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NFIB is an incorporated nonprofit association with nearly 300,000 members across America. NFIB protects and advances the ability of individuals to own, operate, and grow their businesses and ensures that the Congress of the United States and all 50 states hear the voice of small business as they formulate public policy.

On behalf of NFIB Colorado's 7,000 members, this written testimony is entered in opposition to House Bill 21-1300.

Jury verdicts across the country continue to rise, with payout amounts increasing 51.7% annually from 2010 to 2018 while overall inflation grew only 1.7%. As trial lawyers flock to file lawsuits in the wake of the pandemic, the U.S. is poised to hold onto its reputation as the most litigious country in the world, and our \$373.1 billion tort system is likely to grow even more expensive. *(Tiger Joyce, ATRA President, 8/25/20)*

While small and large businesses may face lawsuits that bankrupt them, everyday Americans pay the price of lawsuit abuse through a "tort tax" costing more than \$760 per person every year in the most litigious states, referred to as "Judicial Hellholes." *(Tiger Joyce, ATRA President, 8/25/2020)*

House bill 21-1300 will hide litigation finance and other factoring companies in litigation and treat them like collateral sources. HB 21-1300 will also lead to higher health care costs.

Pursuant to HB 21-1300, healthcare providers will have a lien for the "billed" amount of their services (pg.9, line 12) regardless of what other billing standards may apply to the actual treatment. House bill 21-1300 allows the injured person to elect to create a "healthcare provider lien" rather than bill the injured person's health insurance or other insurance which is available to the injured person. A "healthcare provider lien" can be purchased and assigned to third parties who can claim the full "billed amount." The assignee has all the rights and remedies of the assignor. **The assignee is specifically not deemed a "consumer lender" exempting the assignee from restrictions on such practices.**

The fact of the assignment, its terms and the amount paid by the assignee is not discoverable or admissible as evidence in any third-party or first-party action.

The effects of HB 21-1300, if passed, will apply to all bodily injury claims payable under any type of insurance policy that provides coverage for such claims. This includes commercial general liability policies, commercial property policies, business owner policies, commercial and personal auto policies, uninsured and underinsured motorist policies, and primary and excess policies of any kind including umbrella policies. The bill applies to first-party and third-party claims. This bill would render insurers defenseless to challenge the reasonable amount of medical bills claimed by an injured claimant/plaintiff. The result would be a de facto determination that the billed amount is owed once liability is proven, regardless of whether a claimant's medical bills were already paid by health insurance or another "collateral source."

We believe HB 21-1300 will drive up costs as "phantom damages" grow larger due to an increased use of medical finance companies and "letters of protection." The resulting "phantom damages" are not new. They exist any time lawsuit recoveries are calculated using the dollar amount a patient was billed for a medical service instead of the amount actually paid for treatment. For example, a hospital may bill \$50,000 for an emergency room visit, while the amount the hospital receives after adjustments may be \$30,000. The \$20,000 difference is not owed or ever paid in the real world.

Unfortunately, the legal system provides opportunities and incentives for attorneys, clients, and others to pretend a "billed" amount is a real number an individual would be expected to pay for treatment. The use of inflated billed amounts only increases the overall cost of the judicial system, spreading the financial burden on the backs of every American through higher health care costs.

In some cases, lawyers will even recommend clients to doctors the lawyer has a relationship with, and those doctors often charge a much higher amount than a typical doctor might charge.

Instead of using health insurance coverage, trial lawyers are now encouraging clients to enter into agreements with third-party medical financing companies to pay for medical care related to injuries or offering a "letter of protection" to the medical provider.

Letters of protection typically do not include a medical financing company. Rather, the doctor treats the patient based on the letter of protection provided by the patient's lawyer, stating that the bill will be paid out of the settlement or verdict awards.

Health care costs are already high enough in Colorado, please do not exacerbate the increase.

*Note: This is not the first attempt to pass this type of legislation. Please refer to Sb 19-217 by Senator Foote.

NFIB Colorado requests a NO vote on HB 21-1300.

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