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March 14, 2024

Senator Matt Klein
Chair
Committee on Commerce and Consumer Protection
Minnesota Senate
75 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

Senator Judy Seeberger
Vice Chair
Committee on Commerce and Consumer Protection
Minnesota Senate
75 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

Senator Liz Boldon
Sponsor of SF4065
Minnesota Senate
95 University Ave. W.
Saint Paul, MN 55155

RE: CDIA Opposition to SF4065 Section 9(a)(25) & Section 10, Regarding Medical Debt

Chair Klein, Vice Chair Seeberger, Senator Boldon, and Members of the Committee:

On behalf of the Consumer Data Industry Association, I write to oppose SF4065 given its conflicts with federal law, rulings from the U.S. District Court for the District of Minnesota, and an overly broad and disruptive definition of medical debt applying both to collections agencies and consumer reporting agencies, which were it to become law could disrupt the accuracy and reliability of consumer reports opening the door to unintended and negative consequences for Minnesota consumers. However, CDIA and its members recognize the legitimate concerns around medical debt and wish to highlight the changes made by the three national credit bureaus regarding medical debts that provide consumers greater flexibility and more time to address these items.

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.

Section 10(a) of SF4065 would prohibit a consumer reporting agency (CRA) from including information that a CRA knows or should know concerns medical information or medical debts, referencing the Fair Credit Reporting Act (FCRA) to define medical information. Section 9(a)(25) would prohibit a collecting party from reporting information it knows or should know concerns medical information or medical debts to a credit reporting agency. In both Section 9(a)(25) and Sectoin10(a), SF4065 establishes a problematic and expansive definition of medical debts.

I. Prohibition on Reporting Medical Debt is Pre-Empted by the FCRA

Consumer Reporting Agencies are tightly regulated by the FCRA, which also preempts 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 is preempted by the FCRA at 15 USC §1681t(b)(1)(E) and 15 USC §1681t(b)(1)(F), respectively. The FCRA governs 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.

As such, Section 9(a)(25) and Section 10(a) are preempted by the Fair Credit Reporting Act. The U.S. District Court for the District of Minnesota ruled on this question and held that the FCRA broadly and clearly preempts states from regulating on "subject matter" covered by the FCRA, which would include the matters covered in Sections 9(a)(25) and Section 10(a) of SF4065. With that in mind, CDIA respectfully requests that these sections be removed from the bill before it receives further consideration by the Committee.

II. Credit Bureaus Have Adjusted Policies on Medical Debt, Providing Consumers Additional Flexibility & Time to Address Unpaid Amounts

While these sections are preempted by the FCRA, CDIA and its members acknowledge that medical debt is distinct from other types of consumer debt. As such, 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.

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. In addition, 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, blanket prohibitions on the inclusion of medical debts in consumer reports 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.

III. The Definition of Medical Debt is Over-Broad and Risks Unintended Consequences

Setting aside the U.S. District Court's FCRA preemption ruling, and the changes made to how unpaid medical debts are treated by the three national credit bureaus, CDIA remains concerned by the overly broad definition of medical debts established in SF4065.

In Section 9(a)(25) and Section 10(a) medical debts are defined, without limitation, as debt arising from the provision of medical care, treatment, services, devices, medicines, or debt arising from procedures to maintain, diagnose, or treat a persons physical or mental health.

Although these sections are preempted, they would also create confusion for furnishers and consumer reporting agencies alike, who do not have or desire access to transaction level data that would be required to parse amounts reported as debts.

For example, if a consumer were to use a personal credit card to pay for medical care in an office setting, turn around and spend several thousand dollars on unrelated items and let the account fall into arrears, CRAs could be required to remove the entirety of the credit account from a report under this definition. In the same vein, were a consumer to use a personal credit card at a convenience store to purchase over the counter medicines and let the overall account fall into arrears, a CRA could be forced to remove the entire account from the consumer's file.

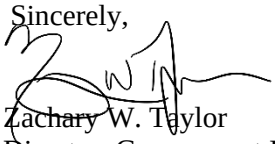
As a result, consumer reports in Minnesota could become less reliable and CRAs could run afoul of FCRA requirements to maintain reasonable procedures to ensure accuracy. In these instances, substantial amounts of unpaid debts could be forced from a consumers' file, making the reports less reliable for lenders and other users. As a result, it would be more difficult for these entities to accurately price risk and result in higher costs or loss of access to services for Minnesota consumers.

While CDIA opposes Sections 9(a)(25) and Section 10 of SF4065 in their entirety based on FCRA preemption, we believe it is important that these definitions be adjusted to avoid the unintended consequences that could undermine the overall accuracy of the consumer reporting ecosystem and harm Minnesota consumers in the process.

While CDIA acknowledges the validity of concerns surrounding the cost of care and its impacts on Minnesotans, we respectfully request that the Committee remove Sections 9(a)(25) and Section 10 of SF4065 dealing with the furnishing and reporting of medical debt information, as they are preempted by the Fair Credit Reporting Act (FCRA) at 15 USC §1681t(b)(1)(E) and 15 USC §1681t(b)(1)(F).

Thank you for your time and consideration.

Sincerely,



Zachary W. Taylor
Director, Government Relations
Consumer Data Industry Association