



**Written Testimony of Anna Anderson
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**Before the Chief Judge of the Court of Appeals and the State of New York
*2023 Hearing on Civil Legal Services in New York***

September 13, 2023

On behalf of the National Consumer Law Center,¹ I thank the Chief Judge of the Court of Appeals and the State of New York, Hon. Rowan D. Wilson, for inviting us to provide written testimony regarding the state of nursing home debt collection in New York. I offer the testimony here in the hopes that the Court will continue to address the unmet civil legal services needs in New York and to provide resources necessary to meet those needs. This testimony also expands on previous comments made to the Permanent Commission on Access to Justice's Statewide Stakeholders Meeting in June 2023.

I. The Larger Medical Debt Crisis

The issue of nursing home collection is part of a broader medical debt crisis that has only worsened as a result of the pandemic. Pre-pandemic, people in the United States owed at least \$195 billion in medical debt.² In 2022, the burden of that medical debt fell on 100 million

¹ The National Consumer Law Center, Inc. (NCLC) is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of twenty-one practice treatises and annual supplements on consumer credit laws. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted training for thousands of legal services and private attorneys on the law and consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC's attorneys have been closely involved with the enactment of all federal laws affecting consumer credit since the 1970s, and regularly provide extensive comments to the federal and state agencies on the regulations under these laws. Anna Anderson, staff attorney at NCLC, also chairs a national coalition of attorneys and advocates working across the country to address nursing home debt collection issues.

² Matthew Rae, Gary Claxton, Krutika Amin, Emma Wager, Jared Ortaliza, and Cynthia Cox, KFF, *The Burden of Medical Debt in the United States* (March 2022), available at <https://www.kff.org/health-costs/issue-brief/the-burden-of-medical-debt-in-the-united-states/>.

people.³ Despite near universal coverage by Medicare, gaps in that coverage caused 22% of adults 65 and over to report that they currently had medical debt in 2022 and an additional 15% reported that they have had medical debt in the past 5 years.⁴ The burden of medical debt falls even more heavily on Black older adults, who are 2.6 times more likely to carry medical debt than older white adults.⁵ These racial disparities are present in medical debt collection actions, as well. For example, while the average rate of people facing medical debt collections in all of New York is 8 %, the rate for communities of color in Onondaga County, however, is much higher—at 41 %.⁶

Even people with robust health insurance coverage deal with medical debt and collection, as insurance and provider billing departments too often fail to help patients adequately resolve their bills before they are turned over to aggressive collection agencies. Consumers are also facing increasingly complex medical billing systems. It is not uncommon to receive inaccurate or erroneous bills, and medical providers and insurance companies devote too few resources to prevent, identify, and correct billing mistakes. Older adults in particular face an increased risk of errors and inaccurate medical bills because they are more likely to have chronic conditions and to have multiple insurance plans and often have difficulty navigating complex billing systems to correct inaccurate bills.⁷

The lack of transparency in medical costs also exacerbates this problem. Most people cannot plan and shop around for better rates when seeking medical help, as services are often sought during a time of crisis or emergency. Even when consumers attempt to get pre-approvals and a list of charges in advance, those numbers and approvals frequently do not match the bills that are issued. In order to cope with unexpected medical expenses, some consumers may turn to risky

³Noam N. Levey, KFF Health News, *Diagnosis Debt: 100 Million People in America Are Saddled With Health Care Debt* (June 2022), *available at*

<https://kffhealthnews.org/news/article/diagnosis-debt-investigation-100-million-americans-hidden-medical-debt/>.

⁴Lunna Lopes, Audrey Kearney, Alex Montero, Liz Hamel, and Mollyann Brodie, KFF, *Health Care Debt In The U.S.: The Broad Consequences Of Medical And Dental Bills* (June 2022), *available at*

<https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/>.

⁵Berneta L. Haynes, National Consumer Law Center, *The Racial Health and Wealth Gap Impact of Medical Debt on Black Families* (March 2022), *available at*

<https://www.nclc.org/wp-content/uploads/2022/09/RacialHealth-Rpt-2022.pdf>.

⁶ Amanda Dunker, Elisabeth Ryden Benjamin, Community Service Society of New York, *Discharged into Debt: New York's Nonprofit Hospitals are Suing Patients* (March 2020), *available at*

<https://www.cssny.org/publications/entry/discharged-into-debt>.

⁷Consumer Fin. Prot. Bureau, *Issue Spotlight: Medical Billing and Collections Among Older Americans* (May 2023), *available at*

<https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-medical-billing-and-collections-among-older-americans/full-report>.

medical credit cards⁸ or medical loans⁹ to pay their medical bills—often at high interest rates or with deceptive terms like deferred interest.

Despite programs meant to protect low-income patients from medical debt, many fall through the cracks and wind up in debt. In New York, all hospitals are nonprofits subject to the Public Health Law.¹⁰ These hospitals receive over \$1 billion each year to provide financial assistance to patients who cannot afford medical care.¹¹ Yet alarmingly, there is a significant disconnect here, and many patients who are eligible for financial assistance never receive or are even made aware of the fact that this help is available, leading to substantial debts they cannot pay back.

Medical debt can have cascading life consequences. Many debt collectors report medical debts to credit bureaus. Despite recent reforms,¹² medical debt on a credit report can make it harder to obtain housing, employment, or credit, even before factoring in additional financial strains caused by wage garnishments and bank account freezes.

Importantly, medical debt collection actions not only have financial consequences, but also have a significant impact on the health and well-being of New Yorkers. A high percentage of those with medical debt report regularly skipping doctors' visits and prescription refills for fear of getting into more debt, even if they have insurance coverage. Delaying and avoiding healthcare not only leads to worse health outcomes but also to increased healthcare costs down the line.¹³

II. Medical Debt Collection in New York

Medical debt collection involves a wide variety of issues, including hospital bills, out-of-network services such as ambulance and anesthesiologists, nursing home debt, and costs for laboratory work. Regardless of whether the consumer owes the medical provider, a credit card company, or another lender, medical bills may end up being placed for collection with private debt collection

⁸April Kuehnhoff, Chi Chi Wu, National Consumer Law Center, Health Care Plastic: The Risks of Medical Credit Cards (April 2023), available at https://www.nclc.org/wp-content/uploads/2023/04/Report_Health-Care-Plastic.pdf.

⁹Consumer Fin. Prot. Bureau, Medical Credit Cards and Financing Plans (May 2023), available at https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf

¹⁰Amanda Dunker, Elisabeth Ryden Benjamin, Community Service Society of New York, Discharged into Debt: New York's Nonprofit Hospitals are Suing Patients (March 2020), available at <https://www.cssny.org/publications/entry/discharged-into-debt>.

¹¹*Id.*

¹²The Big Three credit bureaus have voluntarily stopped reporting medical debts under \$500 as of the Spring of this year. Last year, the credit bureaus stopped reporting paid medical debts. They also agreed to wait one year before reporting medical debts. New York State legislation to prevent medical debt from being included on credit reports, The Fair Medical Debt Reporting Act, passed the New York State legislature in May 2023 and is awaiting signature from the Governor.

¹³Berneta L. Haynes, National Consumer Law Center, The Racial Health and Wealth Gap Impact of Medical Debt on Black Families (March 2022), available at <https://www.nclc.org/wp-content/uploads/2022/09/RacialHealth-Rpt-2022.pdf>.

agencies. As a result of all of the compounding factors of the medical debt crisis, there has been a 64% increase in medical debt collection lawsuits in NY in recent years.¹⁴

Between 2015 and 2020, hospitals in New York sued over 53,000 people for medical debt.¹⁵ The average lawsuit was for just \$1,000, and the default rate in these cases is a shocking 98%.¹⁶ Despite hospitals receiving State funds to provide assistance to patients, consumers are still being harassed, sued, and forced into costly judgments.

Medical debt cases are quite different from other consumer credit cases, in that the consumer is almost never aware of the charges they will incur when they are first seen by the medical provider and agree to be responsible for the charges. Consumers are also almost never represented by an attorney in these cases, which means that important protections that were passed recently in New York—such as heightened pleading requirements, key statute of limitations provisions, limitations on judgment interest rates, and prohibitions on judgment liens and wage garnishments—are not being enforced.¹⁷

Consumers with valid defenses in these cases but who also lack representation understandably get discouraged by the hurdles of litigation and often give up. Furthermore, pleading requirement standards are not enough to ensure that consumers are protected in settlement and mediation programs. While diversion programs can be helpful in some access to justice initiatives, they are often harmful in consumer cases, where mediators facing a high volume of cases pressure consumers into settling cases without first ensuring that debt collectors have met their burdens. When only the debt collectors have legal representation in these cases, the power imbalance is too severe. I have seen in my work with legal aid groups how *pro se* consumers are pressured into settling collection cases that are procedurally and factually deficient. When consumers settle these cases with the little funds and resources they have, it impacts their ability to afford housing and ongoing medical care.

III. Illegal Nursing Home Debt Collection in New York

The medical debt crisis also impacts caregivers, many of whom are lower income and older Americans. Alarming, we have seen an uptick in caregivers being pursued in collection

¹⁴Amanda Dunker, Elisabeth Ryden Benjamin, Community Service Society of New York, Discharged into Debt: New York's Nonprofit Hospitals are Suing Patients (March 2020), *available at* <https://www.cssny.org/publications/entry/discharged-into-debt>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ NYCPLR § 213-d; NYCPLR § 5004; NYCPLR § 5201(b); NYCPLR §5231.

lawsuits for their loved ones' nursing home bills.¹⁸ These cases have increased nationally in the wake of rising long-term care costs that have only been compounded since the COVID-19 public health emergency.

The Nursing Home Reform Act, a federal law, prohibits third party guarantees of payment and co-signers in nursing home admission agreements.¹⁹ While the Nursing Home Reform Act allows nursing homes to require a resident's representative with legal access to a resident's resources to agree to provide payment from the resident's resources, the representative cannot be held personally liable to pay the resident's debt.²⁰ Despite this clear prohibition on holding third parties personally liable for these debts, nursing homes and collection lawyers have been able to obtain settlements and judgments against caregivers that can total hundreds of thousands of dollars.

Nursing home collection lawyers routinely file baseless complaints against caregivers and other third parties, using the threat of litigation and potential judgment to pressure families and caregivers into settling these debts out of their own funds, even while knowing that the claims are at best precarious and at worst illegal and deceptive. These complaints often consist of boilerplate language that has been copied and pasted over and over again with only bare recitations of legal claims and statutes, and no factual support. Third parties who are sued for these nursing home bills often face baseless allegations of fraudulent conveyance, conversion, and unjust enrichment, in addition to breach of contract claims that illegally seek to impose personal liability on them.

To a layperson and a caregiver who has been served with one of these lawsuits, the effect can be terrifying. Many third parties settle baseless lawsuits for fear that they will lose their own homes if the case goes on, or worse that their loved ones will be kicked out of the nursing home. In their own words, caregivers have explained to the CFPB:

- “I ended up getting sued for my Dad's nursing home bill, even with the [multiple] insurances... I signed [a settlement agreement] under duress because of a threat of garnishment for the entire amount.”²¹

¹⁸Noam N. Levey, NPR, Nursing Homes Are Suing Friends and Family to Collect on Patient Bills (July 2022), available at <https://www.npr.org/sections/health-shots/2022/07/28/1113134049/nursing-homes-are-suing-friends-and-family-to-collect-on-patients-bills>.

¹⁹42 U.S.C. § 1395i-3(c)(5)(A)(ii).

²⁰ *Id.*

²¹Consumer Fin. Prot. Bureau, Issue Spotlight: Nursing Home Collection (September 2022), available at <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-nursing-home-debt-collection/full-report/>.

- “I thought, I won’t be able to afford my mortgage – I am definitely going to lose my house. I could face a garnishment of my paycheck and be forced to live on a reduced income when money was already tight to begin with. What will I tell my kids? What does it mean, to have this kind of judgment against you, how will that impact the rest of my life?”²²
- “My Mom passed away on October 3, 2020. It was just two days before ... I had received mail which said that I was personally being sued by the nursing home for close to \$80,000. I never had time to grieve. I kept so much inside; the stress was unbearable.”²³

In New York, thousands of these cases have been filed—many lacking any factual or legal support. For example, in Monroe County, 24 nursing homes filed 238 debt collection cases from 2018 to 2021 seeking almost \$7.6 million.²⁴ In nearly two-thirds of those cases, a friend, relative, or other caregiver was sued for the resident’s bills.²⁵ Due to a lack of legal assistance, as well as a lack of familiarity with these issues in the courts, the overwhelming majority of these cases end with costly settlements or judgments.

While caregivers need to be protected and know their rights before they sign these concerning nursing home contracts and admissions agreements,²⁶ New York State can also step up to help ensure that unlawful collection practices are not allowed to continue. There are a number of steps that the courts can take to ensure improper judgments are not entered,²⁷ in addition to legislative measures to stop these cases from being brought in the first place.²⁸

²² *Id.*

²³ *Id.*

²⁴Noam N. Levey, NPR, Nursing Homes Are Suing Friends and Family to Collect on Patient Bills (July 2022), available at <https://www.npr.org/sections/health-shots/2022/07/28/1113134049/nursing-homes-are-suing-friends-and-family-to-collect-on-patients-bills>.

²⁵ *Id.*

²⁶National Consumer Law Center, Justice in Aging, Can a Nursing Home Force a Resident’s Family and Friends to Pay the Bill (September 2023), available at <https://www.nclc.org/resources/can-a-nursing-home-force-residents-family-and-friends-to-pay-the-bill/>. See also, Consumer Fin. Prot. Bureau, Know Your Rights: Caregivers and Nursing Home Debt (November 2022), available at <https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/know-your-rights-caregivers-and-nursing-home-debt/>.

²⁷National Center for State Courts, Tiny Chat Companion Piece: Nursing Home Debt (September 2023), available at https://www.ncsc.org/_data/assets/pdf_file/0024/94038/CFPB-TC-Companion-Sheet-1.pdf https://www.ncsc.org/newsroom/tiny-chats?utm_campaign=349411_June%2016%202023&utm_medium=email&utm_source=dotdigital&utm_t=0,0,0,0.

²⁸Natasha Khwaja, Pew Charitable Trusts, How State Courts Can Help Address America’s Medical Debt Problem (July 2023), available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/07/19/how-state-courts-can-help-address-americas-medical-debt-problem>.

Without further action from New York State, improper and unlawful nursing home collection actions will continue, forcing caregivers to make difficult choices between helping their elderly loved ones get the care they need in their final years or facing their own financial ruin.²⁹

IV. Conclusion

Additional attention and focus on medical debt, and nursing home debt in particular, is needed in New York. This includes funding for legal services attorneys and better enforcement of existing protections in these cases. Until steps are taken to address these gaps in our justice system, the outcomes for low-income and vulnerable New Yorkers will continue to languish, resulting in significant financial and medical harm that will burden the courts and the State at large.

Thank you for the opportunity to provide testimony on this important issue.

Sincerely,

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²⁹Consumer Fin. Prot. Bureau, Issue Spotlight: Nursing Home Collection (September 2022), *available at* <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-nursing-home-debt-collection/full-report/>.