SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1061 (Limón)
Version: March 11, 2024
Hearing Date: April 2, 2024
Fiscal: Yes
Urgency: No
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SUBJECT

Consumer debt: medical debt

DIGEST

This bill prohibits reporting medical debt to credit reporting agencies, those agencies from including it in their reports, and others from relying on medical debt that appears. The bill requires hospitals to maintain a database of litigation arising from medical debt.

EXECUTIVE SUMMARY

Medical debt can be devastating to families in California and can come without warning. In fact, estimates find that over 40 percent of American adults are saddled with medical bills they are unable to pay. For years, medical debt constituted most of the debt in collections on consumer credit reports. This is despite the fact that medical debt is a poor predictor of a person's credit risk but rather reflects problems navigating complex health care billing and insurance reimbursement processes. The effects of this unpaid debt can keep individuals and families from finding housing, from securing good jobs, obtaining insurance, and other life necessities. While recent changes in reporting have helped those households with smaller medical debt loads, those most in need of relief are still forced to live in the shadow of sometimes crushing medical debt.

This bill prohibits anyone from reporting medical debt to consumer credit reporting agencies (CRAs) and the CRAs from including it on their reports. Medical debt that is reported to CRAs is void and unenforceable and contracts for such debt must include notice of this provision. To track the processing of such debt more transparently, the bill also requires hospitals to maintain a database of all litigation involving debt incurred by patients.

The bill is sponsored by Attorney General Rob Bonta and six other organizations. It is supported by various groups. It is opposed by industry associations, including the California Association of Collectors.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the Consumer Credit Reporting Agencies Act (the Act). The Act defines “consumer credit report” as any written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer’s credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the consumer’s eligibility for: (1) credit to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) hiring of a dwelling unit, or (4) other authorized purposes. (Civ. Code § 1785.3.)

2) Prohibits CRAs from making any consumer credit report containing specified items of information, including:

   a) Bankruptcies that, from the date of the order for relief, antedate the report by more than 10 years.
   b) Suits and judgments that, from the date of entry or renewal, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.
   c) Paid tax liens that, from the date of payment, antedate the report by more than seven years.
   d) Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years.
   e) Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years. These items of information shall no longer be reported if at any time it is learned that in the case of a conviction a full pardon has been granted, or in the case of an arrest, indictment, information, or misdemeanor complaint a conviction did not result.
   f) Any other adverse information that antedates the report by more than seven years. (Civ. Code § 1785.13.)

This bill:

1) Prohibits a CRA from making any consumer credit report containing medical debt.

2) Defines “medical debt” to mean a debt related to, in whole or in part, a transaction, account, or balance arising from a medical service, product, or device. It does not include debt charged to a credit card unless the credit card is

issued under an open-end or closed-end plan offered specifically for the payment of medical services.

3) Prohibits a person who uses a consumer credit report in connection with a credit transaction from using a medical debt listed on the report as a negative factor when making a credit decision.

4) Prohibits a person from furnishing information regarding a medical debt to a CRA. A medical debt is void and unenforceable if information regarding it is furnished to a CRA.

5) Makes it unlawful to enter into a contract creating a medical debt that does not include the following term: "A holder of this medical debt contract is prohibited from furnishing any information related to this debt to a consumer credit reporting agency. In addition to any other penalties allowed by law, if any information related to this debt is furnished to a consumer credit reporting agency, the debt shall be void and unenforceable." If the contract does not include this term, it is void and unenforceable. A violation by a person holding a license or permit issued by the state shall be deemed to be a violation of the law governing that license or permit.

6) Requires a hospital to maintain a database, and to update it every three months, of all litigation resulting from money owed to the hospital by a patient or a patient's guarantor that includes all of the following:
   a) Litigation filed by or on behalf of the hospital or any subsequent holder of the debt, including, but not limited to, a debt buyer.
   b) The name, case number, court, litigation status, ethnicity of any defendant and patient, and dollar amount of the litigation.

7) Mandates a contract by which a hospital sells medical debt to a third party include a provision that requires the buyer to report litigation resulting from the debt to ensure the hospital continues to maintain the database.

8) Makes conforming changes to additional statutes to comply with these changes to law, including those provisions governing debt owed to ground ambulance providers, health professionals, and hospitals.

COMMENTS

1. The medical debt debacle

According to a KFF Health News investigation with NPR and CBS News, more than 100 million people in America are saddled with medical bills they cannot pay; the "project exposed that medical debt — rather than fighting disease — is now a defining feature of the nation's health care system."[1]

The Consumer Financial Protection Bureau (CFPB) issued a report in 2022 raising concerns about medical debt collection and reporting in the United States:

> Medical debt is the most common collection tradeline reported on consumer credit records. People also report being contacted by debt collectors about medical debt more than any other type of debt. . . . Unlike many other consumer debts, people rarely plan to take on medical debt. Two-thirds of medical debts are the result of a one-time or short-term medical expense arising from an acute medical need. Medical debt is also unique in that people have less ability to shop around for medical services. Choice of medical services is limited due to price opacity, restrictive insurance networks, constraints on provider availability, and in some cases, emergency need. Nonetheless, medical debt is the debt which is most frequently reported to consumer reporting companies.
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> Some communities have higher rates of medical debt than the national average. In particular, young adults, people with low incomes, and Black and Hispanic people, are disproportionately likely to have medical debt. Veterans and older adults are also significantly impacted by medical debt. . . .
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> Medical billing and collections practices can be confusing and difficult to navigate. Prices for the same services are usually higher for uninsured and out-of-network patients than for in-network patients. Even in-network prices can vary substantially between different facilities or different departments. After billing, providers often send unpaid accounts to third-party collections agencies. These agencies have little access to providers' records. This can make it difficult for people to confirm that the medical debts that collectors contact them about are valid and accurate.
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> Once medical bills enter collections, they are often reported to consumer reporting companies. Medical debt collections on an individual's credit report can impact their ability to buy or rent a home, raise the price they pay for a car or for insurance, and make it more difficult to find a job. This impact is particularly pronounced when lenders, insurers, landlords, and others rely on outdated credit scoring models that fail to take into account

[1] Noam Levey, *Sick and struggling to pay, 100 million people in the U.S. live with medical debt* (June 16, 2022) NPR, https://www.npr.org/sections/health-shots/2022/06/16/1104679219/medical-bills-debt-investigation; *Diagnosis: Debt*, KFF Health News, https://kffhealthnews.org/diagnosis-debt/#:~:text=More%20than%20100%20million%20people,the%20nation's%20health%20care%20system.

> that medical collections are less predictive than nonmedical collections of future credit performance.
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> Medical debt can also lead people to avoid medical care, develop physical and mental health problems, and face adverse financial consequences like lawsuits, wage and bank account garnishment, home liens, and bankruptcy.[2]

There have been responses in the face of this crisis.[3] In 2022, the major CRAs removed paid medical collections from credit reports and stopped reporting unpaid medical collections until those debts were one year old, extending the previous six-month grace period. That same year, one of the most widely used credit-scoring models indicated medical debt in collections would no longer be used in their credit scoring. As of April 2023, the major CRAs agreed to no longer report on medical collections under $500.

However, the problem is still real for many Americans:

> In the past five years, more than half of U.S. adults report they've gone into debt because of medical or dental bills, the KFF poll found.
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> A quarter of adults with health care debt owe more than $5,000. And about 1 in 5 with any amount of debt said they don't expect to ever pay it off.
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> "Debt is no longer just a bug in our system. It is one of the main products," said Dr. Rishi Manchanda, who has worked with low-income patients in California for more than a decade and served on the board of the nonprofit RIP Medical Debt. "We have a health care system almost perfectly designed to create debt."
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> The burden is forcing families to cut spending on food and other essentials. Millions are being driven from their homes or into bankruptcy, the poll found.[4]

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[2] *Medical Debt Burden in the United States* (February 2022) Consumer Financial Protection Bureau, https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf. All internet citations are current as of March 19, 2024.

[3] Fredric Blavin, Breno Braga & Michael Karpman, *Medical Debt Was Erased from Credit Records for Most Consumers, Potentially Improving Many Americans' Lives* (November 2, 2023) Urban Institute, https://www.urban.org/urban-wire/medical-debt-was-erased-credit-records-most-consumers-potentially-improving-many#:~:text=In%20August%202022%2C%20it%20was,appear%20on%20consumer%20credit%20reports.

[4] *See* fn 1.

2. Removing medical debt from consumer credit reports

In order to respond to the hardships faced by many Californians, this bill prohibits reporting medical debt to CRAs and restricts the CRAs from placing it on credit reports. Where medical debt still appears on a credit report, the bill prohibits a person using that report from considering it a negative factor. To ensure compliance on the part of creditors, including debt collectors and buyers, the bill provides that any medical debt is void and unenforceable if information regarding it is furnished to a CRA. To spread awareness, the bill requires a disclosure of these provisions to be included in contracts creating medical debts.

This follows similar action being taken at the federal level by the CFPB:

> The [CFPB] announced it is beginning a rulemaking process to remove medical bills from Americans' credit reports. The CFPB outlined proposals under consideration that would help families financially recover from medical crises, stop debt collectors from coercing people into paying bills they may not even owe, and ensure that creditors are not relying on data that is often plagued with inaccuracies and mistakes.
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> "Research shows that medical bills have little predictive value in credit decisions, yet tens of millions of American households are dealing with medical debt on their credit reports," said CFPB Director Rohit Chopra. "When someone gets sick, they should be able to focus on getting better, rather than fighting debt collectors trying to extort them into paying bills they may not even owe."[5]

The CFPB specifically writes in support of this bill:

> The purpose of the credit reporting system is to assess credit risk, not to coerce people to pay debts they may not owe. Unfortunately, the CFPB has heard from consumers across the country, including in California, that many people do not find out that they have an erroneous medical bill in collections until they apply for a mortgage or car loan. They are then forced to choose between a protracted fight to address the inaccuracy or to pay it without ample time to review, which is not an option for many. Debt collectors have many other legal remedies to collect legitimate medical bills without resorting to coercive credit reporting. . . .

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[5] *CFPB Kicks Off Rulemaking to Remove Medical Bills from Credit Reports* (September 21, 2023) CFPB, https://www.consumerfinance.gov/about-us/newsroom/cfpb-kicks-off-rulemaking-to-remove-medical-bills-from-credit-reports/.

> SB1061 would cement important protections against medical bill credit reporting into California law and provide state regulators with additional authority to prevent the inclusion of medical bills in credit reports. This legislation would join a recent wave of efforts by states to protect consumers against medical credit reporting. Last year, Colorado and New York passed legislation to bar medical bills from appearing on consumer credit reports, and many other states are currently considering similar legislation.

The bill defines "medical debt" as debt related to, in whole or in part, a transaction, account, or balance arising from a medical service, product, or device. It does not include debt charged to a credit card unless the credit card is issued under an open-end or closed-end plan offered specifically for the payment of medical services. These types of medical credit cards have come under increased scrutiny in recent years:

> [T]he Consumer Financial Protection Bureau (CFPB) published a report on high-cost specialty financial products, such as medical credit cards, that are sold to patients as a way to alleviate the growing costs of medical care. Patients are typically offered these products in a medical provider's office even when their insurance may cover the procedure or they qualify for a hospital's reduced or no-cost financial assistance program. The report finds that these specialty products are typically more expensive for patients than other forms of payment, including conventional credit cards, with interest rates often reaching above 25%. These products can add, instead of remove, the financial stress that comes with medical bills, including decreased access to credit, costly and lengthy collection litigation, and an increased likelihood of bankruptcy.
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> "Fintechs and other lending outfits are designing costly loan products to peddle to patients looking to make ends meet on their medical bills," said CFPB Director Rohit Chopra. "These new forms of medical debt can create financial ruin for individuals who get sick."
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> Financial institutions and financial technology companies are generating a growing number of financing products for patients and their families. According to available public information, the financing terms for medical credit cards and medical installment loans include interest rates significantly higher than traditional consumer credit cards, 26.99% to 16%, respectively. These products often have deferred interest plans, with all accrued interest potentially becoming due at the end of a defined period, which can prove especially expensive and unaffordable for patients.
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> People used specialty medical credit cards or loans with deferred interest periods to pay for almost $23 billion in healthcare expenses for more than

> 17 million medical purchases from 2018 to 2020. They also paid $1 billion in deferred interest.[6]

As pointed out, New York has recently passed legislation that prohibits medical debt from being collected by a consumer reporting agency or included in a consumer report and prohibits medical service providers from reporting medical debt directly or indirectly to a consumer reporting agency.[7] Under that law, medical debt that is furnished to a CRA is void.

The bill also requires hospitals to maintain and update a database of all litigation resulting from money owed to the hospital by patients. This includes litigation filed by or on behalf of the hospital or any subsequent holder of the debt, including debt buyers. Hospitals will have to include a provision in contracts selling the debt to third parties that requires the buyer to report litigation resulting from the debt back to the hospital to ensure the hospital continues to maintain the database.

According to the author:

> Removing medical debt from consumer credit reports will improve the lives of millions of Californians dealing with purported past-due medical expenses. Medical debt differs from other categories of consumer debt in several ways. First, medical debt is often non-discretionary – consumers have limited or no choice in the nature and timing of medical services they require to support their health and well-being. Second, the amounts of medical debt reported to credit bureaus contain inaccuracies at significantly higher rates than other forms of consumer debt, often driven by mistakes in billings, reimbursements, or insurance disputes. And, third, medical debt is less predictive of a consumer's willingness and ability to pay future credit obligations than other forms of consumer debt. We also know that medical debt disproportionately affects low-income consumers, Black and Latino communities, and young people, all of whom already face structural barriers to achieving financial well-being.
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> This bill will not relieve many burdens associated with medical debt. The bill does not forgive debts, nor does it restrict collection practices related to medical debt. But the bill will help to lift the credit scores of people who have been inaccurately and unfairly saddled with medical debts on their credit reports, opening opportunities for access to healthier financial products, better housing, and more employment opportunities. Without a robust health care system that covers necessary and often lifesaving

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[6] *CFPB Report Highlights Costly Credit Cards and Loans Pushed on Patients* (May 4, 2023) CFPB, https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-highlights-costly-credit-cards-and-loans-pushed-on-patients/.

[7] N.Y. Pub. Health Law § 4925 et al.

medical expenses in a timely, accurate and comprehensive manner, medical debt should not be included on consumer credit reports.

3. Stakeholder positions

The sponsors of this bill, including the National Consumer Law Center, explain the need for the bill:

> Medical debt information on credit reports wreaks havoc on the financial lives of millions of Californians. These blemishes on a credit report (which employers and landlords as well as creditors may see) and the resulting lower credit scores can compromise a family's long-term financial stability by blocking access to mainstream credit, housing, and even employment. The fear of medical debt harming their credit scores also creates a barrier to Californians seeking the health care they need, causes people to skip or postpone needed care, and leads to worse health outcomes.
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> More than 1 in 5 Californians report that they have medical debt they are paying off to providers. Health care costs in California have been increasing at a rate outpacing the nation and inflation, taking up more and more of consumer income. In 2002, one third of Californians had deductibles, now nearly 80% have deductibles and the median deductible is nearly $4,000. That means when Californians seek health care services beyond a doctor's visit, like an emergency room visit, a hospital stay, cancer treatment, a heart attack, an MRI, or a broken bone, they are likely to incur medical debt.

Writing in support, AFSCME states:

> While the three national credit unions, Experian, TransUnion and Equifax have relaxed their rules when it comes to medical debts of $500 or lower, those with significant debt still could have their credit scores negatively affected by medical debt. This is not an equitable way to solve the problem. Those with medical debts of $500 or more should not be penalized because their illnesses or injuries were more extensive.
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> Having a bad credit score can negatively impact the lives of AFSCME members and all California workers. A negative credit score limits career opportunities, makes housing less affordable, and can make car insurance more expensive. Negative credit scores disproportionately affect marginalized communities. To combat this problem, the state already bans reports from containing eviction reports if the tenant won the case and criminal convictions at least seven years in the past. The state should do the same with medical debt.

The National Multiple Sclerosis Society states the need for the bill:

> People living with MS have very high medical expenses and are at high risk for medical debt. They make frequent health care visits and rely on expensive prescription medications and medical equipment to help manage their disease. MS disease-modifying therapies (DMTs) are essential for many people with MS, but their prices have skyrocketed. As of July 2023, the median brand price of MS DMTs was over $103,000. Generic alternatives can also be costly and people with MS do not get to choose which generic is used to fill their prescription.
>
> The impact of medical debt on people living with a chronic and expensive disease is significant. Reports have emerged that healthcare systems are denying people appointments or care due to unpaid bills, even very small amounts. Medical debt is leading many people to delay or avoid getting care or filling prescriptions and research has demonstrated that when people delay care or delay accessing prescriptions, it makes their health condition worse.
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> It is critical that accrued debt does not prevent access to care. SB 1061 will be an important step in that direction.

The California Labor Federation writes in support:

> Californians need a fair credit system that does not punish them for seeking medical care when they need it. The credit of working-class and low-income Californians should not be destroyed when they are simply trying to make ends meet and seek care. SB 1061 will protect countless patients by prohibiting consumer reporting agencies from including medical debt on credit reports and ending this exploitative practice. SB 1061 provides millions of Californians with a pathway towards a just recovery.

Writing in opposition, the California Association of Collectors and the Receivable Management Association International argue:

> SB 1061, if implemented, would create major disruptions in the reporting, processing, and collection of various types of debts to the detriment of consumers, medical providers, and business community. While the bill exempts general purpose credit cards from SB 1061's ban on credit reporting of medical debt, the definition of medical debt is so broadly written that it runs the risk of reclassifying other loan products, including home equity loans and banking lines of credit, as medical debt based on consumer action. Furthermore, it pulls into the definition of medical debt

> specialty health-based credit cards that are issued to consumers with prime credit ratings that are primarily used for the purchase of cosmetic, veterinary, and personal fitness products. It is our understanding that the purpose of this bill is to protect lower socio-economic consumers who might be struggling with paying medically necessitated medical debt and its impact on their credit reports. These are not those consumers.
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> Moreover, SB 1061 also seeks to automatically void any medical debt that is credit reported to the credit reporting bureaus. This is a major concern which is only magnified by the potential for this bill to reclassify other loan products as medical debt. The solution should not be a punitive penalty stemming from administrative errors or by the lack of knowledge that a loan product was reclassified as medical debt by consumer action, but rather simply having a requirement to remove the item from the credit report. The voiding of debt is a tremendous overreach and would amount to an improper taking.

In response to concerns about the harshness of voiding debt upon a violation, the author has agreed to amend the bill so that debts become void only as a result of a knowing violation.

SUPPORT

Attorney General Rob Bonta (co-sponsor)
California Low-income Consumer Coalition (co-sponsor)
California Nurses Association (co-sponsor)
CALPIRG (co-sponsor)
Consumer Federation of California (co-sponsor)
Health Access California (co-sponsor)
National Consumer Law Center (co-sponsor)
AARP
American Federation of State, County, and Municipal Employees
Asian Resources, Inc.
California Association for Micro Enterprise Opportunity
California Labor Federation, AFL-CIO
California Pan-Ethnic Health Network
California State Council of Service Employees International Union
Consumer Attorneys of California
Consumer Financial Protection Bureau
Consumer Protection Policy Center/USD School of Law
Courage California
East Bay Community Law Center
Friends Committee on Legislation in California
Leukemia & Lymphoma Society

National Multiple Sclerosis Society, MS-CAN
NextGen California
Public Law Center
Rising Communities
Small Business Majority
Western Center on Law and Poverty

OPPOSITION

California Association of Collectors, Inc.
Consumer Data Industry Association
Receivables Management Association International

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: SB 975 (Min, Ch. 989, Stats. 2022) created a non-judicial process for addressing a debt incurred in the name of a debtor through duress, intimidation, threat, force, or fraud of the debtor's resources or personal information for personal gain. SB 975 authorizes a cause of action through which a debtor can enjoin a creditor from holding the debtor personally liable for such "coerced debts" and a cause of action against the perpetrator in favor of the claimant.

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