information filed with the Securities and Exchange Commission or from shareholder meetings (for publicly traded companies);
- Information filed in court cases or data about court practices (e.g., information about the number of lawsuits filed by medical payment product providers); and
- Conversations with current and former employees.

Q13(ii). What data collection, data analysis, and research actions should agencies take?

Agencies should obtain and analyze the data listed above and then publish their reports.

Given its supervision authority, the CFPB should be able to obtain significant information from credit card lenders that are banks with over \$10 billion in assets, which includes Synchrony. This could include information that Synchrony has stated was confidential and withheld, including to members of Congress, such as its agreements with providers.⁴⁷ Other federal and state agencies may also

⁴⁷ Companies' Responses to Senators' 2022 Questions, available at: <https://www.warren.senate.gov/imo/media/doc/Medical%20Credit%20Card%20Companies%20Responses.pdf>.

have access to information about the agreements between medical providers and medical payment product companies through their oversight, supervision, or licensing of different medical providers.

Q13(iii). Are there different or other actions that agencies should consider for underserved communities, including Tribal communities and geographically isolated communities?

It is particularly important to reach out to members of these communities through focus groups, analyze complaints from such communities, and speak to advocates working with these communities.

Q14. Where medical payment products are causing harm, what are some specific levers for regulatory oversight and enforcement by Federal agencies that regulate financial products or health care providers?

The following are the recommendations for action on medical credit cards by federal agencies from Health Care Plastic:⁴⁸

Recommendations for the Consumer Financial Protection Bureau

- **Prohibit deferred interest on all credit cards, including medical credit cards, using the CFPB's authority under the Credit CARD Act.** The CFPB has clear legal authority to ban deferred interest given its broad grant of rulemaking authority under the Act.
- **Prohibit medical credit cards from placing a charge on an account or issuing funds before a medical procedure is completed or the medical product is delivered (with limited exceptions).** Require medical credit card companies to instruct consumers that they have the right to cancel financing arrangements with no penalty before beginning the procedure.
- **Remind credit card companies that patients are entitled to withhold payment based on claims or defenses due to problematic practices by medical providers related to medical credit cards, and that they must conduct a reasonable investigation of such disputes.** Require companies to provide special outreach materials informing patients of this right. Require that companies cease working with medical providers that are engaging in abusive practices.
- **Adopt the requirements of the 2013 Consent Order against CareCredit as regulations,** such as requiring patients to apply directly with the credit card company

⁴⁸ Health Care Plastic at 28 - 29.

for credit limits over \$1,000; requiring training of provider staff; and prohibiting providers from charging for services not yet rendered, with limited exceptions.

- **Clarify that a credit card company violates the Credit CARD Act's ability-to-pay requirements** if it does not have procedures in place to ensure that providers are not providing inflated income amounts or improperly filling out applications for patients with incorrect information.
- **Where consumer complaints reference false, deceptive, misleading, or unfair practices by medical providers, forward those complaints to relevant state or federal agencies with enforcement authority.** Require credit card companies to monitor providers for such practices and cease doing business with them if such practices are detected.
- **Collaborate with the FTC to bring enforcement actions against debt collectors that are collecting or filing suit on unsubstantiated claims arising from medical financial products.**
- **Include research about and discussion of medical credit cards in the CFPB's consumer credit card market reports.**
- **Issue reports about medical financial products, outlining potential risks for consumers,** including particular risks for older Americans and consumers with limited English proficiency.

Recommendations for Department of Health and Human Services

- **Issue a joint statement with the CFPB condemning false, deceptive, misleading, and unfair practices by medical providers connecting patients to medical credit cards.** This statement should also clarify that, when medical providers receive federal funding, they have a duty to provide meaningful language access, and that duty extends to communications with patients regarding medical credit cards.
- **Issue a statement by the Centers for Medicaid and Medicare Services informing providers that they should not offer medical credit cards when Medicaid will cover a service,** and that they must inform patients regarding the option of a Medicaid covered service when offering or upselling an alternative procedure that is not covered by Medicaid.

Additionally, we believe that some medical payment product companies that might otherwise meet the legal definition of a debt collector under the Fair Debt Collection Practices Act (FDCPA) are attempting to exploit the exclusion from that definition where debt are acquired before they were in default⁴⁹ by stating in contractual agreements with providers that accounts are not in default when they are acquired.⁵⁰ This is presumably so that the medical payment provider can argue that it does

⁴⁹ 15 U.S.C. 1692a(6)(F)(iii).

⁵⁰ See, e.g., AccessOne Medical Charge Account Agreement between AccessOne MedCard, Inc. and AU Health System, Inc. ¶ 1.2(g) (Oct. 7, 2019), available at:

not need to comply with the FDCPA. The CFPB should use its authority to issue FDCPA regulations⁵¹ to define the term “default.”

HHS should also pursue opportunities to obtain additional information about medical financial products. For example, HHS should add questions about medical financial products to a previously announced effort to collect information about medical debt collection.⁵² HHS should also collaborate with other federal agencies to add questions about medical debt and medical financial products to existing surveys such as the Census Bureau’s Survey of Income and Program Participation and the Center for Disease Control’s National Health Interview Survey.

Additionally, to the full extent of its authority pursuant to 42 C.F.R. § 482.1(a), HHS should require reporting about Medicare, Medicaid, and Children’s Health Insurance Program (CHIP) co-insurance and cost sharing that is charged to medical financial products. HHS should restrict hospitals that accept Medicare funds from marketing medical payment products to Medicare, Medicaid and CHIP recipients.

Q14(i). Are there specific areas for Federal enforcement actions?

Health Care Plastic discusses numerous abusive practices that would be appropriate targets for federal enforcement actions.

<https://s3.documentcloud.org/documents/23897552/accessone-au-health-contract.pdf> (one of the criteria for an “Eligible Charge” is that “the Patient Receivable is not in default at the time it is paid with an AccessOne Charge Account”); AccessOne Medical Charge Account Agreement between AccessOne MedCard, Inc. and UNC Health Care System ¶ 1.2(g) (June 12, 2019), available at: <https://s3.documentcloud.org/documents/23897548/accessone-unc-contract.pdf> (same); Amended and Restated Receivables Purchase Agreement between AccessOne MedCard, Inc. and The Charlotte-Mecklenburg Hospital Authority ¶ 1.2(i) (Jan. 1, 2014), available at: <https://s3.documentcloud.org/documents/23897549/accessone-atrium-health-contract.pdf> (same).

⁵¹ 15 U.S.C. 1692l(d).

⁵² See, e.g., White House, Fact Sheet: The Biden Administration Announces New Actions to Lessen the Burden of Medical Debt and Increase Consumer Protection (Apr. 11, 2022), available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/11/fact-sheet-the-biden-administration-announces-new-actions-to-lessen-the-burden-of-medical-debt-and-increase-consumer-protection/> (“HHS will request data from more than 2,000 providers on medical bill collection practices, lawsuits against patients, financial assistance, financial product offerings, and 3rd party contracting or debt buying practices. The Department will, for the first time, weigh this information in their grantmaking decisions, publish topline data and policy recommendations for the public, and share potential violations with the relevant enforcement agencies of jurisdiction.”).

Q14(iii). What complementary legislative actions are worth exploring? Where may additional statutory authority be needed?

Amendments to the IRS financial assistance regulations or the FTC Act's prohibition against unfair or deceptive acts and practices can be used to address the problems posed by medical credit cards and payment products. However, the IRS regulations and the FTC Act cannot be enforced directly by consumers. For example, if a patient is convinced to place a medical debt on a medical credit card instead of receiving financial assistance or insurance coverage, they cannot file a lawsuit to enforce the IRS financial assistance regulations or Section 5 of the FTC Act. The single most effective legislative measure would be to give patients the ability to file a lawsuit to enforce the IRS financial assistance regulations or the FTC Act when they are harmed by problematic practices with respect to medical credit cards or other lending products.

2. CFPB-Specific Questions

Q1. 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?

Please see the answers from the previous section, especially the responses to questions 13 and 14. In addition, both NCLC and Community Catalyst have filed petitions for rulemaking urging the CFPB to ban the reporting of all medical debts from credit reports.⁵³ We urge the CFPB to include specialty medical financing products in such bans, including medical credit cards and loans, and to require credit card lenders to identify what portion of credit card balances is medical debt when they furnish information to a nationwide CRA so that these amounts can also be excluded from credit reports.

With respect to deferred interest, we remind the CFPB that we have repeatedly urged the CFPB to ban this inherently deceptive practice. NCLC made this recommendation in our comments to the Credit CARD Act study RFIs in 2013, 2015, 2017, 2019, 2020, and 2023,⁵⁴ as well as our 2015 report on the practice⁵⁵ and other regulatory comments.⁵⁶ Indeed, we began advocating for the

⁵³ Community Catalyst, Request for Rulemaking Pursuant to the Fair Credit Reporting Act (FCRA), available at: <https://www.consumerfinance.gov/rules-policy/petitions-rulemaking/community-catalyst-fcra-petition/>; NCLC, et al., Petition for Rulemaking: Ban Medical Debts from Credit Reports (Sept. 30, 2022), available at: <https://www.consumerfinance.gov/rules-policy/petitions-rulemaking/nclc-et-al-petition/>.

⁵⁴ NCLC 2023 Comments to CARD Act RFI at 2 (listing of NCLC comments to CARD Act study RFIs).

⁵⁵ Chi Chi Wu, National Consumer Law Center, Deceptive Bargain: The Hidden Time Bomb of Deferred Interest Credit Cards at 9 (Dec. 2015) www.nclc.org/resources/deceptive-bargain-the-hidden-time-bomb-of-deferred-interest-credit-cards/.

⁵⁶ See, e.g., Comments of NCLC, et al to CFPB on ability-to-pay requirements and household income at 5-6 (Jan. 7, 2012), available at: www.nclc.org/resources/group-comments-to-the-consumer-financial-protection-bureau-regarding-regulation-z-12-c-f-r-part-1026/.

elimination of deferred interest right after the Credit CARD Act of 2009 was passed and have done so consistently for over a decade. All of the reasons that we advocate for a ban on deferred interest are as valid as ever, and as discussed in more detail in NCLC's 2023 Comments to CARD Act RFI at pages 2 to 9, include:

- **Inherent deception.** Deferred interest promotions are inherently deceptive. Many consumers simply do not understand how these promotions work, because they are complicated by nature
- **Harming the most vulnerable.** Multiple CARD Act reports published by the CFPB have found that it is consumers with lower credit scores who bear the brunt of retroactively charged deferred interest. Thus, struggling consumers are subsidizing free credit for superprime consumers.
- **Impacting millions and a growing problem.** Synchrony alone has 14 million accounts with deferred interest promotions. About 20 percent of these accounts end up being assessed retroactive deferred interest, or about 2.8 million accounts. The CFPB⁵⁷ has found that total deferred interest purchase volume was over \$60 billion in 2020, nearly double the volume from 2011. The aggregate amount of deferred interest assessed to consumers increased by 45 percent from 2015 to 2020, to just over \$2.5 billion in total.⁵⁷
- **Difficulty determining monthly payments that will pay off the balance.** Issuers generally set the minimum payment at less than the amount that would pay off the balance during the deferred interest period. Consumers do not understand this, or they have trouble calculating the amount necessary to pay each month to avoid being assessed deferred interest.
- **Payment allocation makes a bad problem even worse.** Consumers with a deferred interest balance may have other balances that are not subject to a promotion or have a different promotional period. Payment allocation in these instances is very complicated, and it can be nearly impossible to pay off a deferred interest balance to avoid retroactive interest.

Q2. How do firms offering medical financial products typically market to providers?

In a letter from Wells Fargo to Senator Warren on January 23, 2023, Wells Fargo reported that:

We may offer a few manufacturers or professional member groups funds to promote the WFHA product directly to providers . . . No paid endorsements are offered to hospitals or health associations.⁵⁸

⁵⁷ NCLC 2023 Comments to Credit CARD Act RFI at 5-6.

⁵⁸ Companies' Responses to Senators' 2022 Questions, available at: <https://www.warren.senate.gov/imo/media/doc/Medical%20Credit%20Card%20Companies%20Responses.pdf>.

In an addendum to a letter from Synchrony to Senators Warren, Markey, Sanders, Murphy, and Brown on January 26, 2023, Synchrony reported that:

CareCredit does not have any paid endorsement arrangements with any of its providers, including hospitals.

CareCredit does, however, have over 150 relationships with professional and other associations (including the American Dental Association and the American Veterinary Medical Association), manufacturers, and buying groups, which endorse and promote our products to their professional members or practices . . . Contracts with these associations are confidential, but may contain sponsorship payments and/or royalty payments.⁵⁹

CareCredit also wrote that:

CareCredit's relationships with professional and other associations pertain to associations of commercial, not consumer, entities. The terms of these relationships vary, but generally provide for one or more of the following types of payments made by CareCredit to the association:

- A sponsorship payment (often in conjunction with CareCredit being recognized as a sponsor at the association's annual tradeshow or meeting);
- An enrollment royalty where CareCredit pays the association an amount for each professional member (e.g. dentist, veterinarian, cosmetic surgeon) that the association refers to the CareCredit network; or
- A sales royalty where CareCredit pays the association a percentage of the sales resulting from new professional member enrollments attributed to the association.⁶⁰

We are unaware of any other publicly-available information about marketing strategies for other medical financial products beyond the information that medical providers included on websites for specific medical financial products. However, we anticipate that medical payment product companies present at relevant medical industry conferences, either as speakers or as exhibitors. We anticipate that they provide webinars or continuing education sessions virtually about their products and that they place ads in relevant industry publications in addition to adopting some or all of the marketing strategies addressed by Wells Fargo and CareCredit.

⁵⁹ *Id.*

⁶⁰ *Id.*

Q3. How do creditors and their affiliates underwrite loans to patients? What specific factors (e.g., age, type of medical procedure, credit score, etc.) are considered in underwriting?

Medical credit card providers check the applicant's credit report⁶¹ and obtain some information about the medical provider or procedure. For example, Wells Fargo inquires about the name of the medical provider or the type of care in the medical credit card application process - asking the consumer to choose between audiology, dental, veterinary, and vision.⁶² When consumers apply for CareCredit, the company asks the applicant to "Select your healthcare category," listing: cosmetic surgery, cosmetic treatments, dental, eye exams/eye glasses, LASIK/vision surgery, hearing, health systems/hospitals, veterinary, weight loss, weight loss surgery, or other. Alphaeon Credit asks consumers to "Select Your Practice" or pre-qualify but does not immediately ask for information about the type of medical procedure on a webpage that can be accessed without providing personal information.⁶³

Here are two examples of practices used by other medical payment providers:

- AccessOne states "[r]egardless of credit history, all patients qualify for our program and have access to the same non-discriminatory payment terms."⁶⁴ The sign-up process for this company requires consumers to select a participating provider and input the specific account number.⁶⁵ The website warns that, "Your account must be in good standing with your healthcare provider to be eligible for AccessOne."⁶⁶
- The company PayZen says that it "applies our financial and credit underwriting expertise and our sophisticated AI-enabled risk models to instantly analyze and underwrite each individual patient."⁶⁷ Elsewhere the website elaborates that PayZen uses "[u]nique data assets with

⁶¹ See, e.g., Alphaeon Credit Card, More Details, available at: <https://d.comenity.net/ac/alphaeonicosmetic/public/home> ("Credit card offers are subject to credit approval."); CareCredit, FAQs, available at: <https://www.carecredit.com/faqs> ("If you prequalify and then you apply, there will be a hard inquiry on your credit report."); Wells Fargo, Wells Fargo Health Advantage Card, available at: <https://retailservices.wellsfargo.com/locator/WFHA> ("Subject to credit approval").

⁶² Wells Fargo, Getting started, available at: <https://retailservices.wellsfargo.com/locator/get-started> (see pull down menu above "Apply Now" button). See also Companies' Responses to Senators' 2022 Questions, available at: <https://www.warren.senate.gov/imo/media/doc/Medical%20Credit%20Card%20Companies%20Response%20s.pdf> ("Applicants must demonstrate that they are creditworthy and satisfy federally mandated 'ability to pay' requirements in order to receive a CareCredit credit card.").

⁶³ Alphaeon Credit, Secure Application, available at: <https://go.alphaeoncredit.com/credit-portal/apply>.

⁶⁴ AccessOne, Empowering Patients, available at: <https://accessonepay.com/patients/>.

⁶⁵ AccessOne, New Account Application, available at: <https://myaccessone.com/applications/signup>.

⁶⁶ *Id.* (emphasis in original).

⁶⁷ PayZen, PayZen personalized payment plans, available at: <https://payzen.com/solutions/>.

30,000 data points (including full credit attributes from soft pull).⁶⁸ The goal of this underwriting appears to be to set an amount to pay to the provider directly, as the company appears to act as a debt buyer and then collect the face value of the account from the consumer.⁶⁹ Consumers are told that, “If the healthcare service you receive from your provider is eligible for PayZen payment plans, you can sign up anytime. There’s no credit application and your credit score won’t be affected.”⁷⁰ We could not find any information about what services are eligible and elsewhere the website states that “100% of patients can enroll,”⁷¹ which appears to conflict with the statement that only certain healthcare services are eligible.

We encourage the CFPB to continue to investigate these topics for other medical payment providers.

Q4. Do consumers understand the risks of paying medical bills via a medical credit card, installment loan, or other commercial payment product, including lowered ability to negotiate their bill with their provider?

No, many consumers do not understand the risk of paying medical bills with medical payment products.

Health Care Plastic provides data about some areas where consumers are likely to lack understanding:

- 53% of survey respondents reported that the staff of the medical provider described the terms of credit incorrectly;
- 50% observed that clients never received disclosures about the credit card terms when signing up;
- 47% noted that clients were told that there was 0% interest when there was actually deferred interest;

⁶⁸ PayZen, A first-of-its-kind Affordability Financing platform, available at: <https://payzen.com/for-providers/>.

⁶⁹ See PayZen, PayZen personalized payment plans, available at: <https://payzen.com/solutions/> (“Once the payment source for each plan is verified, an adjustment file is automatically sent to the provider for the full weighted balance – so providers get paid up-front, with zero days in A/R, 100% non-recourse. The debt is off your books and the cash is in-hand.”).

⁷⁰ PayZen, PayZen is your provider’s healthcare affordability partner, available at: <https://payzen.com/patients/for-patients/>.

⁷¹ PayZen, A first-of-its-kind Affordability Financing platform, available at: <https://payzen.com/for-providers/>.

- 44% had clients that did not understand the explanation of the deferred interest promotion;
- 38% of advocates reported that clients with limited English proficiency were only presented with information in English; and
- 26% of respondents had clients who were asked to sign up for medical credit cards when the client(s) had diminished capacity to consent.⁷²

As discussed in our response to question 14, we recommend banning deferred interest and the adoption of some of the provisions of the 2013 CareCredit consent order to address some of these problems.

Q5. To what extent are alleged debts placed on medical credit cards and loans sent to debt collectors?

In NCLC's survey of consumer advocates about their clients' experiences with medical credit cards, more than two-thirds of respondents (68%) reported that their clients had been sued on medical credit card debt and nearly a third of survey respondents (32%) mentioned frequent collection communications as a problem.⁷³

Issuers of medical credit cards such as Synchrony Financial and Wells Fargo are active litigants in state courts around the country - although available data does not distinguish between lawsuits on medical credit cards and other financial products.⁷⁴ They may work with collection laws firms to file

⁷² Health Care Plastic at 4.

⁷³ *Id.* at 17.

⁷⁴ See, e.g., Claire Johnson Raba, The Debt Collection Lab, One-Sided Litigation: Lessons from Civil Docket Data in California Debt Collection Lawsuits 19 (July 2023), available at: <https://debtcollectionlab.org/research/one-sided-litigation> (from 2009 to 2020, Wells Fargo filed 35,933 debt collection lawsuits and Synchrony Bank filed 24,705 in 16 counties in California); National Consumer Law Center, Pandemic Lawsuits in California: Credit Card Issuers and Debt Buyers Top Litigants in 2021 (July 2022), available at: https://www.nclc.org/wp-content/uploads/2022/08/IB_CA_2021_collection_lawsuits-1.pdf (Synchrony Bank filed 6,798 lawsuits in 16 California counties in 2021); Daniel Wilf-Townsend, Assembly-Line Plaintiffs, 135 *Harvard L. Rev.* 1704, 1732 (May 2022), available at: <https://harvardlawreview.org/wp-content/uploads/2022/04/135-Harv.-L.-Rev.-1704.pdf> (Synchrony Bank was the seventh most common filer of collection lawsuits in 2019 civil lawsuits in sample states with 26,510 total cases filed; also listing Wells Fargo although not providing data about total lawsuits); Reinvestment Fund, Debt Collection in Philadelphia 6 (Mar. 2021), available at: https://clsphila.org/wp-content/uploads/2021/03/ReinvestmentFund_2021_PHL-Debt-Collection-Final-report.pdf (listing Synchrony Bank as one of the 10 largest filers in Philadelphia debt collection cases); Julia Barnard, et al., Suing-to-Intimidate: New Evidence Confirms that Opportunistic Abuses and Intimidates Families in Court to Collect Small-Dollar Loan Debts in California Courts at Appx. A (Center for Responsible Lending, Mar. 2021), available at: <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-opportun-suing-to-intimidate-mar2021.pdf> (showing Wells Fargo among the top filers of debt collection lawsuits in Los Angeles County Superior Courts from 2018–2020).

these lawsuits. They may also sell some accounts to debt buyers who may in turn file collection lawsuits or place accounts with debt collectors for collection.

AccessOne acts like a debt collector in its interactions with medical providers. AccessOne pays the amount due to the hospital over time as the consumer makes payments - minus a 6% “servicing fee.”⁷⁵ (Alternatively, in some cases hospitals can receive up front payment for an additional 4%+ servicing fee. However, this arrangement is only available where the consumer achieves a certain threshold credit score.)⁷⁶ AccessOne then returns accounts to the medical facility after the consumer misses three consecutive months of minimum monthly payments (referred to as a “chargeback” or “repurchase” of accounts).⁷⁷ Depending on the hospital’s collection policy, those accounts may be sent to the state for collection, including garnishment of tax refunds,⁷⁸ or subject to a lawsuit by the hospital that receives the returned accounts.⁷⁹

⁷⁵ AccessOne Medical Charge Account Agreement between AccessOne MedCard, Inc. and AU Health System, Inc. ¶ 1.4 (Oct. 7, 2019), available at: <https://s3.documentcloud.org/documents/23897552/accessone-au-health-contract.pdf> (“The AccessOne Receivable for each Patient Receivable paid with an AccessOne Charge Account is equal to 100% of such Patient Receivable, less servicing fee . . . of 6.0% for a new amount . . . equal to 94% . . . AccessOne makes no initial payment to the Providers on an AccessOne Receivable and instead pays the amount due to the Providers by paying to the Providers, on each Payment Date, an amount equal to 94% of the amount of each principal payment made by the Patient Accountholder”).

⁷⁶ *Id.* at Appx. E; AccessOne Medical Charge Account Agreement between AccessOne MedCard, Inc. and UNC Health Care System Appx. E (June 12, 2019), available at: <https://s3.documentcloud.org/documents/23897548/accessone-unc-contract.pdf> (partially redacted).

⁷⁷ AccessOne Medical Charge Account Agreement between AccessOne MedCard, Inc. and AU Health System, Inc. ¶ 1.6, Appx. C (Oct. 7, 2019), available at: <https://s3.documentcloud.org/documents/23897552/accessone-au-health-contract.pdf>; AccessOne Medical Charge Account Agreement between AccessOne MedCard, Inc. and UNC Health Care System ¶ 1.6 (June 12, 2019), available at: <https://s3.documentcloud.org/documents/23897548/accessone-unc-contract.pdf>; Amended and Restated Receivables Purchase Agreement between AccessOne MedCard, Inc. and The Charlotte-Mecklenburg Hospital Authority ¶ 1.5(a) (Jan. 1, 2014), available at: <https://s3.documentcloud.org/documents/23897549/accessone-atrium-health-contract.pdf>.

⁷⁸ Noam Levey and Aneri Pattani, “How banks and hospitals are cashing in when patients can’t pay for health care” National Public Radio (Nov. 17, 2022), available at: <https://www.npr.org/sections/health-shots/2022/11/17/1136201685/medical-debt-high-interest-credit-cards-hospitals-profit> (“UNC Health refers unpaid bills to the state revenue department, which can garnish patients’ tax refunds.”); Joseph Neff, “In collecting bills, UNC Health Care has powerful friends” News & Observer (Jan. 3, 2013), available at: https://journalnow.com/in-collecting-bills-unc-health-care-has-powerful-friends/article_30fbc504-55ad-11e2-a8f4-0019bb30f31a.html (“Last year, UNC Hospitals collected \$5.7 million, while UNC Physicians and Associates collected \$2 million. Together, that accounted for 11 percent of the \$72 million of set off debt collected for all state and local agencies that year . . . It’s not unusual for UNC Health Care to collect debt 10 or more years older.”).

⁷⁹ *Id.* citing Atrium Health Billing and Collection Policy, available at: <https://cdn.atriumhealth.org/-/media/chs/files/for-patients-visitors/financial-assistance/atrium-health-billing-and-collections-policy-82022.pdf>. See also Barak Richman, et al., Hospitals Suing Patients: How Hospitals Use N.C. Courts to Collect Medical Debt 12, 15 (2023), available at: https://scholarship.law.duke.edu/faculty_scholarship/4261 (reporting that Atrium filed 2,482 lawsuits from

Q6. How can the CFPB use its authorities to ensure people with medical bills in collections, including medical payment product debt, are screened for eligibility for financial assistance and other benefits?

In March 2022, NCLC wrote to Director Chopra to outline steps that the CFPB should take to protect consumers with medical debt.⁸⁰ Below we list recommendations from that letter that are most responsive to this question while reiterating the other requests from that letter:

- Require debt collectors to include notice about any financial assistance policy in their communications with consumers.
- Require debt collectors to provide notice about any financial assistance policies when consumers indicate that they are experiencing financial hardship - even if the consumer does not specifically ask about financial assistance.
- Prohibit misrepresentations about financial assistance or the consumer's eligibility for such assistance.
- The CFPB should meet with the team at the Internal Revenue Service that is responsible for compliance with non-profit hospital financial assistance rules, pursuant to the Affordable Care Act and 26 CFR 1.501(r). The agencies should consider issuing joint guidance regarding the duty of nonprofit hospitals to provide financial assistance to low-income patients, and the hospitals' responsibility to refrain from credit reporting or collection activity until after eligibility for financial assistance has been determined. Otherwise, those who collect or report those debts for the hospitals may be in violation of the FDCPA, since the correct amount of the debt has not been established.

Q7. How are health care providers and financial companies using credit or “propensity to pay” scores to determine patients' eligibility for financial assistance or medical payment products? What are the implications for compliance with the Fair Credit Reporting Act or other CFPB authorities?

Several companies sell “propensity to pay” scores to healthcare providers. One example is Paro, which “provides automated charity screening capabilities” for financial assistance.⁸¹ Paro was acquired in 2019 by Waystar, which sells a revenue cycle management platform (*i.e.*, collections

2017 to 2022 and was responsible for 42 percent of lawsuits filed by North Carolina hospital systems against patients during that period).

⁸⁰ Letter from Jen Bosco, et al, National Consumer Law Center, to Director Rohit Chopra, Consumer Financial Protection Bureau (Mar. 22, 2022), available at: https://www.nclc.org/wp-content/uploads/2022/09/CFPB_med_debt_action_ltr.pdf.

⁸¹ Paro, Homepage, available at: <https://www.paroscore.com/>.

software) to healthcare providers.⁸² Despite the fact that Paro is marketed for eligibility determinations for a financial decision, Paro claims “PARO Charity Screening reports, products and services do not constitute a ‘consumer report’ as that term is defined in the federal Fair Credit Reporting Act.”⁸³ Thus, Paro is likely not complying with the FCRA’s requirements for accuracy, dispute resolution, disclosure of consumers’ file information or adverse action notice requirements. Paro and its use by providers is thus likely not transparent to patients, which can harm them. If a patient is not provided financial assistance due to Paro’s information, they will not be informed of this fact with an adverse action notice, nor will they be able to see what information Paro has about them or to dispute any errors.

Another company offering propensity to pay products is Experian Health. These products include:

- Patient Financial Clearance, which Experian claims “determines which patients are likely to pay and connects those who potentially qualify for financial assistance with the right programs.”⁸⁴ This includes Healthcare Payment Risk Score, which supposedly predicts a patient’s propensity to pay.⁸⁵ Experian boasts users can “[l]everage Experian’s comprehensive data and analytics capabilities to calculate the patient’s optimal payment plan amount based on the patient’s unique financial situation.”⁸⁶
- Collections Optimization Manager, which Experian claims “helps hospitals and health systems assess a patient’s unique financial situation and tailor collections strategies to meet their needs”⁸⁷ and “monitors patient accounts for changes in their ability to pay and provides collections staff with targeted, timely updates enhancing recovery time and improving staff productivity.”⁸⁸ This product can also supposedly “reveal those patients who likely are eligible for charity services, those who might prefer to pay in full at a discount, or those who might benefit from structured installment payments.”⁸⁹

⁸² Press release, With the acquisition of PARO, Waystar adds presumptive charity scoring solution to its technology platform (June 6, 2019) <https://www.waystar.com/news/with-the-acquisition-of-paro-waystar-adds-presumptive-charity-scoring-solution-to-its-technology-platform/>.

⁸³ Paro, Homepage, available at: <https://www.paroscore.com/>.

⁸⁴ Experian Health, Patient Financial Clearance (2020), available at: <https://www.experian.com/content/dam/marketing/na/healthcare/brochures/patient-financial-clearance.pdf>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Experian Health, Case study: Targeted collections efforts yield outstanding results, available at: <https://www.experian.com/content/dam/marketing/na/healthcare/case-studies/case-study-sanford-collections-optimization-manager.pdf>.

⁸⁸ Experian Health, To stay afloat financially, get smarter collections data, available at: <https://www.experian.com/content/dam/marketing/na/healthcare/case-studies/case-study-altru-health-system.pdf>.

⁸⁹ *Id.*

All of these products appear to consider a consumer's financial information. This raises the question from where Experian is obtaining the financial data - Is this data from the main credit reporting files (*i.e.*, File One)? It is unclear from Experian Health's website whether these products are FCRA compliant.

In addition, both Paro and the Experian Health products raise a concern as to whether they are being used by nonprofit hospitals to make determinations as to presumptive *ineligibility* or exclusion from financial assistance programs. While the IRS rules regarding financial assistance allow for presumptive eligibility based on third-party information, presumptive denials are not permitted.⁹⁰

Q8. 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?

We do not have data about whether hospitals notify patients that collection attempts will cease. However, we believe that such notice would be beneficial to consumers who would otherwise lack information that the hospital is no longer pursuing the collection of this amount. Such notice should not be sent if the medical provider is simply transferring the debt to another party, like a debt buyer, that will continue collection. Notice should also inform consumers if prior collection efforts on the account that has been written off will not prevent them from accessing future medical care from that provider.

Medical providers should also notify all consumers that are deemed eligible for financial assistance that they qualify for financial assistance and their account balance is zero or has been discounted. This notification should also happen when the medical provider deems someone eligible for financial assistance without the consumer formally or actively applying.

3. HHS-Specific Questions

⁹⁰ 79 Fed. Reg. 78,954, 78,992 (Dec. 31, 2014)(Supplementary Information for 26 C.F.R. § 1.501(r)-6(c)(2): "The final regulations do not treat as reasonable efforts a presumptive determination that an individual is not FAP-eligible").

Q1. What actions should HHS consider taking to address problematic practices related to medical credit cards or loans, particularly as they relate to patients eligible for or enrolled in Medicare, Medicaid, or the Children's Health Insurance Program, or patients enrolled in Affordable Care Act Marketplace plans?

The following are the recommendations for HHS from Health Care Plastic:⁹¹

- **Issue a joint statement with the CFPB condemning false, deceptive, misleading, and unfair practices by medical providers connecting patients to medical credit cards.** This statement should also clarify that, when medical providers receive federal funding, they have a duty to provide meaningful language access, and that duty extends to communications with patients regarding medical credit cards.
- **Issue a statement by the Centers for Medicaid and Medicare Services informing providers that they should not offer medical credit cards when Medicaid will cover a service,** and that they must inform patients regarding the option of a Medicaid covered service when offering or upselling an alternative procedure that is not covered by Medicaid.

Additionally, to the full extent of its authority pursuant to 42 C.F.R. § 482.1(a), HHS should require reporting about Medicare, Medicaid, and Children's Health Insurance Program (CHIP) co-insurance and cost sharing that is charged to medical financial products. HHS should restrict hospitals that accept Medicare funds from marketing medical payment products to Medicare, Medicaid and CHIP recipients.

Q3. Are there particular health care provider types that are most associated with being offered or offering medical payment products, and are these providers receiving directed payments or other incentives through State Medicaid programs?

A 2021 report about the medical patient financing industry stated that dental care represented 59% of medical expenses financed, followed by "other" at 24%, cosmetic and dermatology care at 10%, vision care at 5%, and audiology at 2%.⁹² Recently medical credit cards and loans have also been used to pay for out-of-pocket medical costs associated with medical care traditionally covered by insurance.⁹³ For example, Synchrony has partnered with several large health care providers,

⁹¹ Health Care Plastic at 28 - 29.

⁹² IbisWorld, Medical Patient Financing 16 (Dec. 2021).

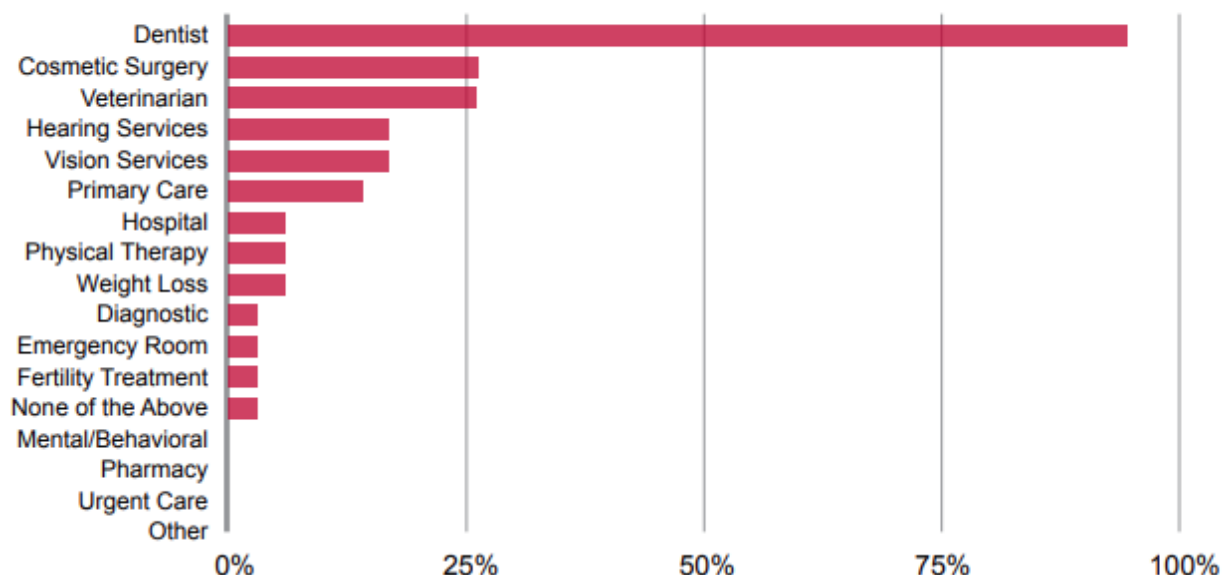
⁹³ See Consumer Financial Protection Bureau, Medical Credit Cards and Financing Plans 2 (May 2023), available at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf; Noam Levey and Aneri Pattani, "How Banks and Hospitals Are Cashing in When Patients Can't Pay for Health Care," National Public Radio (Nov. 17, 2022), available at: <https://www.npr.org/sections/health-shots/2022/11/17/1136201685/medical-debt-high-interest-credit>

including AdventHealth, Kaiser Permanente, and the Cleveland Clinic, to offer its CareCredit product.⁹⁴

In Health Care Plastic, we asked survey respondents to indicate where their clients have been offered medical credit cards. Respondents could select more than one option. Almost all respondents (94%) identified dentists as a place where their clients are offered medical credit cards. More than a quarter selected cosmetic surgery (26%) and veterinarians (26%). Some respondents reported that clients were offered medical credit cards for hearing services (17%), vision services (17%), or primary care (14%). A couple of respondents indicated that clients were offered medical credit cards at a hospital (6%), physical therapy (6%), or for weight loss procedures (6%). One respondent each indicated that a client was offered a medical credit card in the emergency room (3%) or for fertility or reproductive health (3%). One respondent selected none of the above (3%). No respondents selected mental / behavioral health, pharmacy, urgent care, or other.

Here is the chart from Health Care Plastic containing these results.

Chart 3: Where Clients Were Offered Medical Credit Cards (n=35)



[cards-hospitals-profit](#); Katherine Davis, "Hospitals pitch plastic to patients facing costly treatments," Crain's Chicago Business (Sept. 1, 2022), available at: <https://www.chicagobusiness.com/health-care/hospitals-medical-credit-cards-patients-afford-treatment>.

⁹⁴ Synchrony Financial (SYF) Q2 2020 Earnings Call Transcript (July 21, 2020), available at: <https://www.fool.com/earnings/call-transcripts/2020/07/21/synchrony-financial-syf-q2-2020-earningscall-tran.aspx>. See also Companies' Responses to Senators' 2022 Questions 16-22, available at: <https://www.warren.senate.gov/imo/media/doc/Medical%20Credit%20Card%20Companies%20Response%20s.pdf> (listing hospitals in the CareCredit network).

Q7. How might HHS improve patient understanding of options for covering the cost of medical treatments?

Please see the answer to Question 11 in Section 1.

Q8. What financial relationships exist between medical payment product companies and health care providers?

Please see the answer to Question 8 in Section 1. Additionally, servicing fees provided by hospitals to AccessOne are discussed in response to Question 5 in Section 2.

Q9. Do health care providers or financial institutions market or recommend medical credit cards or loans to Federal health care program beneficiaries (e.g., Medicare, Medicaid, Affordable Care Act Marketplace, or Children's Health Insurance Program enrollees)?

In Health Care Plastic, 21% of survey respondents reported that their clients were offered medical credit cards even though they have Medicaid and more than two-fifths of respondents (44%) reported that clients' accounts were not submitted to insurance before being signed up for a medical credit card.

The following is an excerpt from Health Care Plastic:⁹⁵

A legal services provider from California explained: "Unscrupulous providers often sign people up for private financing even when they should be covered by insurance." The respondent further noted: "By getting paid directly from the finance company, providers avoid insurer scrutiny of costs and billing practices." Another legal services attorney from California noted that services that "should have been paid by Denti-Cal" was a reason that consumers dispute credit charges.

One legal services attorney from Massachusetts described clients signing up for medical credit cards after incorrectly being told that services were not covered by Medicaid: "[W]e've certainly seen people who sign up for Care Credit after their provider tells them their insurance, including Medicaid, wouldn't cover the services they need. Unfortunately, this information isn't always true and Medicaid members have paid for services on medical credit cards that Medicaid would have paid had the provider submitted a prior authorization request and/or claim." Two legal services attorneys from California described clients being provided with medical credit cards after being "upsold" or "steered" into procedures not covered by Medicaid:

⁹⁵ Health Care Plastic at 17-18.

- “Many are Medi-Cal recipients who were upsold services by their Medi-Cal accepting dentists, who told them that they need implants (not covered by Denti-Cal) or porcelain crowns (not covered by Denti-Cal).”
- “These products should not be facilitated through providers. These products perversely incentivize providers to burden patients with unaffordable debts and to steer them away from procedures covered by their insurance. Providers receive payment immediately through the finance company, without carrying any risk of borrower default.”

Q10. Do medical payment product companies recommend certain health care providers to their users? Do companies limit where or how patients use medical credit cards?

See Section 2, Question 3 for more information about how some medical payment providers require consumers to select a participating provider.

The CFPB’s recent report about medical payment products addresses limits on how patients use medical credit cards in Appendix A in the Services Covered section.⁹⁶

4. Treasury-Specific Questions

Q1. What policy actions should Treasury consider taking to address problematic practices related to medical credit cards or loans, including debt collection and credit reporting practices, to conform with the existing tax laws and regulations pertaining to tax-exempt hospitals?

Treasury should amend its regulations governing non-profit financial assistance programs to provide better guidance to hospitals about their financial assistance and debt collection obligations and to help ensure that patients get financial assistance when eligible rather than getting signed up for a medical payment product. Treasury should clarify that offering a medical payment product before making a determination about eligibility for financial assistance does not constitute a reasonable effort to determine whether a person qualifies for the hospital’s financial assistance policy and thus violates Treasury’s regulations.

⁹⁶ Consumer Financial Protection Bureau, Medical Credit Cards and Financing Plans 2 (May 2023), available at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf

Q2. Should a tax-exempt hospital's signing patients up for medical payment products be considered similar to a tax-exempt hospital's selling medical debt, such that the special rules that only exclude debt sales from being extraordinary collection actions if certain requirements are met would be applied to these payment products?

Our concern about this approach is that the hospitals would need to be parties to contracts with the medical payment providers in order to adopt these requirements as a condition of working at the hospital. To the extent that consumers need to access medical financial products, it would be better for the hospital not to have exclusive relationships with certain medical financial products, which may involve kickbacks to the medical provider and increase the cost of credit to the consumer.

Q3. How would applying the debt sale special rules to payment products change hospitals' and payment product providers' current practices, especially those related to financial assistance eligibility screening, extraordinary collection actions, interest rates, and recall or return of balances owed by FAP-eligible individuals?

We anticipate that medical payment providers would avoid entering into contractual agreements with non-profit medical providers subject to 501(r) to avoid these restrictions, especially the restriction on interest rate. Instead, they would likely market their medical financial products directly to consumers so that any consumers they sign up would not be subject to these requirements. This could be a positive result in that, as discussed in Health Care Plastic and as shown by the 2013 CFPB enforcement action against CareCredit, problems often result when the health care provider staff is handling the credit card application and disclosures.

Q5. What are best practices for hospitals publishing and making patients aware of financial assistance programs (beyond compliance with the widely publicized requirements found in the section 501(r) regulations)?

Some states have laws that impose affirmative obligations on hospitals to screen for financial assistance⁹⁷ and require debt collectors to provide notice of financial assistance in each

⁹⁷ See, e.g., Colo. Rev. Stat. § 25.5-3-502(1) (“a health-care facility shall screen, unless a patient declines, each uninsured patient for eligibility for: . . . (b) Discounted care through the Colorado indigent care program”); Wash. Rev. Code § 70.170.060(5) (“For the purpose of providing charity care, each hospital shall develop, implement, and maintain a policy which shall enable indigent persons access to charity care. The policy shall include procedures for identifying patients who may be eligible for health

communication.⁹⁸ These laws provide additional methods for consumers to connect with information about hospital financial assistance policies.

Additionally, we note that some hospitals provide online tools to help consumers determine if they qualify for financial assistance.⁹⁹ Such tools, when easily accessible on hospitals websites, can provide additional information about financial assistance eligibility to patients.

Q8. Does the availability of medical payment products generally benefit the community or assist patients financially?

Medical payment products create a large number of risks for consumers as outlined in our response to Section 1 Question 1. Additional consumer protections should be adopted to better protect consumers from these harms.

* * *

Thank you for the opportunity to submit these comments. If you have questions about these comments, please contact April Kuehnhoff at akuehnhoff@nclc.org.

Respectfully submitted,

National Consumers Law Center (on behalf of its low-income clients),
Americans for Financial Reform Education Fund, and
Georgia Watch

care coverage through medical assistance programs . . . and actively assisting patients to apply for any available coverage.”).

⁹⁸ See, e.g., Conn. Gen. Stat. § 19a-509b(d) (“Each hospital which holds or administers one or more hospital bed funds shall require its collection agents to include a summary as provided in subsection (c) of this section in all bills and collection notices sent by such collection agents.”).

⁹⁹ See, e.g., Augusta Health, Financial Assistance, available at: <https://augustahealth.myfa.app/>.