

March 14, 2023

The Honorable Robert Rodriguez
Chair, Senate Committee on Business, Labor, & Technology
200 E Colfax
RM 346
Denver, CO 80203
United States

Re: HB 1126 – Medical Debt

Dear Chairman Rodriguez:

I write on behalf of the American Financial Services Association (AFSA)¹ to express our serious concerns with House Bill 1126, which would make drastic changes to Colorado’s laws related to medical debts. While we recognize the bill’s purpose of protecting consumers from harms that may be associated with unexpected medical debt, as drafted, HB 1126’s broad definition of “medical debt” would create significant compliance challenges resulting in unintended negative consequences for Colorado borrowers.

HB 1126 would prohibit a consumer reporting agency from making a consumer report containing any information concerning medical debt, which is broadly defined to include: debt arising from health-care services...or health-care goods, including products, devices, durable medical equipment, and prescription medications.” On its face, this exclusion may seem simple enough, but in practice, isolating “medical debt” from other debt may not be feasible depending on how the debt was incurred, particularly for medical debt paid by credit card or other revolving credit like a home equity line of credit (HELOC) where medical expenses may be comingled with other spending. Outlined below are several examples of possible “medical debt” that would create such challenges.

Example 1

Noah goes to Urgent Care and pays her \$50 co-pay on a credit card. That \$50 transaction is part of a \$1000 statement balance for the month. Would the entire statement balance be “medical debt” and prohibited from being reported? Would \$950 be allowed to be reported and \$50 not? If Noah pays half the balance, what portion of the payment would be attributable to \$50 co-pay? Could the remaining \$500 be included in the consumer report? Would any portion of the remaining \$500 be “medical debt”?

Example 2

Jane pays her insurance co-pay of \$5 on a prescription at Target pharmacy while also buying other items. Her entire purchase at Target is \$150, and includes a new outfit, a frozen pizza, Tylenol, gift

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

wrap, and nail polish. Is part, or even all, of this transaction “medical debt” despite largely being made up of items that aren’t medical? Card issuers do not have the ability to distinguish between these two portions of a single transaction, and the resulting statement would reflect the total balance. Even if split into two separate lines, the account would still create the problem outlined in Example 1.

Example 3

Jack has a house worth \$1 million with a \$500,000 mortgage. Jack takes out a \$100,000 line of credit and uses \$15,000 of it for a nose job, \$800 for Botox and \$4,000 for a new porch. Is the \$15,000 nose job “medical debt” and thus not reportable? What about the \$800 Botox? Is the entire balance prohibited from being reported? If Jack pays part of the HELOC off, but not all of it, which part of the payment is attributable to the porch and which part of the payment is attributable to Jack’s cosmetic procedures?

Example 4

Olivia carries a \$1500 balance between statements on a credit card. While working to pay down the balance and improve her credit score, Olivia uses her credit card to pay for a prescription with a \$15 co-pay. Would the entire balance of this credit card, which existed before the “medical debt” was incurred, now be “medical debt” and require removal of the entire trade line from Olivia’s credit report?

The federal Fair Credit Reporting Act (FCRA) requires reporting of only accurate information. This duty for accurate reporting does not distinguish between negative or positive consumer information, meaning all accurate information must be reported, whether positive or negative. Because of this duty, compliance with a wholesale prohibition on reporting a category of debt that cannot be isolated from other debt would necessarily require the suspension of all credit reporting related to revolving credit where “medical debt” could be comingled. The harm from such a suspension would be felt by all consumers across Colorado now unable to reap the benefits of favorable credit reporting. Borrowers who make on-time payments and don’t carry a balance, despite doing everything right to protect their own credit profiles, would be harmed by the bill’s restrictions.

Importantly, the credit underwriting process assesses a prospective borrower based on a number of different factors, including their overall credit profile, income, and ability to repay the loan. To the extent that any information related to “medical debt” provides an indication of the borrower’s ability to repay new credit, requiring such information be omitted from consumer reports could create safety and soundness concerns for the new loan by interfering with creditors’ means of fully assessing the borrower’s ability to repay the loan. In addition to the direct harm to borrowers losing out on the benefits of positive credit reporting, these restrictions could limit the ability of creditors to use consumer reports overall and thus affect the overall availability of credit for all Colorado consumers.

In order to preserve the integrity of the credit reporting system, while maintaining the bill’s protections for isolated “medical debt,” we respectfully request you amend the bill’s definition of “medical debt” to exclude debt charged to a credit card or incurred by other revolving lines of credit that could be comingled with non-medical expenses and further clarify that it does not include elective cosmetic procedures.

We urge you to consider the effects these restrictions will have on Colorado’s credit markets and not move forward with the legislation without amendments. Thank you for your consideration of our

comments and proposed amendments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at (202) 469-3181 or mkownacki@afsamail.org.

Sincerely,

A handwritten signature in blue ink that reads "Matthew Kownacki". The signature is written in a cursive style with a period at the end.

Matthew Kownacki
Director, State Research and Policy
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517