September 11, 2023

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

Secretary Becerra
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

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

RE: Request for Information Regarding Medical Payment Products (CMS–2023–0106)

Dear Secretary Yellen, Secretary Becerra, and Director Chopra:

Thank you for the opportunity to submit comments in response to the above-titled request for information (RFI), issued by the Treasury Department, the Consumer Financial Protection Bureau (CFPB), and the Department of Health and Human Services (the Agencies). We strongly support this effort to better understand the prevalence, nature and impact of medical payment products on consumers and the health care system.

The undersigned organizations represent millions of patients and consumers facing serious, acute and chronic health conditions across the country. Our organizations have a unique perspective on what patients need to prevent disease, cure illness, and manage chronic health conditions. Our breadth enables us to draw upon a wealth of knowledge and expertise that can be an invaluable resource in this discussion.

In March of 2017, our organizations agreed upon three overarching principles[1] to guide any work to reform and improve the nation's healthcare system. These principles state that: (1) healthcare should be accessible, meaning that coverage should be easy to understand and not pose a barrier to care; (2) healthcare should be affordable, enabling patients to access the treatments they need to live healthy and productive lives; and (3) healthcare must be adequate, meaning healthcare coverage should cover treatments patients need, including all the services in the essential health benefit (EHB) package.
An estimated 100 million people in the United States are currently in debt because of medical and dental bills.[2] Although the Affordable Care Act (ACA) gave consumers critical protection against catastrophic costs, including by capping out-of-pocket costs for those who obtain coverage under an employer-sponsored plan or an ACA plan in the individual and small group markets, the consumers and patients we represent are still experiencing medical debt, regardless of age, income, ethnicity or insurance status. The consequences of this debt are overwhelming, particularly for patients with chronic and acute conditions.[3] Too often, patients and their families must make difficult tradeoffs to manage their debt, including by juggling payments for basic household needs, such as utilities, rent or mortgage, and food, with those required to get care and manage their health conditions.[4] We therefore greatly appreciate the Agencies seeking to better understand medical payment products. We ask that you keep in mind that these products are part of a broader systemic issue with health care costs, and patients can offer firsthand experience to inform future policymaking. Below we offer comments on select questions raised in the RFI.

General Questions

Understanding impact and actions Federal agencies can take to address harm
We urge the Agencies to require health care providers and financial institutions that market these products, including medical credit cards and installment loans, to provide effective notice and consent to patients and consumers. Patients must be informed in a clear, understandable way, and in a separate document, about key features of these products that pose high risks of confusion and financial harm, including high interest rates and transaction fees, as well as how having such a product may affect coverage under a health plan and eligibility for a hospital's financial assistance program. Notices should also advise patients of alternatives to medical financing, including the potential for enrolling in any applicable financial assistance program, or Medicaid or marketplace plans with financial assistance. We emphasize that notices must be prominent and expressed in plain language. Dense, boilerplate buried in

[1]Consensus Health Reform Principles. Available at: https://www.lung.org/getmedia/0912cd7f-c2f9-4112-aaa6-f54d690d6e65/ppc-coalition-principles-final.pdf.

[2] Lunna Lopes et al., "Health Care Debt In The U.S.: The Broad Consequences Of Medical And Dental Bills," *Kaiser Family Foundation* (June 2022), https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/; and Noam N. Levey, "100 Million People in America Are Saddled With Health Care Debt," *Kaiser Family Foundation Health N*ews (June 2022), https://kffhealthnews.org/news/article/diagnosis-debt-investigation-100-million-americans-hidden-medical-debt/

[3] See, for example, Nora V. Becker, et al., Association of chronic disease with patient financial outcomes among commercially insured adults, JAMA Med Int. August 22, 2022; Patrick Richard, et al., The Financial Burden of Cancer on Families in the United States, Int J Environ Res Public Health, April 2021; and Patrick Richard, Regine Walker, and Pierre Alexandre, The burden of out of pocket costs and medical debt faced by households with chronic health conditions in the United States," PLoS One, June 25, 2018.

[4] Semret Seyoum et al, Cost Burden Among CF Population in the United States: A Focus on Debt, Food Insecurity, Housing and Health Services," Journal of Cystic Fibrosis, Vol. 22, Issue 3, May 2023, https://www.sciencedirect.com/science/article/abs/pii/S1569199323000036

a stack of patient forms will be ineffective and overlooked, especially in circumstances where patients may feel rushed (i.e., when seeking urgent care) or compromised (i.e., after being stabilized).

Medical payment products are part of a broader, systemic problem that saddles patients with substantial and sometimes unwarranted or inappropriate costs. For example, a review of claims denials by plans participating in HealthCare.gov found denial rates for in-network claims ranged from 2 percent to 49 percent, yet patients appealed fewer than one percent of denied claims. Even fewer filed an external appeal.[5] Without better data on the reasons for those denials, and better support for patients to file internal and external appeals, we cannot assume patients' costs under their health plans are legitimate and correctly applied — rather than the result of inappropriate utilization management or a coding error. The Agencies can use tools already available to them – broader and more granular data reporting under the ACA's transparency requirements, for example — to better understand patient costs under their coverage and suggest opportunities for future policymaking.

Opportunities for federal action and enforcement

Robust, granular data about the use and impact of these medical debt products on patients are crucial for identifying disparities and understanding the populations affected by these products. This, in turn, is essential to determining what policy interventions are needed to address problems identified by the Agencies. The Agencies should strive to collect self-reported data on race, ethnicity, language, gender, disability, sexual orientation, and gender identity. When collecting these data, the Agencies can take steps to ensure data collection is accurate and to encourage greater response rates. For example, any data collection should make clear why the data are being collected and how the data will be used.[6] Individuals collecting this information should undergo cultural competency and skilled communication training to regain trust among communities asked to provide data and to minimize the trauma and stigma that underserved communities may experience when interacting with government entities.

However, the Agencies should not delay taking enforcement actions, such as filing an action against a company already violating consumer protections, until they have further data. The CFPB May report[7] and the RFI made clear, there are existing examples of bad actors promoting medical payment products and preying on patients who may feel compelled to enroll in these products in order to cover their costs without understanding the implications or alternatives.

HHS Questions

Implications for Protections under the No Surprises Act

The No Surprises Act's (NSA) ban on balance bills in most circumstances when patients inadvertently or unavoidably obtain care out-of-network is a critical protection that will help reduce medical debt for many. However, it's important to consider how use of medical payment products may undermine those protections, particularly since NSA enforcement relies on health plans and providers resolving billing

[5] Pollitz, K, Lo, J, Wallace, R, "Claims Denials and Appeals in ACA Marketplace Plans in 2021," KFF, Feb. 9, 2023, https://www.kff.org/private-insurance/issue-brief/claims-denials-and-appeals-in-aca-marketplace-plans/.

[6] Palanker, D, Clark, J, Monahan, C, "Improving Race and Ethnicity Data Collection: A First Step to Furthering Health Equity Through State-Based Marketplaces," The Commonwealth Fund, Jun. 9, 2022, https://www.commonwealthfund.org/blog/2022/improving-race-and-ethnicity-data-collection-first-step-furthering-health-equity-through

[7] Consumer Financial Protection Bureau, "Medical Credit Cards and Financing Plans," May 2023. https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf

disputes rather than putting the burden on patients. Medical payment products add complexity for patients trying to navigate the health system and secure their NSA rights. For example, the Agencies should collect data to determine whether medical payment products are marketed to patients when they are asked by out-of-network providers to waive their NSA rights. Because providers can refuse to treat patients who will not agree to be balance billed, we are concerned medical payment products can be presented to patients as a way to obtain care and pay the resulting balance bill. Data on their use in these circumstances can inform policies to protect patients.

Treasury Questions

Hospital Financial Assistance

We strongly urge the Treasury Department to require universal screening for hospital financial assistance programs. Too few patients are aware of their rights to obtain financial assistance and are then at heightened risk of enrolling in predatory products and taking on medical debt. Non-profit hospitals should be required to provide data on the outcome of those screenings and the use of medical payment products marketed or promoted by the hospital and/or their providers.

General Comments

We believe there are additional steps the Agencies and others within the Administration should take to address the upstream causes of medical debt.[8] For example, the Department of Labor should tighten regulations on association health plans to protect against bad actors that defraud small businesses and leave their employees with unpaid bills. The Administration should also use its full authority to improve affordability of coverage, whether it's restricting use of plans that fail to meet ACA protections, such as short-term limited duration products and other limited benefit plans, or strengthening the protections of the ACA, for example by placing restrictions on high-deductible health plans. High deductibles, even in ACA-compliant plans, present real barriers for patients who need care, leaving them with the impossible choice of forgoing care or taking on debt and risky financing products.

Finally, we encourage the Agencies to consider whether medical payment products are putting consumers at risk in other areas of health care, for example, pharmacy and prescription drug benefits. High out-of-pocket costs there, too, present opportunities for risky financing schemes that may jeopardize consumers' financial stability and ultimately, access to care.

****

Thank you for the opportunity to provide these comments. Should you have any questions, please contact Theresa Alban at the Cystic Fibrosis Foundation at talban@cff.org.

Sincerely,

ALS Association
American Kidney Fund

[8] Partnership to Protect Coverage, 100 Days Agenda: A Patient-First Blueprint. https://www.cff.org/sites/default/files/2021-10/PPC-100-Days-Agenda.pdf

American Lung Association
Arthritis Foundation
Cancer*Care*
Crohn's & Colitis Foundation
Cystic Fibrosis Foundation
Epilepsy Foundation
Hemophilia Federation of America
Lupus Foundation of America
Muscular Dystrophy Association
National Bleeding Disorders Foundation
National Eczema Association
National Health Council
National Kidney Foundation
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Patient Advocate Foundation
National Psoriasis Foundation
Pulmonary Hypertension Association
Susan G. Komen
The AIDS Institute
The Leukemia & Lymphoma Society