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INTO THE RED TO STAY IN THE PINK: THE HIDDEN COST OF BEING UNINSURED

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HEALTH INSURANCE IN THE UNITED STATES is the most important vehicle for gaining access to health care services. It makes a substantial difference in the amount and type of services people are able to obtain. Thus, there are serious health consequences for people who do not have health insurance. It is related to both reduced access to care and to poor health outcomes.

Lack of health insurance also affects the financial security of individuals and families. The financial consequences of being uninsured are not as frequently discussed as the health consequences but they are equally devastating. A good health insurance policy is protection against financial ruin for many Americans. Lacking health insurance, or having limited health insurance, can lead to myriad financial problems. For instance, medical bills mount quickly if a person is uninsured and needs medical treatment.

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The Legal Aid Society of Greater Cincinnati and the Access Project have collaborated on this article, which begins the process of understanding the impact of medical debt by reviewing national research and the experience of one community, Cincinnati, Ohio.[1]

Despite the existence of substantial public resources invested in medical coverage for low-income people in Greater Cincinnati, the financial impact of being uninsured is particularly harsh on those with limited income and no medical coverage. The Federal Medicare program provides coverage to 134,956 elderly and disabled people in Hamilton County.[2] The State and Federal Medicaid program covers 32,565 low-income aged, blind, and disabled people[3] and 60,621 parents and children in Hamilton County.[4] Furthermore, the Hospital Care Assurance Program provided $77 million in funds to Hamilton County hospitals that agreed to provide free care to low-income residents.[5] Thirty million of this was for residents with incomes below 100% of the federal poverty line.[6] In addition, the Hamilton County Health and Hospitalization Levy provided $36 million to University Hospital and Children's Hospital Medical Center to provide free care to residents under 100% of the pov-

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[1] Through its Healthcare Access Advocacy Project, The Legal Aid Society of Greater Cincinnati seeks to improve access to affordable, appropriate health care for low-income uninsured and under-insured individuals and families. Legal Aid has partnered with the Access Project, a Boston-based organization that seeks to improve the health of our nation by assisting local communities in developing and sustaining efforts that improve health care access and promote universal coverage, with a focus on people who are without health insurance.

[2] HEALTH CARE FINAN. ADMIN., U.S. DEP'T OF HEALTH AND HUMAN SERVS., OHIO MEDICARE ENROLLMENT AS OF JULY 1, 1999: AGED AND DISABLED 3/2000 UPDATE (1999), *at* http://www.hcfa.gov/STATS/ ENROLL/070199/OHIO.HTM.

[3] OHIO DEP'T OF JOB AND FAMILY SERVS., OHIO MEDICAID MANAGED CARE MONTHLY ENROLLMENT REPORTS 20 (July 20, 2000), *at* http://www.state.oh.us/odjfs /ohp/bhpp/reports/omr1998/sfy98omr_1.pdf.

[4] OHIO DEP'T OF JOB AND FAMILY SERVS., OHIO MEDICAID MANAGED CARE MONTHLY ENROLLMENT REPORTS 5 (Aug. 2001), *at* http://www.state.oh.us/odjfs/ohp /bmhc/reports/0801complete.pdf.

[5] *See* Letter from John E. Callender, Senior Vice President, Ohio Hospital Association, to George Vincent, Chairman, Hamilton County Tax Levy Review Committee (Apr. 24, 2001) (listing the funding provided to twelve Hamilton County hospitals) (on file with author).

[6] *See id.*

erty line and reduced cost care to residents with incomes below 200% of the poverty line in 2001.[7]

Not surprisingly, low-income people are more likely to be uninsured than those with higher incomes. According to a recent survey, the overall adult uninsured rate in Greater Cincinnati is 7.4%, or approximately 155,000 adults.[8] The rate among those with incomes below the federal poverty line is 20%.[9] Welfare reform contributed to a large increase in the number of low-income people without insurance. Over 150,000 low-income Ohioans lost Medicaid coverage between 1997 and 2000 in the midst of welfare reform implementation, with over 10,000 of them in Hamilton County.[10] Notably, most of those who are employed have low-wage jobs that do not offer health insurance.

Despite the fact that medical debt is very common, there has been little research on the consequences that medical debt has on uninsured people and on the financial consequences of not having health insurance. This article is a first step in understanding this problem and its impact on one community. The article couples interviews of uninsured individuals who have sought medical care with existing research and data on the financial problems that follow the use of medical care. Further research is needed to fully understand how the lack of insurance affects individuals' personal finances and ultimately the nation's financial health.

Three consequences of medical debt are described: (1) access to future health care—where the existence of medical debt discourages the uninsured from seeking health care or prevents them from obtaining it; (2) direct financial effects—where medical debtors are subjected to aggressive collection efforts, including collection agencies, liens, lawsuits, and garnishment, which lead to devastated credit records and bankruptcy; and (3) emotional and social effects—where medical debtors experience

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[7] Agreement Regarding Use of Hamilton County Health and Hospitalization Tax Levy Proceeds 1, 14 app. II (Nov. 27, 1996) (on file with author).

[8] CMTY. HEALTH STATUS STEERING COMM., HEALTH IMPROVEMENT COLLABORATIVE OF GREATER CINCINNATI, INDICATORS OF HEALTHY COMMUNITIES 2000, at 79 (2000), *at* http://www.the-collaborative.org/indicators2k.html (on file with Health Matrix).

[9] *Id.*

[10] *See* OHIO DEP'T OF JOB AND FAMILY SERVS., OHIO FAMILY MEDICAL PROJECT 2-3, 8 (2001) (documenting the effects of welfare reform on Ohio Medicaid recipients), *at* http://www.state.oh.us/odjfs/ohp/reports/index.stm#ofmp.

severe stress, cannot save money, and lose jobs and homes because of medical debt.

I. CONSEQUENCE #1: ACCESS TO FUTURE HEALTH CARE

Not having health insurance is a significant barrier to receiving health care. Yet once an uninsured person manages to get care, the cost and resulting debt may create an additional barrier to getting any care in the future.[11] This can be either because individuals are reluctant to seek care at facilities where they owe money, or because the facilities themselves withhold care from those who owe. For instance, in a 2000 survey of uninsured Cincinnatians, 26% of respondents reported that they would not seek additional health care because they owe money for past care.[12] Another 16% reported they would not return to the provider to whom they owed money.[13]

The results of national survey data are similar. The Access Project's Community Access Monitoring Survey (CAMS) research found that a quarter (26%) of the people who owed money to a health care facility said that the debt would deter them from seeking care in the future.[14] Survey responses included statements such as:

> I had to stop with the treatments because I owe a lot of money and I want to pay my debt first.

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[11] THE ACCESS PROJECT, LISTENING TO THE UNINSURED: RESULTS OF A NATIONAL SURVEY OF THE UNINSURED ABOUT OBTAINING HEALTH CARE AT LOCAL FACILITIES (forthcoming) (draft manuscript at 11, on file with Health Matrix). The Access Project coordinated surveys in twenty-four communities across the United States, including Cincinnati. The surveys document the experience of uninsured people seeking health care from hospitals and health centers. Some of the national data appears in the Cincinnati report. *See* DENNIS ANDRULIS ET AL., THE ACCESS PROJECT, GETTING HEALTH CARE WHEN YOU ARE UNINSURED: A SURVEY OF UNINSURED PATIENTS AT UNIVERSITY HOSPITAL IN CINCINNATI, OHIO (Jan. 2001), http://www.accessproject.org/downloads/Cincinnati.pdf.

[12] DENNIS ANDRULIS ET AL., THE ACCESS PROJECT, GETTING HEALTH CARE WHEN YOU ARE UNINSURED: A SURVEY OF UNINSURED PATIENTS AT UNIVERSITY HOSPITAL IN CINCINNATI, OHIO 16 (Mar. 2000), http://www.accessproject.org/downloads/Accessing_Quality_Cinn.pdf. In conducting this report, the Access Project collaborated with the Legal Aid Society of Greater Cincinnati to survey low-income uninsured Cincinnatians. The survey documents their experience seeking health care at Cincinnati hospitals and health centers.

[13] *Id.*

[14] THE ACCESS PROJECT, *supra* note 11 (draft manuscript at 11).

> I am ashamed to take my kids to the physician because I think they know I owe thirty-five dollars.
>
> I still owe [for] the operation on my breast and I don't visit the clinic because I am afraid that I won't be able to pay.
>
> I feel sick all the time, but because I owe a lot, I don't go.
>
> I need to have my wrist re-broken to fix [it], but since I can't afford it I will not get it done.
>
> They sent me to a collection agency, but I don't have any money to pay with. Just think[ing] about going back to that hospital makes me sick.
>
> I am embarrassed by my old bill. The office staff makes you feel uncomfortable about the bill. So I pray I never have a dire emergency[15]

Of course, deferring medical attention often leads to the need for even more costly care in the future. Thus, this phenomenon includes both a health effect and a spiraling financial effect. People who do not access preventive care are more likely to develop serious illness. People who are ill but defer seeking health care often end up in emergency rooms or in inpatient hospital care. Local hospital data demonstrates that those who either put off preventive or primary care, or could not access care because of a lack of coverage, inappropriately use very costly emergency room care. Emergency rooms cannot turn away patients unable to pay, while many physicians will.[16]

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[15] *Id.* (draft manuscript at app.).

[16] Notably, 7% of hospitalizations in Greater Cincinnati are avoidable, which compares favorably with the national rate of 12%. CMTY. HEALTH STATUS STEERING COMM., *supra* note 8, at 83. "Potentially avoidable hospitalizations are hospital stays for conditions that may be preventable with appropriate and timely ambulatory care." *Id.* The rate of avoidable hospitalizations is higher among those living in low-income areas. *Id.*

II. CONSEQUENCE #2: DIRECT FINANCIAL EFFECTS

It is beyond question that those who do not have health insurance face greater financial pressures than those who do. Four out of ten (39%) uninsured adults in the Kaiser Family Foundation 2000 national survey reported problems paying medical bills and over a quarter (27%) said that these problems had a major impact on themselves and their families.[17] Applied across the population, these statistics mean that over ten million uninsured people per year feel a major financial effect from medical bills. By comparison, only about 7% of insured people reported a major impact.[18] The Access Project's CAMS results are consistent with these findings: approximately three in five (59%) of the uninsured respondents said that they needed help paying their medical bills and nearly half (46%) were in debt to the safety-net facility they used.[19] In the Cincinnati survey, 90% said they needed help paying their medical bills.[20]

People without health insurance are not without means. Most have jobs or are in families in which someone works, though they tend to have lower incomes than those with insurance. Like many American families, though, when they live up to their means, a financial jolt like a large, uninsured medical expense from an illness or injury can put even the most financially responsible individuals on a path to greater hardship.

A. Juggling Debt

For many, the first stop on that path is to incur additional debt. Ten percent of homeowners with a home equity line of credit, and two percent with traditional home equity loans, cite medical expenses as one of the uses of the borrowed funds.[21] About nine million households had home equity loans in 1997.[22] When traditional loans are not available, often due to low income or limited equity, people often turn to sub prime loans (which have higher interest rates and are often marketed as bill-

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[17] THE NEWSHOUR WITH JIM LEHRER/KAISER FAMILY FOUND., NATIONAL SURVEY ON THE UNINSURED 23 cht.12 (2000), http://www.kff.org/content/2000/3013/.

[18] *Id.*

[19] THE ACCESS PROJECT, *supra* note 11 (draft manuscript at 9).

[20] DENNIS ANDRULIS ET AL., *supra* note 12, at 13.

[21] Glenn B. Canner et al., *Recent Developments in Home Equity Lending*, 84 FED. RES. BULL. 241, 248 tbl.8 (2000).

[22] *Id.*

consolidation loans)[23] or high interest credit cards, as a way to pay for medical bills. In fact, some medical providers encourage repayment with credit cards, even with the additional finance charge expense to the consumer. A recent study recounted anecdotal reports from bankruptcy lawyers that because debtors are reluctant to risk losing the services of their health care providers, they try to pay for them, even if other creditors go unpaid.[24] "Because most health care providers now will accept major credit cards, substantial medical debt may be subsumed into scheduled debts to VISA or MasterCard credit card providers or may be transformed into second mortgages on homes."[25]

Without further research, it is difficult to quantify the amount of medical debt from these sources that belongs to people without insurance. Respondents to the Access Project's CAMS study report having to finance medical bills with bank loans, signing promissory notes, and having their bank accounts attached to pay for health care.[26]

B. Facing Higher Charges

In an ironic situation health policy expert Uwe Reinhardt called 'brutal and inhumane' uninsured people are charged much more for medical care than those with insurance.[27] An investigation by the *New York Times* cited an example of a New York gynecologist who charges $25 for a routine exam for a woman insured by a managed care organization and charges $175 for the same exam for a woman without insurance.[28] "'That happens everywhere,' said Dr. Guy Clifton, the chief of neurosurgery at the University of Texas-Houston Medical School. 'If it's not an emergency and you can't pay for it, you don't get care.'"[29] Irene Wielawski studied local efforts to provide care for the uninsured under a Robert Wood Johnson Foundation grant. She described pricing disparities in a recent

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[23] *Id.* at 249.

[24] Melissa B. Jacoby et al., *Rethinking the Debates Over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375, 383 (2001).

[25] *Id.*

[26] THE ACCESS PROJECT, supra note 11 (draft manuscript at app.).

[27] Gina Kolata, *Medical Fees Are Often Higher for Patients Without Insurance*, N.Y. TIMES, Apr. 2, 2001, at A1.

[28] *Id.*

[29] *Id.*

issue of *Health Affairs*.[30] She wrote that her son once needed a hernia operation, and her insurer, Aetna, paid $3,509.50 for a surgeon, the surgical suite, a pediatrician, laboratory tests, and an x-ray.[31] However, an uninsured carpenter she was following as part of her research, who also needed a hernia operation, was told by a hospital that the surgeon's bill alone would be $3,000 to $5,000 and that he needed to make a down payment of $1,500.[32] Unable to pay, he put off the operation for a year until a charity project paid for it. Wielawski called the phenomenon of overcharging the uninsured "one of the many unintended and largely overlooked results of our decade-long obsession with curbing health care costs." [33]

Managed care organizations have effectively negotiated with medical providers to contain or drive down their reimbursement rates. The uninsured, with no one to negotiate for them, are left to face the higher charges.

It is not surprising then, that people without insurance coverage feel that the cost of medical care is unreasonable. A report of the Health Improvement Collaborative of Greater Cincinnati notes that this population tends to be working people employed in positions that do not offer health coverage, or offer it at premiums they cannot afford, are typically already in high-debt loads due to auto and housing needs, and have an education level that restricts job/salary opportunities, so that the cost of health care is a greater financial burden.[34]

C. The Collections Process

When uninsured people have trouble paying their medical bills and do not have recourse to other sources of funds, they often find themselves pursued by collection agencies. In the Kaiser Family Foundation 2000 national survey, four of ten uninsured respondents (39%) said that they had been contacted by a collection agency about unpaid medical bills,[35] and about a quarter of respondents (29%) had problems paying their rent or

[30] Irene Wielawski, *Gouging the Medically Uninsured: A Tale of Two Bills*, HEALTH AFF., Sept.-Oct. 2000, at 180.

[31] *See id.* at 183.

[32] *Id.* at 183-84.

[33] *Id.* at 181.

[34] CMTY. HEALTH STATUS STEERING COMM., *supra* note 8, at 77.

[35] THE NEWSHOUR WITH JIM LEHRER/KAISER FAMILY FOUND., *supra* note 17.

mortgage.[36] Over a third (36%) reported having problems with collection or credit agencies.[37] CAMS respondents were also familiar with collection agencies. Though there was not an explicit question in the survey, many respondents told of collection agencies contacting (or harassing) them for payment:

> They harass the hell out of people if they can't pay within 90 days.
>
> We were paying what we could afford each month faithfully, which was $50-$75 dollars. But the hospital told us that if we could not pay the whole bill in six months that we would be automatically turned over to a collection agency. That will ruin our credit!
>
> They were harassing me about those bills. They already threatened to send it to my credit people for $39!
>
> She doesn't go there because she's still making payments on what she owes from [a] prior visit. The[] [bill collectors] are getting ugly with her.
>
> I owe twenty thousand dollar[s] to the hospital and because I didn't pay the bill they would call my home so I could pay five hundred dollars a month, but I can't. I have four children. I was willing to pay a thousand but they didn't want it.
>
> I spoke to the collector and he told me to pay twenty dollars a month. I owe seven thousand dollars and I have four kids. They took me to court.[38]

Most hospitals, clinics and providers have a formal process to sell outstanding accounts to an entity that specializes in collection.[39] Sometimes the collection agency is within the corpo-

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[36] *Id.* at 25.
[37] *Id.*
[38] THE ACCESS PROJECT, *supra* note 11 (draft manuscript at app.).
[39] Telephone conversation between Kim Shellenberger, Community Catalyst, and Gail Hillebrand, Consumers Union (Aug. 1999).

rate structure of the hospital and sometimes it is a separate company specializing in medical debt collection. The health care institution often sells its outstanding accounts to the collection agency for ten to seventeen cents on the dollar and the collection agency keeps what it is able to collect from individuals. This is an increasingly common practice among health care providers, which often turn over their accounts to agencies 30 to 60 days after a missed payment, rather than a more customary 150 to 210 days.[40] It is in the financial interest of the collection agency to use very aggressive tactics to get money from the individual consumer. A federal law, the Fair Debt Collection Practices Act,[41] governs the methods that collection agencies use to contact individuals. The law applies to collection agencies and attorneys but not to a creditor (such as a hospital) collecting its own debt. Some states have their own laws governing the collection practices of these creditors, but other states have no such rules.

Medical providers are among the creditors most likely to turn to debt collectors.[42] Some credit counseling agencies report that medical collection agencies have a particularly bad reputation for harassment. Consumers burdened by dealing with rude agency representatives are more likely to resort to financially risky methods to pay off the debt, such as credit cards or sub prime loans.

> "'Whenever we talk about credit card debt, there's an assumption that credit cards are used to buy a fur coat on the way to the bankruptcy court,' says Melissa Jacoby, a Temple University law professor."[43] Yet in reality, '[c]redit cards are very often used to finance the purchase of medical supplies and medical care and the like.'[44]

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[40] Jennifer Steinhauer, *Will Doctors Make Your Credit Sick?*, N.Y. TIMES, Feb. 4, 2001, at B13.

[41] 15 U.S.C. §§ 1692-1692o (2000).

[42] *See* Susan D. Kovac, *Judgment-Proof Debtors in Bankruptcy*, 65 AM. BANKR. L.J. 675, 710 (1991) (discussing the willingness of medical providers to turn to legal means to recover medical debts).

[43] Matt Olson, *Medical Debtors to the Poorhouse*, THE PROGRESSIVE, July 2001, at 30, 30.

[44] *Id.*

> Leona Kaliser of Philadelphia survived ovarian cancer and congestive heart failure. . . . "I have to go for a lot of different tests and blood work. And I have to see a lot of doctors every couple of months, or more often when I have problems," she says. "And when my out-of-pocket money was depleted, I went to the credit cards."[45]

When Kaliser lost her disability insurance and could no longer pay the minimums on her credit cards, she continued to receive solicitations for more credit cards—as many as ten a day. "'I would tell the people, 'This is silly, I can't afford to pay you, and I don't need more credit,' but they kept calling.'"[46]

Recently, a class action lawsuit was filed in Kentucky state court alleging a hospital was assigning past-due accounts to collection agents without properly seeking payment from patients' health insurance providers.[47] The suit charged that St. Elizabeth Hospital routinely failed to try to properly bill the patients' insurance and then billed the patient.[48] The suit claimed that this led to aggressive bill collection tactics by collection agencies working on the hospital's behalf.[49] According to Eric Deters, attorney for the class, "'[t]his (suit) is not about people not wanting to pay their hospital bills' . . . 'It's about improper practices by the medical center resulting in emotional and financial stress for these people.'"[50] The lawsuit, which was settled within two weeks of filing, alleged violations of state consumer protection laws as well as the Fair Debt Collection Practices Act, the Fair Credit Billing Act, and the Fair Credit Reporting Act.[51]

The practice of pursuing collection efforts, up to and including litigation, when the patient had medical insurance to cover the bill, seems common. In Cincinnati, Charmaigne Gilden had Medicaid coverage for her daughter and a niece in her

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[45] *Id.*

[46] *Id.*

[47] Blythe v. St. Elizabeth Med. Ctr. Inc., No. 00-CJ-00622 (Kenton County Cir. Ct. filed Mar. 23, 2000).

[48] *Id.*

[49] *Id.*

[50] Terry Flynn, *Hospital Sued Over Billings*, KY. ENQUIRER, Mar. 24, 2000, at A1.

[51] *Blythe*, No. 00-CJ-00622.

care.[52] Despite this fact, the Cincinnati hospital where the two girls received care sued Gilden to recover a debt. After the suit was filed, a hospital representative reported that the collection attorney would not let the hospital dismiss the suit. Yet, a letter from a Legal Aid Society of Greater Cincinnati attorney to the collection attorney resulted in a prompt dismissal.

Shirley Scott had a $983 bill for physician services.[53] The physician group turned the bill over to a collection agency. The collection agency initially acknowledged that Scott had Medicaid at the time the service was provided but alleged that she had signed an agreement to be financially responsible, notwithstanding her Medicaid coverage.[54] The collection agency threatened to sue Scott. After Legal Aid requested a copy of the financial responsibility agreement, the collection agency acknowledged the agreement did not exist and agreed to cease collection efforts and write off the debt.

D. Court Judgments and Garnishments

Creditors may sometimes compel repayment, if laws permit, through wage garnishment and property liens and attachments. In order to do this, creditors must go to court and win a judgment. Federal law generally permits creditors to garnish up to 25% of an individual's earnings.[55]

Wage garnishment can lead to harassment by the employer who has the burden of complying with paperwork requirements associated with the garnishment. While it is illegal for an Ohio employer to fire an employee for one judgment or garnishment,

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[52] Interview by Hugh F. Daly, Legal Aid Society of Greater Cincinnati, with Charmaigne Gilden, Cincinnati, Ohio (Aug. 31, 2001).

[53] Interview by Hugh F. Daly, Legal Aid Society of Greater Cincinnati, with Shirley Scott, Cincinnati, Ohio (Sept. 6, 2001).

[54] Ohio law prohibits Medicaid providers from charging Medicaid recipients for services covered by Medicaid. *See* OHIO ADMIN. CODE § 5101:3-1-131(A) (2000). Providers risk losing their provider agreements and ability to obtain Medicaid reimbursements by billing patients for a Medicaid covered service unless the patient is advised the provider will not bill Medicaid and agrees to be liable for the debt. *Id.* § 5101:3-1-131(D).

[55] *See* 15 U.S.C. § 1673 (2000). There is a narrowly defined group of people, primarily those who earn less than $154.50 per week, who are considered "judgment-proof" for whom wage garnishment is not permitted. In addition, some types of income, such as social security payments, public assistance, veteran's benefits, and unemployment insurance, are exempt from garnishment. Ohio law also limits garnishment to 25% of disposable income. *See* OHIO REV. CODE ANN. § 2329.66(A)(13)(b) (West Supp. 2001).

it is not illegal to fire an employee for multiple judgments leading to multiple garnishments.[56] In today's current health care delivery system, it is standard to have multiple providers and bills for a single medical event: an emergency room visit for a broken arm results in a hospital bill, a physician bill, a radiology bill, and a pharmacy bill. For the uninsured patient, this system increases the likelihood that there could be multiple judgments and garnishments. Thus, medical debt can lead to the risk of losing a job.

Ohio, for a short time, had a provision in its garnishment law that recognized the special nature of medical debt. In 1993 the legislature enacted sections 2716.021 and 2716.051 that limited the amount of disposable income subject to garnishment by health care judgment creditors to 12% of the judgment debtors disposable income.[57] This law was challenged by at least two hospitals as a violation of the Equal Protection Clause of the United States Constitution.[58] Both courts rejected this argument and upheld the law. They both held that the discrimination in the law between medical debt and other debt was acceptable because it bore a rational relationship to a legitimate governmental objective.[59]

One court, in describing the legitimate governmental interest, recognized the "pernicious consequences of attempting to collect an inordinate sum from those who are seriously ill."[60] The court also found that it is a legitimate governmental objective to "encourage[] persons to seek out treatment without fearing that a quarter of his or her limited wage is subject to garnishment."[61] The other court concluded that the discrimination rationally furthered "the state's legitimate legislative objective

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[56] *See* OHIO REV. CODE ANN § 2716.05 (West Supp. 2001); *see also* 15 U.S.C. § 1674(a) (2000) (stating "no employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness").

[57] OHIO REV. CODE ANN. §§ 2716.021, .051 (West 1995) (repealed 1995). Other creditors can garnish 25% of disposable income. *See id.* § 2329.66(A)(13)(b) (exempting 75% of debtors' disposable earnings from garnishment).

[58] Wooster Cmty. Hosp. v. Anderson, 670 N.E.2d 563 (Ohio Ct. App. 1996); St. Ann's Hosp. v. Arnold, 672 N.E.2d 743 (Ohio Ct. App. 1996).

[59] *Wooster Cmty. Hosp.*, 670 N.E.2d at 566; *St. Ann's Hosp.*, 672 N.E.2d at 747.

[60] *Wooster Cmty. Hosp.*, 670 N.E.2d at 566.

[61] *Id.*

in protecting the health of its citizens by ensuring Ohioans expanded access to more affordable health care coverage."[62]

Unfortunately, the Ohio legislature repealed this special legal treatment of medical debt in 1995.

Statements from The Access Project's CAMS study reveal some experiences with debt collection through litigation:

> The first thing they asked me was if I had any land or properties to pay with because I didn't qualify for Medicaid or medical insurance.
>
> The unpaid bills are sent to collection, then they attach the bank accounts.
>
> I know of people who have had wages garnished due to medical bills, who could not afford to lose their income. I am concerned that the same may happen to me.[63]

Court judgments create immediate problems for individuals and have serious repercussions down the road. Wage garnishment can make it very difficult for a family to pay other necessary bills such as rent, utilities, and food. Property liens prevent people from using that property as collateral and make it very complicated to sell the property. Court judgments also appear on an individual's credit report and may make it difficult to get additional credit of any kind.

E. Medical Debt's Effect on Credit Score

Collection agencies have an important reporting relationship with national credit bureaus. Contact with a collection agency, then, easily leads further down the path of financial repercussions—to the world of credit scoring and reporting.

Almost every adult has a credit file with the three major national credit bureaus, Experian, Equifax, and Trans Union.[64] The file collects and lists, individually, basic account information of all debts, such as tax liens, bankruptcies, and court

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[62] *St. Ann's Hosp.*, 672 N.E.2d at 747.

[63] THE ACCESS PROJECT, supra note 11 (draft manuscript at app.).

[64] *See* Deanna Kitamura & Deanne Loonin, *Getting Credit Where Credit is Due: Helping Welfare-to-Work Clients Address Credit-Reporting Issues* 34 CLEARINGHOUSE REV.: J. POVERTY L. & POL'Y 148, 149 (2001) (stating credit bureaus have records on at least 190 million Americans, which is 90% of the adult population).

judgments.[65] Most major creditors subscribe to at least one of the credit bureaus. Creditors continuously supply the bureaus with current account information in exchange for the right to information about other credit applicants.

When an individual applies for a loan, the lender requests a credit report and credit score from one of the national credit bureaus. A *credit report* includes a summary of past credit experiences, such as the number of times an account was past due, the date of the most recent delinquencies and the date of the most severe delinquency. Credit reports also include an overall *credit score*, which is a statistically generated number used to predict a borrower's credit risk[66] Fair, Isaac and Company, Inc. developed the most widely used software to generate credit scores, thus the scores are widely referred to as "FICO" scores.[67] Consumers only recently gained access to their credit scores.[68]

While credit scoring systems have been around since the 1950's, their importance in the lending world has increased dramatically in recent years. In 1995, the mortgage companies Freddie Mac and Fannie Mae endorsed FICO scores as part of the mortgage underwriting process. FICO scores have also made inroads among lenders to assess risk in non-mortgage lending and credit card transactions. According to a National Consumer Law Center report on consumer credit, "[l]enders and collectors use scores not only to evaluate applications, but also to decide whether to increase or decrease lines of credit, determine collectability of accounts, and even to project the likelihood of bankruptcy."[69] A recent press release stated, "FICO scores are used by U.S. lenders to make billions of credit decisions each year, including more than 75 percent of mortgage loan originations."[70]

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[65] *Id.* at 150.

[66] *MyFICO: The Score Lenders Use, Credit Central: Glossary,* FairIsaac, *at* http://www.myfico.com/ (last visited Jan. 2, 2002).

[67] *Id.*

[68] *See* Stephanie Brenowitz, *Consumers Gain Access to Credit Number,* COLUMBUS DISPATCH, Mar. 20, 2001, at E1 (discussing how Equifax will now sell a consumer's credit score to the consumer), *available at* http://www.dispatch.com/news/bus01/mar01/631154.html.

[69] *New Revelations About Credit Scoring,* NCLC REPS., May-June 2000, at 21, 21.

[70] *Fair, Isaac, "Demystifies" FICO Scores with List of Score Factors, Web-based Explanation Service,* FairIsaac (June 8, 2000), *at* http://www.fairisaac.com/pagenewsarc 22.htm.

Credit reports and credit scores are increasingly being used in settings beyond lending decisions. For example, employers commonly use credit reports and scores when conducting background checks of job applicants and employees seeking promotions or reassignments. The Fair Credit Reporting Act specifically allows employers to use credit reports for "employment purposes."[71] Landlords review credit reports and scores when screening prospective tenants.[72] Recently, auto insurers have begun using credit scores to set premiums or to decide whether to offer any coverage at all.[73] "[T]he practice is gaining so fast in importance that, for some insurers, credit history carries more weight than driving record."[74]

Throughout their history, credit scores have faced a litany of criticism and litigation from consumer advocates. In June of 2000, Freddie Mac and Fair, Isaac and Company publicly disclosed the factors they use to generate credit scores.[75] Fair, Isaac and Company's list of factors included the relative weight of each factor on the overall score.[76] There remains, however, a serious criticism that the scoring system has a disproportionately negative impact on low and moderate-income individuals. This question remains an important issue for consumer advocacy groups and is also the subject of academic inquiry.

Credit reporting agencies and the furnishers of information to these agencies have potential liability for inaccurate reporting under the Fair Credit Reporting Act.[77] There are a growing number of lawsuits challenging credit bureaus and furnishers for violating the Act.[78]

Helen Clark, of Cincinnati, was employed but had no health insurance when she had an accident and experienced a brain in-

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[71] 15 U.S.C. § 1681b(b)(1) (1994 & Supp. V 1999).

[72] Kitamura & Loonin, *supra* note 64, at 153; *see also* 15 U.S.C. § 1681b(a)(3)(F) (Supp. V 1999) (permitting those with a "legitimate business need" for the information, in connection with a business transaction initiated by the consumer, to review an consumer's credit account).

[73] Dave Carpenter, *Past Financial Woes Drive Up Auto Insurance Rates*, CIN. ENQUIRER, July 24, 2001, at B1.

[74] *Id.*

[75] *New Revelations About Credit Scoring*, *supra* note 69, at 21.

[76] *Id.*

[77] 15 U.S.C. § 1681s-2 (1994 & Supp. V 1999).

[78] Kitamura & Loonin, *supra* note 64, at 162.

jury.[79] Because of the injury, she was no longer able to work. Her loss of income caused her to lose her home and her car, which resulted in her moving herself and her two children from one relative's residence to another. She finally began receiving Social Security disability income, which provided her a steady flow of income. The benefit for herself and her children was such that, based solely on income, she could afford a modest mortgage payment. However, when she contacted a realtor and a credit report was pulled to explore her eligibility for a mortgage, three pages of medical bills showed up, all with a notation that they had been placed for collection. Ms. Clark was not able to qualify for a mortgage.[80]

F. Personal Bankruptcy

Personal bankruptcy is the ultimate financial consequence for many families with high medical costs. A medical crisis can often be the tipping point for a family that is struggling to make ends meet. A recent national study found that half of all personal bankruptcies filed in 1999 involved a medical problem.[81] The data came from a survey of 1,974 individual bankruptcy petitioners conducted during the first quarter of 1999 in eight federal judicial districts.[82] Some of the key findings are:

- One in every four debtors in the sample identified an illness or injury for the debtor or someone in the debtor's family as a reason for filing bankruptcy;[83]
- Approximately one-third of bankruptcy filers in the sample reported that they have substantial medical debt;[84]
- Health care problems are implicated in half of all consumer bankruptcy filings in the United States if one combines the people who identify medical problems,

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[79] Interview by Hugh F. Daly, Legal Aid Society of Greater Cincinnati, with Helen Clark, Cincinnati, Ohio (Sept. 14, 2001).

[80] *Id.*

[81] Jacoby et al., *supra* note 24, at 377.

[82] *Id.* at 376-77.

[83] *Id.* at 387.

[84] *Id.* at 389. Substantial medical debt was identified by asking "whether the debtor had medical bills not covered by insurance in excess of $1000 during the past two years." *Id.* This is a substantial sum for people with a median gross income of $28,000. *Id.*

birth of a baby, or a death in the family with those who list substantial medical bills.[85]

The study did not establish whether there is a correlation between insurance status and filing for medical reasons. Yet it did find that approximately 20% of filers lacked health insurance at the time of filing.[86] It also found that single women heads-of-households are nearly twice as likely to file for medical reasons than single men,[87] and the elderly (ages sixty-five and over) are nearly twice as likely as younger Americans to identify a medical problem as a reason for filing.[88] The study also included a review of other research on the correlation between medical debt and bankruptcy that suggested medical debt has increasingly contributed to bankruptcies over the last twenty years.[89]

A random sampling of files of 151 clients, who approached the Legal Aid Society of Greater Cincinnati for assistance with bankruptcies in 2000-2001, revealed that 47% had substantial medical debt. The average debt of all clients was $41,417.66 and the average *medical* debt was $5,028.50.[90]

Laura Salter was forced to file for bankruptcy because of medical debt.[91] The Cincinnati woman had a heart defect as a result of a childhood bout with rheumatic fever. Ms. Salter had been on welfare for many years but began to work around the time of welfare reform implementation. She fell off of Medicaid. Her employers did not offer health insurance that was affordable to her. She was not able to purchase the antibiotics she needed to fend off infections that affected her heart. She ended up needing emergency open-heart surgery and was left with

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[85] *Id.* at 390.

[86] *Id.* at 399.

[87] *Id.* at 391.

[88] *See id.* at 397. The study showed that for debtors sixty-five and older nearly half of all bankruptcies filings were health related, while debtors under twenty-five years of age reported an occurrence of 7.2% for health related bankruptcy. *Id.* "The proportion of debtors between twenty-five and sixty-four who listed medical reasons ranged from twenty-one percent to thirty-three percent." *Id.*

[89] *See id.* at 386 (concluding the data points towards "the growing use of bankruptcy to deal with the financial aftermath of a health-related problem.").

[90] Data compiled through an analysis of the Legal Aid Society of Greater Cincinnati's files.

[91] Interview by Hugh F. Daly, Legal Aid Society of Greater Cincinnati, with Laura Salter, Cincinnati, Ohio (Aug. 31, 2001).

over $40,000 in medical bills. Collection agents hounded Ms. Salter while she was trying to recover from major surgery. A physician sued her over a bill. Ms. Salter's husband was trying to shield his recuperating wife from the details of these bills. It was only after she was turned down for a department store credit card and a mortgage that she became aware of the full extent of the medical debt. Bankruptcy was the only route available to her to get out from under the overwhelming medical debt.[92]

In certain states, personal bankruptcy can be viewed as an insurer of last resort for families in that it allows them to protect certain assets such as their home or retirement accounts. However, people who file for personal bankruptcy may face further problems down the road such as difficulty purchasing property, higher interest rates, and the inability to get credit. As described earlier, there may be health care consequences as well: people who have declared personal bankruptcy may find it difficult to get medical services unless they pay in cash in advance, forcing them to wait until there is a problem serious enough to warrant a visit to the emergency room, or to forego care altogether.[93]

The first half of 2001 saw a dramatic increase in the number of bankruptcies filed in the U.S. Bankruptcy Court for the Southern District of Ohio.[94] Several Cincinnati area bankruptcy attorneys have noticed increases in business since the U.S. Senate recently approved a measure that would make it more difficult for debtors to wipe out credit card charges and other unsecured debts.

> "I've probably seen a 40 percent increase and it's probably going to get higher," Michael E. Plummer, a Northern Kentucky bankruptcy lawyer, said. "People are rushing in to get it (Chapter 7) done before the laws change and wipe out their ability to have some type of relief."

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[92] *Id.*

[93] *See* CHAMPAIGN COUNTY HEALTH CARE CONSUMERS, CHAMPAIGN COUNTY – A COMMUNITY AT RISK: HEALTH CARE OUT OF REACH 14-15 (2001) (discussing Champaign County's financial policies which limit health care to consumers with outstanding balances).

[94] *Current Year Filings for the Southern District of Ohio in Comparison to Previous Year,* United States Bankruptcy Court: Southern District of Ohio, *at* http://www.ohsb.uscourts.gov/pdffiles/comparisonjuly01.pdf (last visited Sept. 20, 2001).

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> Mr. Plummer said most of his clients are people with moderate incomes who have been overextended by credit card debt or medical bills.
>
> The proposed new laws — which would essentially "eradicate Chapter 7 for the poor" – could create severe financial hardships for debtors who often are already struggling, Mr. Plummer said.[95]

The bankruptcy legislation passed by both houses of Congress, but currently in the conference process, imposes a means test.[96] The legislation establishes income trigger points at which it is presumed that the claimant is abusing the system.[97]

III. CONSEQUENCE #3: EMOTIONAL AND SOCIAL EFFECTS

Incurring large medical expenses and debt often have major psychological and social effects. One-sixth (17%) of uninsured respondents to a 1997 survey said they had to change their way of life significantly in order to pay medical bills.[98] Uninsured people with high medical bills report that they choose not to pay other bills, such as utilities or car payments, or choose not to purchase basic necessities.[99] Others report that they moved into a smaller apartment or "doubled up" with another family in order to afford their medical bills. Twenty percent of parents restrict their uninsured children's participation in sports and other activities, fearing a costly injury for which there is no insur-

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[95] Randy Tucker, *Bankruptcy Business Booms: Law Likely to Change Soon*, CIN. ENQUIRER , March 29, 2001, at D1, *available at* http://enquirer.com/editions/2001/03/29/fin_bankruptcy_business.html.

[96] *Summary of Consumer Provisions in Bankruptcy Bill*, American Bankruptcy Institute, *at* http://www.abiworld.org/legis/legisnews.html (last visited Aug. 20, 2001).

[97] *Id.*

[98] CATHERINE HOFFMAN, THE KAISER COMM'N ON MEDICAID AND THE UNINSURED, UNINSURED IN AMERICA: A CHART BOOK 35 (1998).

[99] *See* THE ACCESS PROJECT, supra note 11 (draft manuscript at app.).

ance.[100] Some people find second or third jobs for additional income to pay off medical debt.

Having no insurance and facing medical expenses also brings general anxiety and worries about the future. In the Kaiser Family Foundation 2000 national survey, three-quarters (74%) of those without insurance reported not being able to save money for the future, compared with 42% of those with insurance.[101] Three in ten (29%) had problems paying their rent or mortgage in the past year,[102] and two-thirds worry that they will have difficulty paying their rent or mortgage in the future.[103] Two-thirds also fear that health care expenses could hurt their credit ratings, making it difficult to get credit or loans.[104] This is not an unfounded fear given the increased activities of collection agencies concerning medical debt, and the direct connection between collection activity and credit ratings, as described earlier in this article.

Stephanie Essenwein owed over $2,000 to a Cincinnati hospital.[105] Despite the fact that she was covered by Medicaid at the time of the service, and the charge could have been written off under Ohio's Hospital Care Assurance Program,[106] the hospital sued Essenwein and obtained a default judgment. The hospital began garnishing her wages and Essenwein fell behind on her rent and was evicted.[107]

Michael Sparkman's wife has diabetes; one daughter has severe asthma, and another daughter has allergies.[108] Mr. Sparkman has no medical coverage through his employer. Mrs.

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[100] Press Release, Covering Kids, Uninsured Children Seven Times More Likely to Go Without Medical Care They Need (August 8, 2001), *available at* http://www.coveringkids.org/entrypoints/press/display.php3?PressReleaseID=2.

[101] *See* THE NEWSHOUR WITH JIM LEHRER/KAISER FAMILY FOUND., *supra* note 17, at 25 cht.14.

[102] *Id.*

[103] *Id.* at 28 cht.16.

[104] *Id.*

[105] Interview by Holly Mechley with Stephanie Essenwein, Cincinnati, Ohio (May 2, 2001).

[106] The Hospital Care Assurance Program, OHIO REV. CODE ANN. § 5112.01-.21 (West 1995 & Supp. 2001), is Ohio's version of the Federal Disproportionate Share Hospital Program, 42 U.S.C. 1936r-4 (1994 & Supp. V 1999), in which hospital bills are written off for people with income below 100% of the federal poverty line.

[107] Interview by Holly Mechley with Stephanie Essenwein, *supra* note 105.

[108] Mark Curnutte, *No Insurance, Tough Medicine*, CIN. ENQUIRER, Jan. 17, 1999, at A1.

Sparkman has Medicare but needs $600 per month in medications. The family has no savings. Lack of health insurance figures into every decision the Sparkman's make about money. They cannot afford a checking account and pay $.80 for money orders to pay their medical bills. Mr. Sparkman went to a dentist for the first time in nearly ten years and was told he needed a root canal costing more than $1,200. He can't afford it. He and his wife recently had a bad cold and filled only one of their antibiotic prescriptions, and shared them. Mr. Sparkman tries to work overtime but is afraid the extra income will cause his daughters to lose coverage under the Children's Health Insurance Program. Medical bills affect where and how they live. For eleven years, the family lived in a one-bedroom apartment. Mr. Sparkman drives a 1985 model car and recent maintenance sent shock waves through his tight budget. He had to use rent money to buy a $117 automotive belt. They covered the rent with money Mrs. Sparkman got from cleaning her church. That money was supposed to go to Christmas gifts for the girls. Mrs. Sparkman's father gave them $400 for Christmas but most of that went to replace a water pump in the car. The family never goes out to eat. They wear second-hand clothing. Every year, Mr. Sparkman takes out a loan to pay medical bills and buy school outfits for the girls. He pays $113 per month on the bank loan.[109]

Medical debt can also have a devastating impact on those who have medical insurance. Donn and Jeanne Hubbard were forced to sell their home in Cincinnati and move in with friends in California because of medical bills.[110] "'We loved this house. We loved this city,' said Mrs. Hubbard. 'It's just wrong. We worked so hard. We raised three children and put them through school. We took care of ourselves and we paid lots of taxes. It's not right that our medical situation should be like this.'"[111] Since a stroke in 1994, Mr. Hubbard has to pay over $900 per month for medications and another $1,000 each month for health insurance premiums and co-payments for covered services. This year, Mr. Hubbard was also diagnosed with prostate cancer. "'Every time something happens, it's more doctor bills and more medications,' Mr. Hubbard said. 'We just can't keep

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[109] *Id.*

[110] Tim Bonfield, *The Human Cost of Medicine: Couples Losing Home They Love to Drug Prices*, CIN. ENQUIRER, June 13, 2001, at A1.

[111] *Id.*

paying all these bills.'"[112] One factor in the Hubbards' decision to move to California is that they can drive to Mexico to purchase medications less expensively.[113]

CONCLUSION

For many, lack of health insurance results in inadequate health care. The financial consequences for the uninsured are often devastating. The phenomenon of medical debt reflects a vicious cycle. Poor people cannot afford health insurance. They get sick and either do not get care or get sicker and use more expensive care resulting in smothering medical debt. The medical debt is, itself, economically destabilizing, preventing families from obtaining adequate housing, employment, savings, and other attributes of financial security. Medical debt flows from poverty and leads to poverty.

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[112] *Id.*
[113] *Id.*