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Senator Donna Bailey
Chair
Joint Committee on Health Coverage, Insurance, and Financial Services
Maine Senate
100 State House Station
Augusta, ME 04333

Representative Lori Gramlich
Chair
Joint Committee on Health Coverage, Insurance, and Financial Services
Maine Senate
100 State House Station
Augusta, ME 04333

Chair Bailey, Chair Gramlich and Members of the Committee:

On behalf of the Consumer Data Industry Association (CDIA), I write to oppose LD 1030, which would revise Maine's existing medical debt policy to prohibit consumer reporting agencies (CRAs) from including debt arising from emergency medical treatment or out-of-network benefits in a consumer report if the consumer was covered by a health plan. Aside from being infeasible for CRAs to implement due to legal, operational, and privacy concerns, the proposal conflicts with the federal Fair Credit Reporting Act (FCRA), which preempts any state legislation that attempts to prohibit or otherwise limit a consumer reporting agency from including medical debt information in a consumer report at 15 USC §1681t(b)(1)(E).

CDIA, founded in 1906, is the trade organization representing the consumer reporting industry, including agencies like the three nationwide credit bureaus, regional and specialized credit bureaus, background check companies and others. CDIA exists to promote responsible data practices to benefit consumers and to help businesses, governments, and volunteer organizations avoid fraud and manage risk.

The FCRA provides important and necessary protections to consumers, lenders, government agencies, law enforcement, volunteer organizations, and businesses who rely on full, complete and accurate consumer reports to make informed decisions. Given the ever-increasing interconnectedness of the modern economy, maintaining alignment between state consumer reporting laws and federal consumer reporting laws is more critical than ever.

State legislation that attempts to regulate credit reporting have many unintended consequences because the credit reporting system operates across all jurisdictions. Only national, uniform standards can achieve the dual goals of protecting consumers and maintaining accurate credit reports, which is why CDIA must oppose proposals like LD 1030.

The FCRA regulates the contents of consumer reports and the obligations of furnishers in reporting data to consumer reporting agencies at 15 USC §1681c and 15 USC §1681s-2, respectively. Congress also limited states' capacity to independently or differently regulate the consumer reporting system. This includes preempting, at 15 USC §1681t(b)(1)(E) and 15 USC §1681t(b)(1)(F), respectively, any state legislation that limits or prohibits the kind of information that can go on a credit report or attempts to limit or prohibit the furnishing of medical debt information to a consumer reporting agency.

Further, CDIA and the state of Maine remain in ongoing litigation regarding the state's existing law and the FCRA's preemptive reach. After being sent back to the district court following the first appeal, the District Court issued a mixed opinion, finding both laws partially preempted by the FCRA. CDIA filed a notice of appeal to the U.S. Court of Appeals for the First Circuit to address what we view as errors regarding scope of preemption. This second appeal is on hold pending the finalization of the Consumer

Financial Protection Bureau's medical debt rule and has been stayed until April 11, 2025. Due to separate litigation over the CFPB rule, we anticipate that the stay may be extended.

Earlier this year CDIA, together with the Cornerstone Credit Union League, filed a declaratory judgment action against the CFPB challenging the Medical Debt Rule on various grounds in Texas. The parties agreed to a preliminary injunction staying the effective date of the rule to June 15, 2025. All deadlines in the case are stayed to May 7, 2025, with a hearing on the motion for a preliminary injunction set for May 12, 2025.

The outcome of either of cases could have significant impact on medical debt policy across the country. Should the CFPB preserve the medical debt rule and the courts deny CDIA's injunction request or ultimately rule in their favor, the provisions of LD 1030 and Maine's current law would become irrelevant as the rule prohibits CRAs from including any medical debt information in a consumer report, regardless of how or when it was incurred.

However, setting aside CDIA's preemption concerns and the ongoing litigation over Maine's law and the CFPB medical debt rules, LD 1030 places obligations on CRAs that are both inappropriate and impossible to meet within the context of the FCRA and the consumer reporting ecosystem.

As noted above, the kinds of information that CRAs can include in a consumer report is already tightly regulated by the FCRA, which does not allow for information related to a whether or not a consumer is covered by a health plan. As a result, entities who would have this information cannot furnish this information to CRAs. Thus, there no FCRA mechanism under which a CRA could identify, track, or report health coverage status to determine how and when information otherwise eligible to be in a consumer report would need to be suppressed to comply with LD 1030.

Even if there were an FCRA-compliant way for CRAs to determine whether a consumer was covered by a health plan for the purposes of LD 1030, when medical debt information is furnished to us, CRAs are not provided with details regarding individual medical treatment. Nor do CRAs want to be recipients of or responsible for this intensely sensitive information regarding individual consumers medical treatment. As a result, it is impossible for a CRA to know whether or not an individual item of debt is from emergency care or arises from out-of-network benefit claims.

This underscores another problem with LD 1030, namely that it places all of the burden on CRAs instead of the entities who furnish information to CRAs. As these furnishers possess more detailed information in relation to unpaid amounts, they are in a far better position to determine whether or not individual accounts would be eligible or ineligible for reporting. However, there is no requirement or limitation placed on furnishers by LD 1030, risking unfair outcomes for CRAs who are furnished information otherwise ineligible to be included in a consumer report under the provisions of LD 1030 but without sufficient information for a CRA to determine that. This underscores again why Congress preempted the states from both regulating the contents of consumer reports and from regulating the obligations of furnishers.

While LD 1030 may be preempted by the FCRA, CDIA and its members acknowledge that medical debt is distinct from other types of consumer debt. The national credit bureaus have established uniform procedures regarding how and when a consumer's unpaid medical debts can be included in a credit report to help consumers by providing more time and flexibility. These changes largely align with Maine's existing medical debt reporting law and are, in some instances, more favorable for consumers.

Unpaid medical debts must be more than $500 and outstanding for more than 365 days before any of the three national credit bureaus will show the account in a consumer report. For unpaid amounts greater than $500 and more than 365 days past due, upon repayment of outstanding amounts, these accounts are removed immediately from a consumer's report, unlike other debts.

The yearlong grace period provides consumers ample time to work with providers and insurers to correct any errors on a bill, pay the bill or get an insurance company to pay it, figure out a payment plan or otherwise resolve the problem and avoid having unpaid debts reach collections and appear on credit reports.

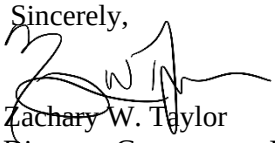
Further, amounts less than $500 are no longer included by the credit bureaus or reported to them by collections agencies. For consumers with outstanding medical debts less than $500, those accounts have been removed from their reports. Together, these changes to how CRAs handle medical debt reporting have removed a substantial majority of medical debts from consumer reports across the country.

Finally, credit scoring models have changed how they consider medical debt, eliminating or reducing how it affects a consumer's score. For example, the Vantage Score 3.0 and 4.0 models ignore medical accounts in collections altogether.

While concerns regarding medical debt and the impact of unpaid debts on consumer's credit histories are understandable, proposals like LD1030 that attempt to exclude some medical debts from the consumer reporting system do not address the underlying concerns about the costs of medical care. On the other hand, the changes made by the three national credit bureaus have provided consumers with substantial flexibility to address outstanding amounts through a variety of approaches.

While CDIA acknowledges the validity of concerns surrounding the cost of care and its impacts on Mainers, we respectfully request that the Committee reject LD 1030 as its operative provisions are inconsistent with 15 USC §1681c and are preempted by 15 USC §1681t(b)(1)(E). Thank you for your time and consideration.

Sincerely,



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