Medical Debt and Its Relevance When Assessing Creditworthiness

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ABSTRACT

Empirical data, qualitative analysis, and case studies document the prevalence of medical debt in America. However, the influence of medical debt on credit reports and scores has not been thoroughly examined. We do know that medical payment data are not uniformly reported to consumer reporting agencies. Unlike other credit-report information, the type of entity furnishing the data often determines whether medical-bill data are used in a credit score. We also know that medical-billing errors are commonplace and that medical collections frequently involve disputes with insurance companies over liability for the accounts. Such distinctive problems—together with the unique conditions under which medical debt is incurred—raise concerns about the predictive value of medical payment data in assessing credit risk.

I. INTRODUCTION

Millions of Americans who experience illness or injury, even those with health insurance, are at risk of incurring medical bills associated with their medical treatment. Many pay for their healthcare at or near the time of treatment. Some pay outstanding medical bills over time after negotiating short-term payment plans with their healthcare providers. Still others struggle for extended periods before ultimately paying their medical bills. Millions of American families incur billions of dollars in medical bills each year.[1] While some may choose to ignore these bills, millions of Americans experience privations paying them. The stress of dealing with illness is exacerbated when medical bills find their way onto a credit report, resulting in further financial distress for families.

Healthcare spending in the United States totaled $2.7 trillion in 2011,

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1. *See National Health Expenditure Projections 2010-2020*, CENTERS FOR MEDICARE AND MEDICAID SERVICES, http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/proj2010.pdf (last visited Mar. 10, 2013) [hereinafter *Projections 2010-2020*] (explaining national spending on healthcare reaching trillions).

representing 17.9% of our nation's gross domestic product (GDP).[2] Spending on healthcare has increased significantly over the past decade; in 2000 it amounted to $1.377 trillion, or 13.8% of GDP.[3] For the past ten years, the cost of healthcare has consistently outstripped the consumer price index and wage gains for American workers.[4]

Not surprisingly, the amount patients have spent out of pocket for healthcare has also increased substantially—from $201.7 billion in 2000 to $307.7 billion in 2011.[5] These costs are in addition to the money patients and their families pay for health-insurance premiums. For some families this has meant fewer dollars to devote to other basic needs and savings. Unfortunately, millions of Americans do not have financial cushions that would enable them to absorb the increasing cost of healthcare. Instead, they incur medical debt.

The Patient Protection and Affordable Care Act (Affordable Care Act or ACA) will expand coverage through both Medicaid and private insurance sold through health insurance exchanges by 2014.[6] It is expected that the ACA will result in an increase in overall spending for insurance coverage and that this will extend insurance to millions of Americans who currently go without.[7] The expansion of insurance coverage is likely to provide relief in terms of costs paid out of pocket. Despite this expectation, growth in overall out-of-pocket spending is projected at an average rate of 5% from 2015 through 2020.[8] Current projections predict that total health expenditures will exceed $4.638 trillion in 2020, while out-of-pocket costs will be more than $443 billion that same year.[9] Even with healthcare reform, healthcare costs will continue to consume a significant share of the American family's budget. Research has found that healthcare expenses and the fear of incurring medical bills make people reluctant to seek needed medical care.[10] However, there has been far

2. *See National Health Expenditure Data: Historical*, CENTERS FOR MEDICARE AND MEDICAID SERVICES (Jan. 9, 2013), http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical.html.

3. *See Table 1: National Health Expenditures; Aggregate and Per Capita Amounts, Annual Percentage Change and Percent Distribution: Selected Calendar Years 1960-2011*, CENTERS FOR MEDICARE AND MEDICAID SERVICES, http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/tables.pdf (last visited Mar. 10, 2013).

4. KAISER FAMILY FOUND., HEALTH CARE COSTS: A PRIMER, KEY INFORMATION ON HEALTH CARE COSTS AND THEIR IMPACT 18 & fig.15 (2012), *available at* http://kaiserfamilyfoundation.files.wordpress.com/2013/01/7670-03.pdf.

5. *See Table 3: National Health Expenditures; Levels and Annual Percentage Change, by Source of Funds: Selected Calendar Years 1960-2011*, CENTERS FOR MEDICARE AND MEDICAID SERVICES, http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/tables.pdf (last visited Mar. 10, 2013).

6. *See* Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).

7. CONG. BUDGET OFFICE, ESTIMATES FOR THE INSURANCE COVERAGE PROVISIONS OF THE AFFORDABLE CARE ACT UPDATED FOR THE RECENT SUPREME COURT DECISION 2-3 (2012), *available at* http://www.cbo.gov/sites/default/files/cbofiles/attachments/43472-07-24-2012-CoverageEstimates.pdf.

8. *See Projections 2010-2020*, *supra* note 1.

9. *See id.*

10. *See generally* DENNIS ANDRULIS ET AL., ACCESS PROJECT, PAYING FOR HEALTH CARE WHEN YOU'RE

less research on the effect that medical debt has on peoples' ability to access credit.[11] In this Article, I intend to describe how the reporting of medical debt to consumer reporting agencies (CRAs) can influence consumers' credit histories and access to affordable credit.

II. MEDICAL-BILLING PROBLEMS

The combination of unaffordable healthcare costs and inefficient insurance-claims payment systems damages credit for millions of Americans. The problem of unaffordable medical bills is quite common and has increased in recent years. The percentage of working-age American adults experiencing problems with medical bills or medical debt increased from 34% in 2005 to 40% in 2010.[12] Seventy-three million Americans experienced problems such as being unable to pay medical bills, having to makes changes to their way of life in order to pay medical bills, being contacted by collection agencies for unpaid medical bills, or having to pay off medical debt over time.[13]

The mélange of health-insurance products on the market also contributes to medical-billing problems. The lack of a standard health-insurance benefit package results in confusion for both patients and providers. Many people are confused about who has responsibility for paying a medical bill. They are often uncertain about the explanation-of-benefits form, unclear about the exact service for which they are being billed, and unsure whether they should pay the healthcare provider or their insurer. One study found that nearly one-third of respondents let a medical bill go to a collection agency because they did not understand the bill or explanation-of-benefits statement.[14]

Other medical-bill problems result from errors. Research estimates that one-in-five claims for insured patients are processed inaccurately, resulting in

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UNINSURED: HOW MUCH SUPPORT DOES THE SAFETY NET OFFER? (2003), http://accessproject.org/paying_for_healthcare_when_youre_uninsured.pdf; CATHERINE HOFFMAN ET AL., KAISER COMMISSION ON MEDICAID AND THE UNINSURED, MEDICAL DEBT AND ACCESS TO HEALTH CARE (2005), http://www.kff.org/uninsured/upload/Medicaid-Debt-and-Access-to-Health-Care-Report.pdf; CAROL PRYOR & DEBORAH GUREWICH, ACCESS PROJECT, GETTING CARE BUT PAYING THE PRICE: HOW MEDICAL DEBT LEAVES MANY IN MASSACHUSETTS FACING TOUGH CHOICES (2004), http://www.accessproject.org/adobe/getting_care_but_paying_the_price.pdf; CAROL PRYOR & JEFFREY PROTTAS, ACCESS PROJECT, PLAYING BY THE RULES BUT LOSING: HOW MEDICAL DEBT THREATENS KANSANS' HEALTHCARE ACCESS AND FINANCIAL SECURITY (2006), http://accessproject.org/adobe/playing_by_the_rules.pdf.

11. *See* Deborah Gurewich et al., *Medical Debt and Consumer Credit Counseling Services*, 15 J. HEALTH CARE FOR POOR & UNDERSERVED 336, 336-38 (2004).

12. *See* Sara R. Collins et al., *Help on the Horizon: How the Recession Has Left Millions of Workers Without Health Insurance, and How Health Reform Will Bring Relief*, COMMONWEALTH FUND, at xii (Mar. 2011), http://www.commonwealthfund.org/~/media/Files/Surveys/2011/1486_Collins_help_on_the_horizon_2010_biennial_survey_report_FINAL_31611.pdf.

13. *See id.*

14. *See* Press Release, Intuit, *Intuit Financial Healthcare Check-Up Shows Americans Confused About Medical Statements* (Apr. 27, 2010), http://about.intuit.com/about_intuit/press_room/press_release/articles/2010/AmericansConfusedAboutMedicalStatements.html.

delayed payments to providers.[15] The problem with billing errors is amplified by the various reasons insurance companies use to deny payment.

According to a United States Government Accountability Office study:

> Claims may be denied for billing reasons, such as the provider failing to include a piece of required information on the claim, such as documentation that the provider received preauthorization for a service, or submitting a duplicate claim. . . . [C]laim denials can occur when a determination is made that the service provided was not appropriate, specifically that the service was not medically necessary . . . . Depending on the reason for a claim denial, either the provider or the consumer may bear the financial responsibility for the denied coverage amount. Claims that are denied because of such billing errors as the provider not providing a required piece of information can be resubmitted and ultimately paid.[16]

As a result, an industry of "denial-management" consultants has emerged to help healthcare providers negotiate with insurance companies and appeal both unpaid and denied claims. Even with denial-management consultants, millions of Americans are at risk of having their credit damaged as a result of medical-billing errors.

A. Medical Collections

Many patients are asked to pay for bills while waiting for their claims to be fully adjudicated. Others delay paying providers while they wrangle with insurers over rejected claims. In the end, the patients are ultimately responsible for paying the bill. It is a routine practice for patients to sign treatment consent forms that include language stating that the patient will assume responsibility for payment in the event that his or her insurance company does not cover 100% of the amount of the medical claim.

Healthcare providers routinely contract with collection agencies to try to recover unpaid patient accounts. Between 2005 and 2010, the number of working-age American adults that collection agencies contacted for medical bills jumped from 22 million to 30 million.[17] Medical collections are the most frequently reported type of collection account on credit reports.[18] More than half of all collection accounts on reports are medical in nature.[19]

Medical collection companies are increasingly the subjects of scrutiny.

15. *See* Press Release, Am. Med. Ass'n, *New AMA Health Insurer Report Card Finds Need for More Accuracy* (June 14, 2010), http://www.ama-assn.org/ama/pub/news/news/2010-report-card.page.

16. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-268, PRIVATE HEALTH INSURANCE, DATA ON APPLICATION AND COVERAGE DENIALS 8 (2011), *available at* http://www.gao.gov/assets/320/316699.pdf.

17. *See* Collins et al., *supra* note 12, at 9.

18. *See* Robert B. Avery et al., *An Overview of Consumer Data and Credit Reporting*, 2003 FED. RES. BULL. 47, 69, *available at* http://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf.

19. *See id.*

Public policymakers and the media are examining healthcare providers'—and their collection agents'—billing and collection practices.[20] Minnesota Attorney General Lori Swanson investigated collection practices being used by Accretive Health, one of the nation's largest collectors of medical debt.[21] Aggressive collection activities were alleged in the emergency room and throughout hospitals where Accretive was brought in to help with bill collection:

> Employees were told to stall patients entering the emergency room until they had agreed to pay a previous balance, according to the documents. Employees in the emergency room, for example, were told to ask incoming patients first for a credit card payment. If that failed, employees were told to say, "If you have your checkbook in your car I will be happy to wait for you," internal documents show.[22]

> Carol Wall, a 53-year-old Minnesota resident, said "a woman with a computer cart" told her she owed $300 as she was "vaginally hemorrhaging large amounts of blood" at an Accretive-affiliated emergency room in January, according to court records.
>
> Another patient, Terry Mackel, 50, said he was asked to pay $363.55 at another Accretive-affiliated emergency room in Minnesota as he waited "alone, groggy and hooked up to an IV" waiting to see an emergency room doctor, according to court documents. Fearing that it was the only way to see a doctor, both patients paid.[23]

The Affordable Care Act will likely address certain medical-billing problems. The ACA added new requirements that hospitals and health systems must meet in order to maintain their federal tax exemption.[24] These provisions

20. *See* Sarah Jane Tribble, *Medical Billing, A World of Hurt: Error-prone System Is Headache for Insurers, Providers, Patients*, CLEV. PLAIN DEALER, May 10, 2012, http://www.cleveland.com/healthfit/index.ssf/2012/05/medical_billing_a_world_of_hur.html; *see also* Ames Alexander et al., *Nonprofit Hospitals Thrive on Profits*, CHARLOTTE OBSERVER, Apr. 21, 2012, http://www.charlotteobserver.com/2012/04/21/3189821/nonprofit-hospitals-thrive-on.html.

21. *See* Press Release, Attorney Gen. Lori Swanson, *Attorney General Swanson Says Accretive Will Cease Operations in the State of Minnesota Under Settlement of Federal Lawsuit* (July 31, 2012), http://www.ag.state.mn.us/Consumer/PressRelease/07312012AccretiveCeaseOperations.asp (explaining investigation and result).

22. Jessica Silver-Greenberg, *Debt Collector Is Faulted for Tough Tactics in Hospitals*, N.Y. TIMES, Apr. 24, 2012, http://www.nytimes.com/2012/04/25/business/debt-collector-is-faulted-for-tough-tactics-in-hospitals.html.

23. Jessica Silver-Greenberg, *Medical Debt Collector to Settle Suit for $2.5 Million*, N.Y. TIMES, July 30, 2012, http://www.nytimes.com/2012/07/31/business/medical-debt-collector-to-pay-2-5-million-settlement.html.

24. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, § 9007 (2010), *as*

require hospitals to have written financial-assistance policies.[25] The policies must include clear eligibility criteria and information on how to apply for assistance—regardless of whether the assistance is provided at discounted rates or for free.[26] Further, the criteria must be widely publicized.[27] The ACA also requires that hospitals provide emergency services regardless of a patient's ability to pay, have written billing and collection policies, and limit the fees charged to patients eligible for financial assistance.[28] Possibly the most significant provision is one prohibiting "extraordinary collection" practices prior to making reasonable efforts to determine whether a patient is eligible for financial assistance.[29]

In June 2012, the Internal Revenue Service issued a notice of proposed rulemaking on financial assistance as well as billing and collection policies.[30] These proposed regulations define "extraordinary collection actions" as: "actions taken by a hospital facility against an individual related to obtaining payment of a bill for care covered under the hospital's FAP [financial-assistance policy] that require legal or judicial process or involve selling an individuals' debt to another party or reporting adverse information . . . to consumer credit reporting agencies . . . ."[31] The proposed regulations state that extraordinary collection actions include, but are not limited to, liens on property, foreclosure on real property, attaching or seizing a bank account, initiating a civil action, causing an individual's arrest, body attachments, or wage garnishment.[32] These new ACA protections will likely reduce the number of accounts reported to CRAs; yet are limited because they apply only to nonprofit hospitals.

B. Asymmetry of Medical Information on Credit Reports

Hospitals, doctors, and other medical providers rarely report payment information to the CRAs. According to the credit bureaus, "[a]ccounts reported by medical businesses account for only .07 percent of our data."[33] Yet medical

amended by Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (adding new section, 26 U.S.C. § 501(r) (2010), to Internal Revenue Service Code).

25. *See* 26 U.S.C. § 501(r)(1)(B) (Supp. 2011).

26. *See id.* § 501(r)(4)(A)(i).

27. *See id.* § 501(r)(4)(A)(v).

28. *See id.* § 501(r)(4)(B).

29. *See* 26 U.S.C. § 501(r)(6) (Supp. 2011).

30. *See* I.R.S. Notice 4830-01-p, REG-130266-11, at 80 (Sept. 24, 2012), *available at* http://www.irs.gov/pub/irs-drop/reg-130266-11.pdf.

31. *See id.*

32. *See id.* at 37. *See generally New Requirements for 501(c)(3) Hospitals Under the Affordable Care Act*, INTERNAL REVENUE SERV. (Feb. 28, 2013), http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/New-Requirements-for-501%28c%29%283%29-Hospitals-Under-the-Affordable-Care-Act (providing additional information on new ACA requirements for hospitals to remain tax exempt).

33. Connie Prater, *15 Tips for Paying High Medical Bills*, CREDITCARDS.COM (July 22, 2008), http://www.creditcards.com/credit-card-news/medical-bill-payment-tips-1266.php (quoting Maxine Sweet,

debt works its way onto credit reports when accounts are sent out to collection.[34] It is the collection agencies that report medical debt to the CRAs such as Transunion, Experian, and Equifax, and they do it frequently considering 52% of collection accounts reported to the credit bureaus are associated with medical bills.[35]

Americans spent an estimated $304.9 billion in out-of-pocket healthcare costs in 2010, over and above the cost of insurance premiums.[36] Many of these payments were made on time and paid directly to healthcare providers. These timely payments are almost universally ignored on credit reports because healthcare providers are rarely furnishers of data.

Most entities that report to CRAs provide both positive and negative information on consumers. For example, credit card and mortgage companies report consumers' payment history, whether positive or negative. With medical debt, healthcare providers do not report "positive" consumer behavior, such as on-time payments, and collection agencies report only "negative" consumer behavior as delinquent collection accounts.

This reporting asymmetry skews medical debt. Medical bills paid on time are not a part of one's credit history, while medical bills sent to collection are reported as derogatory accounts in arrears. This is true of all medical-collection accounts, regardless of whether they result from inefficient healthcare billing systems or a patient's inability or unwillingness to pay.

C. Disregarding Medical Debt in Assessing Creditworthiness

Inconsistent reporting and the unpredictable, atypical nature of medical debt have led many lenders to disregard reports of medical debt when reviewing loan applications.[37] As one expert notes: "Our experience has been that medical debt isn't generally reflective of a borrower's ability or willingness to repay."[38] Other financial-service-industry experts note that:

> Credit evaluators also have some concern about the appropriateness of using medical collection items in credit evaluations because these items (1) are relatively more likely to be in dispute, (2) are inconsistently reported, (3) may be of questionable value in predicting future payment performance, or (4) raise issues of rights to privacy and fair treatment of the disabled or ill.[39]

Vice President of Public Education, Experian).

34. *See id.*

35. *See* Avery et al., *supra* note 18, at 69.

36. *See Projections 2010-2020*, *supra* note 1.

37. *See Use of Credit Information Beyond Lending: Issues and Reform Proposals: Hearing Before the Subcomm. on Fin. Insts. & Consumer Credit of the H. Fin. Servs. Comm.*, 111th Cong. 6 (2010) (statement of Mark Rukavina, Executive Director, Access Project), *available at* http://www.assetplatform.org/UploadedFiles/HTML/RukavinaTestimony.pdf (quoting Self Help of Durham, N.C. public-policy director David Beck).

38. *See id.*

39. Robert B. Avery et al., *Credit Report Accuracy and Access to Credit*, 2004 FED. RES. BULL. 297, 306,

Further, some in the consumer-reporting industry have shown a willingness to exclude medical debt when calculating borrowers' credit scores. For example, the VantageScore algorithm does not consider certain medical data.

VantageScore considers medical debt based on the data reporting entity.[40] Medical debts are never taken into consideration by VantageScore if the debt reporting is known to be from a medical facility.[41] When a medical debt is outsourced to a third-party collection agency, it is treated the same as other debts that are in collection.[42] The most recent VantageScore algorithm has further refined the model so that paid medical collections will not factor into a VantageScore credit score.[43]

Of note, "[t]he VantageScore algorithm does include all collections trades when generating a score, including third-party collections activities related to medical debt."[44] However, VantageScore made an announcement in March 2013 stating that it has removed paid collections accounts from its most recent credit-scoring model.[45]

A representative from TransUnion, while testifying at a congressional hearing, also alluded to problems with medical data: "We share the view of many that the medical payments system in our country has much room for improvement. We also acknowledge the fact that some scoring models, such as *VantageScore*™ and our own insurance scoring model do not consider paid medical collections . . . ."[46]

Other industries using consumer data for predictive modeling purposes have raised questions about the value of including medical debt in a model. For example, property-management companies screening potential tenants have noted that during the 2008 recession, they were processing more applicants with unpaid medical debt.[47]

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available at http://www.federalreserve.gov/pubs/bulletin/2004/summer04_credit.pdf.

40. *Did You Know That Medical Debt Is Only Considered in Your VantageScore If It's Sent to a Collections Agency?*, THE SCORE (VantageScore), July 2011, at 5.

41. *See id.*

42. *See id.*

43. *What Impacts Credit Score*, VANTAGESCORE (Mar. 1, 2013), http://your.vantagescore.com/resource/46.

44. Letter from Barrett Burns, President & CEO, VantageScore, to Mary Jo Kilroy, U.S. House of Representatives (May 3, 2010) (on file with author).

45. *See* Kevin Wack, *Credit Scoring Model Bucks the Industry Line on Paid Debts*, AM. BANKER (Mar. 11, 2013), http://www.americanbanker.com/issues/178_47/credit-scoring-model-bucks-industry-line-on-paid-debts-1057370-1.html. The move by VantageScore was predicated on its review of statistics surrounding paid collection accounts, which show that they are a poor indicator of consumer default. *See id.*

46. *Keeping Score on Credit Scores: An Overview of Credit Scores, Credit Reports, and Their Impact on Consumers: Hearing Before the Subcomm. on Fin. Insts. & Consumer Credit of the H. Fin. Servs. Comm.,* 111th Cong. 193, 200 (2010) (testimony of Chet Wiermanski, Global Chief Scientist, Analytic and Decision Systems, TransUnion LLC), *available at* http://financialservices.house.gov/media/file/hearings/111/printed%20hearings/111-117.pdf.

47. *See* Mike Lapsley, *Credit Trends in the Current Renter Applicant Pool*, CAL. APARTMENT ASS'N

> Many people are stretched financially and often defer medical payments due to higher priority living expenses, such as housing and transportation. Rental applicants with recent medical debt are up 5% from last year, impacting almost 37% of applicants nationally.
>
> Since most property management companies overlook medical debts in their screening criteria, this trend tends to have a lesser impact on a property's applicant quality and acceptance rate. Ensure that your management company doesn't miss out on this enormous group of, in many cases, otherwise qualified applicants by taking advantage of medical debt filters in your screening process. Consult your screening company to determine if you currently score medical debts and whether it's advantageous to make this adjustment.[48]

The examples described above indicate that there is not universal agreement regarding the use of medical debt to assess creditworthiness.

D. Excess Weight of Medical Collections on Credit Scores

While there may not be agreement on the predictive value of medical debt, the effect that it has on one's credit score is indisputable. Collection accounts are recorded in the payment history of a credit report, the most heavily weighted section.

The vast majority of medical-collection accounts originally had a small balance due when reported.[49] The most comprehensive study to date found that more than one-third of medical collections had original balances of $100 or less and 85% had original balances of $500 or less when reported.[50] This study also found that 11.5% of the reported medical-collection accounts were paid off and had no remaining balance.[51]

Despite the fact that so many medical collections are small-balance accounts, they have a disproportionate effect on a credit score. According to FICO, developer of the most widely used measure of credit risk, "Paid or unpaid, large or small amounts—all can affect a credit score . . . ."[52] FICO acknowledges that the effect of a medical collection on a credit score varies, but for any paid or unpaid medical collection, "a person with a FICO score of 680 will see their score drop between 45 and 65 points. Someone with a FICO score of 780 will see their score drop between 105-125 points."[53] In addition,

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NEWS, http://www.naylornetwork.com/caa-nwl/articles/index-v2.asp?aid=121719&issueID=22009 (last visited Mar. 11, 2013).

48. *See id.*

49. *See* Avery et al., *supra* note 18, at 68-69.

50. *See id.* at 69.

51. *See id.*

52. Associated Press, *How to Check Your Credit for Medical Debt Snags*, WFAA-TV, Mar. 4, 2012, http://www.wfaa.com/news/business/141359723.html.

53. *Id.* (quoting Anthony Sprauve, spokesman for FICO).

the medical-collection blemish does not disappear for seven years.[54]

One ill-fated scenario is that of Nathen and Melissa Cobb of Riverton, Illinois. The Cobbs tried to refinance their home in 2011. They did not qualify for the loan due to $740 in medical bills that had been sent to a collection agency. "The Cobbs were surprised because the bills—nearly a dozen small copayments ranging from $6 to $280—had been paid before they tried to refinance."[55] However, because the medical bills were seen as collection accounts, their credit score went from good to mediocre.[56] "'I'm not one of those people trying to ditch out on my bills,' . . . Melissa Cobb said. 'I'm really frustrated.'"[57]

Another unfortunate example is that of Mike and Laura Park of Texas, who "thought their credit record was spotless."[58] The Parks wanted to take advantage of low interest rates and purchase a new home.[59] After they put their house on the market and talked to a lender about a mortgage, they learned that their credit report contained an alarming $200 medical bill that had been sent to a collection agency.[60] "Although since paid, it still lowered their credit scores by about 100 points . . ." and it means they will have to pay points costing $2500 in order to get a low interest rate.[61]

> The Parks had no idea a billing error they'd sorted out a year earlier—they never actually owed the $200—could affect their credit. They didn't know the bill . . . had been sent to a collection agency.
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> "We've prided ourselves in having impeccable credit. We worked hard to establish that," said Laura Park . . . .[62]

III. SUPPRESSING DATA IN CREDIT REPORTS

It is not unheard of for score developers to re-evaluate and suppress certain data in their algorithms. They frequently review and revise their credit-risk models. FICO states that analytic scientists "regularly stud[y] credit bureau data samples to test the predictive value of the factors" used in the FICO scoring model.[63] As a result, they issue new scoring models, such as FICO® 8.

54. *See id.*

55. Carla K. Johnson, *Medical Bills Can Wreck Credit, Even When Paid Off*, USA TODAY, Mar. 5, 2012, http://usatoday30.usatoday.com/news/health/story/health/story/2012-03-05/Medical-bills-can-wreck-credit-even-when-paid-off/53367464/1.

56. *See id.*

57. *Id.*

58. *See id.*

59. *See* Johnson, *supra* note 55.

60. *See id.*

61. *Id.*

62. *Id.*

63. *Keeping Score on Credit Scores: An Overview of Credit Scores, Credit Reports, and Their Impact on*

FICO® 8 was introduced in 2009 and is the newest generation of the FICO credit score.[64] FICO created the formula to "significantly enhance the score's ability to predict consumer credit risk."[65] FICO® 8 is said to boost the predictive strength of the model and ignore small-dollar, "nuisance" collection accounts in which the original balance was less than $100.[66] This was an intentional decision to remove certain data from the score algorithm. This could bode well for the millions of Americans with "nuisance" medical-collection accounts on their credit report. However, it is likely that many American consumers will not benefit from this updated and enhanced scoring model because FICO® 8 will not replace previous models. The FICO® 8 model is the fifth generation of the FICO scoring model that was first introduced in 1989, but it is not the most widely used version.[67] According to news reports, "Fannie and Freddie currently utilize previous FICO score versions, not the FICO 8 model. These prior versions of the classic FICO score do NOT bypass 'small dollar' collections."[68] Because most conventional loans must meet Fannie Mae or Freddie Mac guidelines, they will be underwritten using the older version of the FICO scoring model.[69] Despite the work done by score developers to analyze and revise models improving predictive strength, previous versions of the score remain in use. These older score algorithms may result in faulty assessments of the creditworthiness of certain consumers.

Inaccurate assessments of credit risk due to medical-collection accounts on credit reports result in increased costs for home mortgages, automobile loans, insurance, and credit cards. These problems can linger for people who have had their credit ruined due to medical debt.[70] Consumer advocates and policymakers assert that medical debt is unique and should not be used as a factor when assessing credit risk.[71] Some in the credit reporting industry even question whether consumers should be made to suffer "damaged credit histories due to a very complex and burdensome medical billing system."[72]

Consumers: Hearing Before the Subcomm. on Fin. Insts. & Consumer Credit of the H. Fin. Servs. Comm., 111th Cong. 11-12 (2010) (statement of Thomas J. Quinn, Vice President, Scores, FICO), *available at* http://financialservices.house.gov/media/file/hearings/111/printed%20hearings/111-117.pdf.

64. *See A Look at FICO® 8 Score*, MYFICO, http://www.myfico.com/crediteducation/questions/fico8.aspx (last visited Mar. 12, 2013).

65. *Id.*

66. *Id.*

67. Ann Carrns, *Is That Credit Score a FICO, or a FICO 8?*, N.Y. TIMES, May 10, 2012, http://bucks.blogs.nytimes.com/2012/05/10/is-that-credit-score-a-fico-or-a-fico-8.

68. Gerri Detweiler, *Could a Medical Collection Account Keep You From Getting a Mortgage?,* CREDIT.COM (Aug. 2, 2011), http://blog.credit.com/2011/08/could-a-medical-collection-account-keep-you-from-getting-a-mortgage.

69. *See id.*

70. *See* Tara Siegel Bernard, *Discrepancies on Medical Bills Can Leave a Credit Stain*, N.Y. TIMES, May 4, 2012, http://www.nytimes.com/2012/05/05/your-money/medical-debts-can-leave-stains-on-credit-scores.html.

71. *See supra* Part II.C-D.

72. Letter from Terry W. Clemans, Exec. Dir., Nat'l Credit Reporting Ass'n, to Mary Jo Kilroy, U.S.

A. State Actions Limiting the Reporting of Medical Debt

Some states have taken steps to discourage medical providers and their collection agents from reporting medical debt to the credit bureaus. For instance, in Massachusetts, the Attorney General's Community Benefits Guidelines for Nonprofit Hospitals discourage hospitals and their agents from reporting a patient's debt to a CRA unless specifically approved by the hospital's board of directors.[73] They also recommend that hospitals seek removal of these items from the patient's credit report once the debt is paid in full.[74] In Illinois, hospitals may not pursue legal actions for nonpayment of a hospital bill against an uninsured patient without income or assets necessary to meet his or her financial obligations if the patient has provided all of the information and documentation needed to determine the patient's eligibility.[75] California hospitals may not report adverse information to a CRA, or commence a civil action against a patient without insurance coverage or with high medical costs, within the first 150 days after the initial billing.[76] In Maryland, hospitals that have reported adverse information to a CRA about a patient later found to be eligible for free care on the date of the service are required to strike the adverse information.[77]

State laws and regulations, as well as the new federal prohibition on extraordinary collection actions, will further amplify the inconsistent reporting of medical debt. It is difficult to imagine that credit-card or mortgage payment data would be considered predictive if its reporting were as erratic.

B. Federal Actions Limiting the Reporting of Medical Debt

Though limiting the type of collection accounts that can be recorded on a credit report may be controversial, there is growing support to treat medical debt differently from other types of debt. Federal legislators introduced laws in the last two Congresses that would require medical accounts that have been fully paid or settled to be removed from a credit report within 45 days of attaining a zero balance.[78] This legislation, the Medical Debt Responsibility

House of Representatives (July 21, 2010) (on file with author).

73. *See* OFFICE OF MASS. ATT'Y GEN. MARTHA COAKLEY, THE ATTORNEY GENERAL'S COMMUNITY BENEFITS GUIDELINES FOR NON PROFIT HOSPITALS 29, *available at* http://www.mass.gov/ago/docs/healthcare/hospital-guidelines.pdf.

74. *See id.*

75. *See* 210 ILL. COMP. STAT. ANN. 88/45(a) (West 2013) (examining Illinois's Fair Patient Billing Act).

76. *See* CAL. HEALTH & SAFETY CODE § 127425(d) (West 2012). In addition, § 127420(b)(5)(A) requires hospitals to have written, financial-assistance policies for hospital services provided to low-to-moderate-income Californians. *See id.* § 127420(b)(5)(A). The California Health & Safety Code also restricts certain collection practices in which hospitals may engage. *See id.* § 127405(e)(3).

77. *See* MD. CODE ANN., HEALTH-GEN. § 19-214.2(b)(8) (LexisNexis 2013).

78. *See* Medical Debt Responsibility Act of 2013, S. 160, 113th Cong. (2013); Medical Debt Responsibility Act of 2011, H.R. 2086, 112th Cong. (2011).

Act, had been co-sponsored by Republicans and Democrats.[79] Thus far, it has enjoyed the widespread support of consumer groups and organizations representing financial and medical interests.[80]

However, the Medical Debt Responsibility Act also has its detractors.[81] Many in the consumer-data industry are opposed to deleting data that is part of a person's credit history.[82] Even though some of the opponents believe that the United States medical payment system could be improved, they oppose congressional interference.[83] They have said that if Congress intervenes and restricts the use of certain debts in underwriting models, it will open the door for further tinkering with their models.[84] It is their belief that deleting a particular type of debt creates a dangerous precedent and denies lenders important information.[85] Stuart Pratt, President and CEO of the Consumer Data Industry Association comments, "[I]n some types of lending decisions, lenders may disregard paid medical debt, but in others lenders may find that it is highly predictive, and eliminating access to that data across the board could have a serious detrimental effect on lending decisions."[86]

Though the Medical Debt Responsibility Act has enjoyed bipartisan support, there is industry opposition and its passage is not assured.[87] This may have been a factor when a letter was sent, in August 2012, by four Senate co-sponsors of the bill calling on Richard Cordray, Director of the Consumer Financial Protection Bureau (CFPB), to use the agency's authority to begin addressing problems related to medical collections and credit scores.[88] The letter revealed their concerns, stating:

> Addressing the unique challenges of medical debt would be helpful to all

79. *See* Medical Debt Responsibility Act of 2013, S. 160, 113th Cong. (2013); Medical Debt Responsibility Act of 2011, H.R. 2086, 112th Cong. (2011).

80. Press Release, Senator Jeff Merkley, *Senators Introduce Bill to Help Americans Struggling with Medical Debt* (Jan. 28, 2013), http://www.merkley.senate.gov/newsroom/press/release/?id=110c3207-bc88-4177-86ca-2ce894186f86.

81. *Use of Credit Information Beyond Lending: Issues and Reform Proposals: Hearing Before the Subcomm. on Fin. Insts. and Consumer Credit of the H. Comm. on Fin. Servs.* 11 (2010) (statement of Stuart K. Pratt, President and CEO, Consumer Data Industry Association), *available at* http://archives.financialservices.house.gov/media/file/hearings/111/pratt_testimony_5.12.10.pdf.

82. *See id.*

83. *See id.*

84. *See id.*

85. *See Use of Credit Information Beyond Lending: Issues and Reform Proposals: Hearing Before the Subcomm. on Fin. Insts. and Consumer Credit of the H. Comm. on Fin. Servs.* 11 (2010) (statement of Stuart K. Pratt, President and CEO, Consumer Data Industry Association), *available at* http://archives.financialservices.house.gov/media/file/hearings/111/pratt_testimony_5.12.10.pdf.

86. *See id.*

87. *See id.*

88. *See* Press Release, Senator Robert Menendez, *Menendez, Senators Ask Consumer Financial Protection Bureau to Address Medical Debt Reporting* (Aug. 3, 2012), http://www.menendez.senate.gov/newsroom/press/menendez-senators-ask-consumer-financial-protection-bureau-to-address-medical-debt-reporting.

> involved. Consumers would get access to credit at the prices they truly deserve, while lenders would get better and more accurate information about consumer creditworthiness. But the real winner would be our economy, as millions of creditworthy consumers would be released from artificially-low credit scores that misrepresent their ability and likelihood to pay.[89]

The response from Director Cordray issued in late August 2012 clarified that further investigation of medical debt is guaranteed:

> [T]he CFPB has begun a review of the treatment of medical debt in both the debt collection and credit reporting industries. We want to make sure that medical debt and all information that goes into a consumer's credit report is reported accurately, and that consumers are treated in a fair and consistent way when providers send debt to collection.[90]

Given the focus of federal policymakers, there is no doubt that medical debt will be closely scrutinized in the foreseeable future.

IV. POSSIBLE SOLUTIONS

A. Enact the Medical Debt Responsibility Act

As an initial step, Congress should immediately pass this proposal. Millions of Americans would have their credit restored by suppressing paid-off medical collections and requiring the removal of fully paid and settled medical accounts from credit reports while no longer penalizing them for having had a medical bill that was once sent to collection.[91]

B. Suppress All Medical Payment Data on Credit Reports

The CFPB should utilize its supervisory authority and call for a moratorium on the reporting or use of any medical debt on credit reports. Given the unique nature of medical debt, the prevalence of medical-billing errors, and the lack of clear data on the predictive value of medical accounts, the CFPB should suppress all medical payment data until further research is conducted.

C. Prove Predictive Value of Medical Debt

Financial-industry representatives do not agree on the predictive value of medical debt. Given the importance of credit reports and credit scores in today's economy, Congress and the CFPB should use their investigative and

89. *Id.*

90. Letter from Richard Cordray, Dir., Consumer Fin. Prot. Bureau, to Jeff Merkley et al., U.S. Senate (Aug. 30, 2012) (on file with author).

91. *See* Medical Debt Responsibility Act of 2013, S. 160, 113th Cong. (2013).

supervisory powers to compel the consumer-data industry to demonstrate to regulators the predictive value of medical debt. The industry should be encouraged to make data available to enable regulators to conduct comprehensive, independent research, undertake robust studies to demonstrate that medical data are correlated with credit defaults, and determine the proper weight to assign these debts.

D. Monitor Credit Scoring Algorithm Models

Entities engaged in consumer credit scoring should be monitored by regulators to ensure that scoring algorithms are up to date. If scoring entities refine and develop new algorithms that boost the predictive strength of the model, they should be required to remove from the market the previous, outdated, less accurate scoring models.

E. Conduct Ongoing Research on Medical Debt

Given the goals of the Affordable Care Act, policymakers and the general public will be interested in the effectiveness of health reform at protecting Americans from financial ruin. Congress and the CFPB should conduct ongoing research on the prevalence and consequences of medical debt. This research should be used to inform future healthcare and financial-services policies. Considering the state of the United States economy and the prevalence of medical debt on credit reports, further investigation of this issue is warranted. Any changes that mitigate the burden resulting from the inappropriate reporting of medical debt on credit reports could have positive effects on American families and the overall United States economy.

V. CONCLUSION

Medical debt is unique and should be treated differently than other types of debt. Unlike collections for credit card accounts, medical collections result from services that are frequently unplanned, unpredictable, and for which price quotes are rarely provided.[92] Though Americans access medical care by interacting directly with healthcare providers, their interactions with the billing system typically take place through an intermediary, their insurance company. The result is an opaque process coupled with confusion regarding the cost of care and the responsibility for payment. In addition, the United States medical-billing system is inefficient and error-prone.

Furthermore, those in need of medical treatment are often scared and vulnerable. Many are uncertain about the most prudent course of treatment and

92. *Cf. That CT Scan Costs How Much? Health-Care Prices Are All Over the Map, Even Within Your Plan's Network*, CONSUMER REP. (2012), http://www.consumerreports.org/cro/magazine/2012/07/that-ct-scan-costs-how-much/index.htm.

rely heavily on the suggestions and guidance of their primary-care provider or medical team. Such a highly charged, emotional setting is not one in which most people are prepared to make decisions about credit or financial services. There are few circumstances under which people feel more vulnerable than when they are being treated for illness or injury. This vulnerability is amplified for those who then struggle with medical bills after receiving care.

While there is not a consensus on whether medical debt should be treated differently from other types of debt, there is general agreement that it is not typical consumer debt. The scrutiny of public policymakers has raised concerns about the effect of medical debt on credit scores and the availability of affordable credit. Though the outcome is far from clear, there is no doubt that the issue of medical debt on credit reports will be more closely examined in upcoming years than it has been in the past. The American populace will likely welcome, and benefit from, such an examination.