



1700 G Street NW, Washington, D.C. 20552

January 28, 2025

The Honorable John J. Lawn, Jr. and the Honorable John J. Cronin
Massachusetts State House
24 Beacon St.
Boston, MA 02133

Dear Senator Cronin and Representative Lawn,

I write on behalf of the Consumer Financial Protection Bureau (CFPB) regarding HD. 3503 and SD. 1878, which would, among other things, prohibit medical creditors and debt collectors in Massachusetts from reporting medical debt to consumer reporting agencies for use in a consumer report and prohibit consumer reporting agencies from including information concerning medical debt on consumer reports.

We commend work by states, such as the proposed HD. 3503 and SD. 1878, to proactively protect consumers against the harms of medical debt reporting. States play a frontline role in protecting consumers from unscrupulous practices, including by enacting laws that go further than or reinforce federal protections. The preemption of state law is narrow under both the Fair Debt Collection Practices Act (FDCPA) and the Fair Credit Reporting Act (FCRA), and states may, for instance, prohibit or limit the inclusion of information about a person's allegedly unpaid medical bills on consumer reports. In 2022, the CFPB issued an interpretive rule explaining that, with limited exceptions, states are permitted to enact state-level laws that provide consumer protections involving consumer reporting, including regarding the content of information contained in consumer reports or furnished to consumer reporting agencies, in addition to those provided by the federal FCRA.¹ In particular, this interpretive rule stated that state laws

¹ Consumer Financial Protection Bureau, *The Fair Credit Reporting Act's Limited Preemption of State Laws* (June 2022), https://files.consumerfinance.gov/f/documents/cfpb_fcra-preemption_interpretive-rule_2022-06.pdf

prohibiting furnishers from furnishing information about medical debt to consumer reporting agencies would generally not be preempted.²

On January 7, 2025, the CFPB finalized a regulation that bans the inclusion of medical bills on credit reports used by lenders and prohibits lenders from using medical information in their lending decisions, given the limited predictive value of this information and its use by debt collectors to coerce people to pay bills they may not owe.³ (The CFPB has thereafter been sued twice in Texas on this regulation.⁴) As we have seen in so many other contexts, strong state action provides support for federal policymaking. HD. 3503 and SD. 1878 would cement important protections against medical bill credit reporting into Massachusetts law. This legislation aligns with recent efforts by several states to protect consumers against medical debt reporting. In 2023, Colorado and New York passed legislation to bar medical bills from appearing on consumer reports, and several other states have followed suit or are considering doing so.

The industry lobby has unsuccessfully argued that the FCRA preempts state laws that impose additional requirements on consumer reports, contending among other things that failing to include medical debt would make consumer reports less accurate or reliable.⁵ Consistent with our interpretive rule, these arguments have been unsuccessful in court, and are contradicted by longstanding CFPB research showing that medical debt is less predictive of future consumer credit performance than other tradelines typically found on consumer reports and that unpaid medical bills are rife with unreliable information.

In February 2022, in *Consumer Data Industry Association v. Frey*, the First Circuit Court of Appeals rejected a challenge to Maine’s Medical Debt Reporting Act—which among other things restricts when consumer reporting agencies may report medical bills—on the grounds that the FCRA does not categorically preempt all state laws governing information contained in consumer reports.⁶ Similarly in June 2023, in *Aargon Agency, Inc. v. O’Laughlin*, the Ninth Circuit Court of Appeals denied a challenge to Nevada Senate Bill 248—which restricts the

² The Fair Credit Reporting Act’s Limited Preemption of State Laws, at 1, 12-13.

³ See CFPB Finalizes Rule to Remove Medical Bills from Credit Reports (Jan. 7, 2025), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-remove-medical-bills-from-credit-reports/>.

⁴ See Complaint, *Cornerstone Credit Union League v. CFPB*, No. 4:25-cv-00016 (E.D. Tex. filed Jan. 7, 2025); Complaint, *ACA Int’l v. CFPB*, No. 4:25cv94 (S.D. Tex. filed Jan. 8, 2025).

⁵ Aargon Agency, Inc., et al., Appellants’ Opening Brief, *Aargon Agency, Inc. v. O’Laughlin*, (Apr. 2022); Consumer Data Industry Association, Cert. Petition, *Consumer Data Indus. Assn. v. Frey* (Nov. 2022); Brief of Amici Curiae, Chamber of Commerce of the United States of America, *Consumer Data Indus. Assn. v. Frey* (cert. petition) (Dec. 2022).

⁶ 26 F.4th 1 (1st Cir. 2022).

collection of medical debt—on the grounds that the legislation was not preempted by federal law.⁷ Accordingly, the CFPB welcomes and encourages state legislatures to pass laws reinforcing or exceeding the consumer protections of existing federal laws and regulations.

These arguments against state laws that provide protection with respect to the collection and reporting of medical bills are also mistaken as a factual matter. Medical debt is categorically different from most types of consumer tradelines that typically appear on consumer reports. Consumers frequently incur medical bills in unique circumstances that differ from other forms of credit extension, and CFPB research has found that medical debt is less predictive of future consumer credit performance than other tradelines. Consumers often incur medical bills through unexpected emergencies. Among consumers who report problems paying medical bills, 66 percent acquired their debt because of a one-time or short-term expense arising from an acute medical need.⁸ For the Massachusetts residents and millions of Americans with medical debt, even in non-emergencies, medical bills are subject to opaque pricing which differs based on the patient’s insurance status, the coverage rules of their insurer, and the billing practices of their medical provider.

In addition to being less predictive of credit risk, unpaid medical bills are rife with unreliable information. The most common concerns from consumers in complaints to the CFPB about the collection of medical bills allege that the debt being collected was already paid, does not belong to them, or is otherwise incorrect.⁹ Providers often send unpaid bills to debt collectors with little or no supporting documentation, which creates an opportunity for unscrupulous collectors to collect debts without knowing if they are valid or accurate.

Recent action by the national consumer reporting companies implicitly supports the research findings that medical billing history has limited predictive value in underwriting. These companies announced in March 2023 that they would stop reporting some, but not all, medical bills. In August 2022, one of the major credit score providers, VantageScore, elected to eliminate all medical collection data from one of their scoring models and noted that it expected the impact

⁷ 70 F.4th 1224 (9th Cir. 2023). Additionally, on March 27, 2024, in *Consumer Data Industry Association v. Platkin*, the U.S. District Court for the District of New Jersey rejected a preemption challenge to an amendment to the New Jersey Fair Credit Reporting Act that requires credit file disclosures to be provided to New Jersey consumers in languages other than English.

⁸ Consumer Financial Protection Bureau, *Report: Medical Debt Burden in the United States* (Feb. 2022), https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf at 3.

⁹ Consumer Financial Protection Bureau, *Complaint Bulletin: Medical billing and collection issues described in consumer complaints* (April 2022), <https://www.consumerfinance.gov/data-research/research-reports/complaint-bulletin-medical-billing-and-collection-issues-described-in-consumer-complaints/>

on its models' performance "to be minimal for a large segment of the population."¹⁰ Those with medical bills remaining on their credit reports, however, are still subject to coercive credit reporting and are some of the most vulnerable individuals, such as those facing catastrophic or chronic medical conditions with large medical bills.

The purpose of the credit reporting system is to assess credit risk, not to coerce people to pay debts they may not owe. Unfortunately, the CFPB has heard from consumers across the country that many people do not find out that they have an erroneous medical bill in collections until they apply for a mortgage or car loan. They are then forced to choose between a protracted fight to address the inaccuracy, often while recovering from serious illness, or to pay it without ample time to review, which is not an option for many. Debt collectors have many other legal remedies to collect legitimate medical bills without resorting to coercive credit reporting.

States have long been valued and critical partners in establishing and fortifying protections for consumers, and we welcome the opportunity to continue to work together in support of this bill and other consumer protection endeavors.

Sincerely,



Seth Frotman
General Counsel, Consumer Financial Protection Bureau

¹⁰ VantageScore, "VantageScore Removes Medical Debt Collection Records From Latest Scoring Models," Aug. 10, 2022, <https://www.vantagescore.com/major-credit-score-news-vantagescore-removes-medical-debt-collection-records-from-latest-scoring-models/>.