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Committee On Health Coverage, Insurance and Financial Services
Legislative Information Office
100 State House Station
Augusta, ME 04333

Dear Chairwoman Sanborn, Chairwoman Tepler and members of the Committee on Health Coverage, Insurance and Financial Services,

On behalf of the Consumer Data Industry Association ("CDIA") and its members, CDIA would like to share some information related to an amendment concerning the reporting of medical debt to consumer reporting agencies for Legislative Document 365 - An Act To Protect Consumers from Surprise Medical Bills.

The Consumer Data Industry Association is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition and expanding consumers' access to financial and other products suited to their unique needs.

I write on behalf of the Consumer Data Industry Association (CDIA) to respectfully request your reconsideration against adoption of this amendment for a couple of reasons. This legislation is preempted by federal law and is unnecessary legislation in light of existing business practices.

The bill is covered by and in conflict with the Assurance of Voluntary Compliance that Maine and 30 other states entered into with the nationwide consumer reporting agencies in 2015. In 2015, Maine and 30 other states entered into an Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance ("AVC") with the three consumer reporting agencies that compile and maintains files on consumers on a nationwide basis, Equifax, Experian, and TransUnion ("NCRAs").[1] LD 365 is in direct conflict with that AVC. Under the AVC, the NCRAs agreed to:

- Prevent the reporting and display of medical debt identified and furnished by Collection Furnishers when the date of the first delinquency is less than one hundred and eighty (180) days prior to the date that the account is reported to the CRAs.

- Implement a process designed to effectively remove or suppress known medical collections furnished by Collection Furnishers from files within the CRAs' respective credit reporting databases when such debt is reported either as having been paid in full by insurance or as being paid through insurance.

1 Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance, https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Consumer-Protection/2015-05-20-CRAs-AVC.aspx.

L.D. 365 ignores and deviates from the substantial and comprehensive protections of the AVC in many significant respects, and in so doing, injects confusion and conflict into the process of removing medical debt under appropriate circumstances. By seeking to legislate an area squarely addressed by a comprehensive AVC entered into by the State of Maine, the bill distorts the AVC process and may dissuade other business from entering into AVCs with future attorneys general that provide substantial new consumer benefits, as the NCRAs did here.

The bill is also preempted by federal law. Consumer reporting agencies are regulated by the federal Fair Credit Reporting Act ("FCRA"). Among other things, the FCRA regulates what can stay on a credit report and for how long. The FCRA also preempts states from acting in a number of key areas relative to consumer reporting. Under the FCRA, "[n]o requirement or prohibition may be imposed under the laws of any State. . .with respect to any subject matter regulated under. . . section 605 [15 U.S. Code § 1681c,] relating to information contained in consumer reports."[2]

The subject matter of FCRA § 605 is broad and covers the content of consumer reports – both the type of information that may not be included in a consumer report, as well as what information must be included in such reports. Here, L.D. 365 seeks to place a new requirement or prohibition on a category of information that may not be included in a consumer report – a subject that is squarely within § 605 of the FCRA. A review of section 605 of the FCRA confirms its broad scope, and clearly establishes that the "subject matter" of section 605 includes medical debts.

FCRA § 605(a), "Information excluded from consumer reports," sets forth information that may not be included in a consumer report. For example, § 605(a)(5) prohibits the reporting of "any other adverse item of information" that predates the report by a certain period of time. This catch-all provision applies to any other negative item that was not otherwise listed in § 605. Section 605(a)(6) prohibits the reporting of the: "name, address, and telephone number of any medical information furnisher that has notified the [CRA] of its status" unless certain coding has occurred, or the information is being reported to certain insurance companies. Sections 605(a)(7) and 605(a)(8) contain specific restrictions on the reporting of veteran's medical debt. Thus, FCRA § 605(a) restricts reporting not only on all items of adverse information over a certain age, bankruptcy filings, suits, arrests, etc., it also specifically covers the subject matters of medical information and medical debts.

Case law confirms a broad reading of the subject matter of FCRA § 605. For example, in Simon v. Directv, Inc., the U.S. District Court for the District of Colorado stated that with respect to FCRA § 605, the "FCRA preempts state consumer reporting statutes when (1) the subject matter of the state statute concerns matters regulated under 15 U.S.C. § 1681c; and (2) the state law took effect after September 30, 1996."[3] Thus, the question is not whether the state law operates in the same way as a provision under FCRA § 605, but whether the state law's subject matter concerns the subject matters regulated under FCRA § 605 (15 U.S.C. § 1681c). Here, L.D. 365 addresses medical debt, a subject squarely addressed in section 605 of the FCRA.

The bill is unnecessary in light of existing business practices. Medical debt is treated differently by credit bureaus and scoring models than other kinds of debt. It has been established

2 https://www.law.cornell.edu/uscode/text/15/chapter-41/subchapter-III

3 No. 09CV00852PABKLM, 2010 WL 1452853, at *3 (D. Colo. Mar. 19, 2010), report and recommendation adopted, No. 09CV00852PABKLM, 2010 WL 1452854 (D. Colo. Apr. 12, 2010) (finding plaintiff's claims under state law regulating disclosure of criminal convictions preempted by the FCRA).

that unpaid medical debt does not go on credit report unless it is 180 days past due or longer. This grace period allows consumers six months to resolve any insurance or billing disputes, or to work out a repayment agreement with the medical provider. For paid medical debt, the nationwide credit bureaus will remove from credit reports those previously reported medical collections that have been or are being paid by insurance. The treatment of unpaid and paid medical debt are part of the National Consumer Assistance Plan ("NCAP") created by the nationwide credit bureaus following the AVC settlement with Maine and 30 other state attorneys general and a separate settlement with the New York Attorney General.[4]

Federal law also limits medical debt reporting to CRAs. Federal rules generally require nonprofit hospitals to give consumers at least 120 days before taking "extraordinary collection actions," which include reporting debts to credit bureaus and using debt collection agencies.[5]

CDIA stands ready to offer an alternative approach. Thank you for the consideration of our comments and I would be happy to answer any questions you may have.

Sincerely,

Michael Carone

Michael Carone
Manager of Government Relations

4 See, Attorney General DeWine Announces Major National Settlement with Credit Reporting Agencies, Ohio Atty. Gen. Mike DeWine press release, May 20, 2015; A.G. Schneiderman Announces Groundbreaking Consumer Protection Settlement With The Three National Credit Reporting Agencies, N.Y. Atty. Gen. press release, March 9, 2015.
5 https://www.law.cornell.edu/uscode/text/26/501