Written Statement of Chi Chi Wu,
National Consumer Law Center
Before the House Business Affairs and Labor Committee
of the Colorado General Assembly
in support of HB23-1126: Excluding Medical Debt Information from Consumer Reports
February 22, 2023

The National Consumer Law Center[1] (NCLC) thanks you for holding this hearing on HB23-1126, which would prohibit the reporting of medical debt information by consumer reporting agencies (CRAs). The bill would also inform consumers about their rights by requiring debt collectors to notify consumers with medical debt that such debt can no longer be included on credit reports, with narrow exceptions.

Medical debt information in consumer reports (also known as credit reports) from the nationwide CRAs (i.e., Equifax, Experian and TransUnion) wreaks havoc in the financial lives of millions of Americans, including those in Colorado. Just this month, the Consumer Financial Protection Bureau (CFPB) reported that 13.5 percent of consumers with a credit report had a medical debt collection on their report in 2022.[2] While this is a decrease from 16.4 percent in 2018, it still constitutes the largest source of debt collection blemishes on credit reports. Medical debts constituted 68.9% of accounts reported by contingency-fee-based debt collectors.[3]

Medical bills for life-saving or medically necessary care are often unexpected, and the expenses alone can throw a family into a financial crisis. This crisis is compounded when families cannot pay for these surprise expenses and the debt is reported to the nationwide CRAs. The blemishes on a credit report (which employers and landlords as well as creditors may see) and the resulting lower credit scores can compromise a family's long-term financial stability by making access to mainstream credit, housing, and even employment more difficult.

Medical debts often become past due and are reported to credit bureaus because of payment delays due to billing or insurance disputes, consumer confusion, and the generally dysfunctional nature of

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[1] The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen many examples of the damage wrought by inaccurate credit reporting from every part of the nation. It is from this vantage point – many years of observing the problems created by incorrect credit reporting in our communities – that we supply these comments. Fair Credit Reporting (10th ed. 2022) is one of the twenty-one practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu, lead author of that treatise.
[2] CFPB, Market Snapshot: An Update on Third-Party Debt Collections Tradelines Reporting, Feb. 2023, at 8, https://files.consumerfinance.gov/f/documents/cfpb_market-snapshot-third-party-debt-collections-tradelines-reporting_2023-02.pdf.
[3] *Id.* at 3.

healthcare financing in the United States.[4] Medical debts are almost always reported as debt collection items. Commonly used credit scoring models treat unpaid medical debts negatively,[5] even though medical debts are typically incurred involuntarily and may be riddled with problems such as billing errors and disputes with insurers over liability for accounts.[6]

While recent voluntary changes by the nationwide CRAs will reduce the amount of medical debt on credit reports, we believe the prohibition on all medical in HB HB23-1126 is ultimately necessary to protect consumers, particularly vulnerable consumers. The voluntary changes involve the removal of paid medical debts and medical debts under $500 and a one-year delay in reporting other medical debts.[7] These voluntary reforms will result in the removal of the majority of medical debt, but the debts that will remain are held by the most vulnerable consumers. These include consumers who may be facing catastrophic or chronic medical issues and thus have larger medical bills, and low-and-moderate income consumers who cannot afford to pay off the debts.

Another recent change is that the credit scoring modeler VantageScore has announced that it will no longer include medical debts in its two latest scoring models (VantageScore 3 and 4).[8] This change unequivocally establishes that these debts are simply not necessary for credit scores to be predictive. And if they are not necessary to be predictive, they are not necessary to include in credit reports for the purposes of credit underwriting. However, it appears that FICO scoring models (the most commonly used scoring model) will continue to consider unpaid medical debt.

In addition to credit scoring harm, medical debts on credit reports create other risks, such as:

- The appearance of multiple medical debts, especially in larger dollar amounts, may indicate to an employer or housing provider that the consumer has a chronic health condition. This may result in rejections by less-than-upstanding employers worried that the consumer will require frequent sick leave or result in higher health insurance premiums. Housing providers may reject applicants they believe are sick and require some sort of accommodation.

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[4] CFPB, Consumer Credit Reports: A Study of Medical and Non-Medical Collections, Consumer Fin. Prot. Bureau (Dec. 2014), https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.

[5] An explanation of FICO Scores versions is at https://www.myfico.com/credit-education/credit-scores/fico-score-versions (viewed Feb. 18, 2022). While FICO 9 and 10 do not factor in medical collections that have been paid and unpaid medical debt is weighted less heavily than other debt, many creditors still use FICO Score 8 which weighs medical debt the same as other debt. Fannie Mae and Freddie Mac use an older model that treats medical debt the same as other debt; their regulator (the Federal Home Finance Agency) made the decision to switch those enterprises to FICO 10 in October 2022, but implementation will be a multi-year effort. Press Release, FHFA Announces Validation of FICO 10T and VantageScore 4.0 for Use by Fannie Mae and Freddie Mac, October 24, 2022, https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Validation-of-FICO10T-and-Vantage-Score4-for-FNM-FRE.aspx.

[6] *See* Kenneth P. Brevoort & Michelle Kambara, Data Point: Medical Debt and Credit Scores, Consumer Fin. Prot. Bureau (May 2014).

[7] Consumer Data Industry Association, National Credit Bureaus Support Consumers with Changes to Medical Collection Debt Reporting, Mar. 2022, available at https://www.cdiaonline.org/news/2022/03/18/equifax-experian-and-transunion-support-u-s-consumers-with-changes-to-medical-collection-debt-reporting.

[8] See VantageScore, VantageScore Removes Medical Debt Collection Records from Latest Scoring Models (Aug. 2022) available at https://www.vantagescore.com/major-credit-score-news-vantagescore-removes-medical-debt-collection-records-from-latest-scoring-models/

- Consumers with a disability are disproportionately impacted by medical debt. According to the Kaiser Family Foundation's Burden of Medical Debt report, adults with a disability are more than twice as likely than those without a disability to report owing over $250 in medical debt (15% vs. 7%). Consumers with a disability already face significant barriers in obtaining employment and housing. Medical debts on a credit report might be what tips an already tentative employer or housing provider from hiring a disabled consumer or renting an apartment to them. While such actions violate federal and state anti-discrimination laws, illegal activity does happen. Removing medical debts from credit reports is one way to reduce the potential for such violations.

Colorado can protect its consumers from all of these negative effects of medical debt by adopting HB23-1126. The CFPB, the federal agency charged with interpreting the Fair Credit Reporting Act, made it clear in July 2022 that states have the authority to enact statutes like HB23-1126. The Bureau stated in an Interpretive Rule that: "For example, if a State law were to forbid consumer reporting agencies from including information about medical debt, evictions, arrest records, or rental arrears in a consumer report (or from including such information for a certain period of time), such a law would generally not be preempted."[9]

For all the above reasons, we urge you to support HB23-1126.

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[9] CFPB, The Fair Credit Reporting Act's Limited Preemption of State Laws, 87 Fed. Reg. 41,042 (July 11, 2022).