National Consumer Law Center
Fighting Together for Economic Justice

WHAT STATES CAN DO TO

Prevent Medical Debt from Ruining Credit Reports: Recommendations in the Face of Potential Federal Preemption Threats

State advocates seeking to remove medical debts from credit reports face a new landscape that threatens to undo their work. State laws and bills to ban medical debt credit reporting may need to be modified to protect against a now-hostile federal administration that may attempt to preempt them. **This policy brief provides two suggestions to "preemption proof" state laws prohibiting medical debt credit reporting.**

Background

On January 7, 2025, the Consumer Financial Protection Bureau (CFPB) under the previous administration issued a rule that banned lenders from considering medical debt, and banned consumer reporting agencies (CRAs) such as Equifax, Experian, and TransUnion from including such debts in credit reports sent to lenders. That same day, the trade group for the CRAs, the Consumer Data Industry Association, sued CFPB over the rule in ***Cornerstone Credit Union League v. CFPB***, No. 4:25-cv- 00016 (E.D. Tex.). A day later, the debt collectors and their association filed a second lawsuit over the rule in ***ACA International v. CFPB***, No. 4:25-cv-0009 (S.D. Tex.)

On February 1, 2025, the Trump Administration removed Rohit Chopra as CFPB Director. Then, Acting CFPB Director Russell Vought agreed to a 90-day stay of the rule's effective date in both lawsuits. On April 30, 2025, the CFPB under the Trump Administration entered into an agreement with CDIA in the *Cornerstone* litigation to vacate the rule. But that's not all – the Trump-era CFPB or CDIA might attempt to invalidate the already-passed state laws banning medical debt credit reporting and prevent additional laws by arguing that federal law preempts them.

We urge states to continue adopting laws that ban medical debts on credit reports.

The Looming Threat of Federal Preemption

The Fair Credit Reporting Act (FCRA) is the federal law that governs credit reports. It has a complicated scheme regarding preemption, the ability of federal laws to override state laws. While the FCRA has a general rule that the Act does not preempt stronger state laws, that general rule is subject to a number of more restrictive provisions that do preempt state laws regarding certain specific subjects. The more restrictive provisions do override stronger state laws with stronger protections with regards to those subjects.

The scope of these more restrictive preemption provisions has been hotly debated over the years. The Biden-era CFPB was supportive of state efforts to prohibit medical debts on credit reports, and issued an interpretive rule and provided comment letters in state legislative proceedings stating that such state laws were not preempted.

The Trump CFPB withdrew the interpretive rule as part of a May 12, 2025 mass withdrawal of 67 guidance documents, based on its opposition to any guidance that is not in the form of a formal regulation, viewing guidance documents as burdensome to industry. As discussed in this NCLC article, nothing in the May 12 withdrawal indicated any critique of specific interpretations, although the CFPB has begun issuing other withdrawals with specific reasoning as well.

In general, there are still good arguments that the FCRA does not preempt state laws banning reporting of medical debt, including the First Circuit decision in *Consumer Data Indus. Ass'n v. Frey*, 26 F. 4th 1 (1st Cir. Feb. 10, 2022). **We urge states to continue adopting laws that ban medical debts on credit reports**, such as those in California, Connecticut, Colorado, Illinois, Maryland, Minnesota, New Jersey, New York, Rhode Island, Vermont, Virginia, and Washington State. However, there are additional provisions that states can include in these laws that should help stave off preemption challenges.

Preemption-Proofing State Medical Debt Credit Reporting Laws

To ensure that state laws addressing medical debt on credit reports survive preemption, we recommend including in state bills the following:

1. **A provision that prohibits lenders, employers, landlords, and other users from considering medical debt on credit reports in their decision making.** The FCRA provisions that govern users of credit reports – as opposed to the provisions governing what CRAs themselves can report – are only subject to the general rule that does not preempt stronger state laws. An example of a law that prohibits users from considering medical debt on credit reports is:
    - **California:** Cal. Civil Code § 1785.20.6 provides: "A person who uses a consumer credit report in connection with a credit transaction shall not use a medical debt listed on the report as a negative factor when making a credit decision."

One flaw with user prohibitions is that they are difficult to enforce. To prohibit evasion or noncompliance of user prohibitions, another idea is to include a provision that if a user receives a credit report with medical debt on it, that report can be considered evidence of violation.

2. **A requirement that healthcare providers include in their contracts with debt collectors a provision that prohibits the debt collectors from furnishing medical debts to a CRA.** Such a provision should not implicate the FCRA, since there is no provision in that Act governing the relationship between a health care provider and a debt collector. Examples of such a provision include:
    - **California:** Cal. Civ. Code § 1785.27 (c) (1) provides: "it is unlawful to enter into a contract creating a medical debt that does not include the following term:

        "A holder of this medical debt contract is prohibited by Section 1785.27 of the Civil Code from furnishing any information related to this debt to a consumer credit reporting agency. In addition to any other penalties allowed by law, if a person knowingly violates that section by furnishing information regarding this debt to a consumer credit reporting agency, the debt shall be void and unenforceable."

- **Connecticut:** Conn. Pub. Acts No. 24–6, § 1(b) provides: "A health care provider doing business in this state shall include in any contract entered into with a collection entity on and after July 1, 2024, for the purchase or collection of medical debt a provision that prohibits the reporting of any portion of such medical debt to a credit rating agency"
- **New Jersey:** N.J. Rev. Stat. § 56:11-59(4)(b) provides: "A medical creditor shall not sell a patient's debt to another party unless, prior to the sale, the medical creditor has entered into a legally binding written agreement with the medical debt buyer of the debt pursuant to which the medical debt buyer or collector is prohibited from engaging in any actions in paragraphs (2) and (3) of the definition of "collection action" in section 2 of P.L.2024, c.48 (N.J. Rev. Stat. § 56:11-57, referring to credit reporting)"
- **New York:** N.Y. Pub. Health Law § 4926(2) provides that licensed health care providers and ambulances "shall include a provision in any contract entered into with a collection entity for the purchase or collection of medical debt that prohibits the reporting of any portion of such medical debt to a consumer reporting agency"
- **Rhode Island:** R.I. Gen. Laws § 6-60-2 provides "In any contract entered into with a collection entity or debt collector for the purchase or collection of medical debt, there shall be included a provision which prohibits the reporting of any portion of medical debt to a consumer reporting agency."

Questions? Contact NCLC Senior Attorney Chi Chi Wu (cwu@nclc.org).

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