

February 21, 2023

Representative Lindsey Daugherty, Chair
House Committee on Health and Insurance
Colorado State Capitol, 200 East Colfax Avenue, Denver, CO 80203-1784

RE: Testimony for House Committee Hearing on CO SB23-093

Dear Chairwoman Lindsey Daugherty

The Pew Charitable Trusts (Pew) is pleased to respond to the House Committee on Health and Insurance’s request for public testimony on CO SB23-093: Increase Consumer Protections Medical Transactions.

Pew is a non-profit research and policy organization with an initiative focused on modernizing our nation’s [civil legal system](#). We work to support efforts to deliver more effective, equitable, and open civil courts for the millions of Americans who navigate them each year without an attorney. Our focus is on the recent rise of debt collection litigation, and how it has transformed the business of state courts,¹ while also posing serious implications for the financial security ² of millions of Americans. Since 2000, debt collection lawsuits have dominated between 60-72% of Colorado’s County Court civil caseload, seeing over 75,000 cases in 2021 alone.³ While Colorado has been a leading state in enacting judicial and legislative reforms to address debt collection lawsuits, more can be done to improve how courts handle individual types of debt claims, such as medical debt.

The Problem: Despite growing prevalence, courts lack clear and consistent policies on how to handle medical debt collection lawsuits

Despite its widespread impact, medical debt has long flown under the radar of policymakers and advocates due to the lack of data on its drivers and prevalence, but this has changed over the past two years with new research shining light on the problem.⁴ However, the role that state courts play in the medical debt collection lawsuits remains underrecognized.

41% of Americans—over 100 million—struggled to pay medical bills in 2022.⁵ The majority of these Americans report sacrificing their entire savings or budget for basic needs such as food and clothing to pay off medical bills.⁶ Almost half of these individuals paid for these bills using credit cards, and a slightly greater share resorted to payment plans from hospitals or other lenders.⁷ Both options cause the initial amount owed for medical care to accrue additional fees and interest, and credit card debt can be sold to third party debt collectors. If debts remain unpaid, hospitals and debt collectors can use the state court system to compel payments from patients by garnishing their paychecks and seizing their assets. The legal process often adds additional court costs, attorney’s fees, and interest that can account for over a third of the initial amount owed.⁸ Additionally, 70% of consumers do not participate in debt collection cases across the country, for reasons that include improper notice of the lawsuit and lack of understanding of its implications. In these situations, the company suing can automatically win their case, without a judge ever reviewing the lawsuit for validity.

Our research gives us several indications that medical debt is a leading driver of debt collection dockets in state courts. At a national level, more Americans struggle with medical debt than all other types of consumer debt combined.⁹ When medical debt goes into collections, it often winds up in court, brought by either the medical providers themselves or a third-party debt buyer: analysis in Utah, for example, revealed that medical debt claims were the most common type of debt collection lawsuit filed in the state at 30%.¹⁰ In Colorado, 6 out of 11 major hospitals¹¹ in the state have policies that allow these hospitals to bring legal actions against patients for past due medical bills. Together, this data suggests that it is likely that a substantial portion of the 75,000-plus debt collection lawsuits on Colorado’s county court dockets in 2021 resulted from medical debt.¹²

While several states, including Colorado, have taken important policy steps to address debt collection lawsuits generally, few have acted to specify how they apply to medical debt. This step is crucial given shifting state, federal, and healthcare industry policy landscapes around medical billing that necessitate greater scrutiny by the courts to ensure medical debt collection lawsuits are valid. For example, insured patients can be sued for medical bills that should have been covered by their insurance or were a result of federally unlawful surprise bills, and uninsured ones may have been eligible but not received hospital financial assistance.¹³ Medical bills also frequently contain errors such as higher or incorrect charges that patients themselves must identify and dispute.¹⁴ Rather than continuing to burden vulnerable families with claiming lawfully mandated protections, policymakers can instead empower state courts to enforce these protections by modernizing how they handle medical debt lawsuits.

The Solution: Policies can empower state courts to enforce medical debt protections

Our research on court policies and caseload trends on how debt collection lawsuits are handled in state courts across the country informs four key solutions to customize debt collection lawsuit reforms for medical debt. These solutions serve to ensure an active role of the court to effectively administer justice and empower meaningful participation by consumers facing courts without the help of an attorney.

- 1) **Requiring companies suing to identify medical debt claims in state courts.** Medical debt lawsuits brought by third-party debt buyers and collectors can obscure to courts and consumers whether the lawsuit involves medical debt. Without this identification, it can be challenging for courts to screen and review medical debt cases or enforce rules that apply needs-based case management to medical debt claims. For example, in Michigan 10% of debt collection lawsuits are brought by hospitals but the total amount of medical debt claims being brought is likely to be significantly higher because claims sold to third-party debt buyers are not readily identifiable as medical debt in court filings.¹⁵ [Maryland](#) has addressed this issue by restricting the sale of medical debt to third-party companies. Others states, like [Connecticut](#), require plaintiffs to identify medical debt when filing their lawsuits.
- 2) **Enabling courts to review medical debt claims for validity, regardless of consumer participation.** While some states have moved to require plaintiffs to provide specific documentation, such as an itemization of charges and account statements, to prove debt claims, most do not address what is required for medical debt in particular. Given that medical bills can often be incorrect and entail varying insurance and hospital financial assistance provisions, courts need access to underlying documentation to effectively review these lawsuits. Policymakers can require companies suing to disclose such documentation when filing a medical debt lawsuit and authorize the court to review the documentation for sufficiency before entering a judgment against the consumer.
- 3) **Creating an answer form with medical debt-specific affirmative defenses to empower consumers to meaningfully engage.** States have taken a variety of steps to address high default judgment rates and lack of defendant participation in debt collection lawsuits, including creating answer forms that list defenses available to consumers to empower them to respond and engage with the lawsuit. For example, New York's [consumer credit answer form](#) provided by the courts lists identity theft or being sued by an unlicensed debt collector as potential defenses. States can apply such reforms to medical debt by creating answer forms with affirmative defenses for the court to consider that indicate whether the debt resulted from a surprise bill or was eligible for financial assistance.

4) Preventing court-involvement in medical debt claims from perpetuating financial instability.

Hospitals and debt collectors file medical debt lawsuits to obtain court-authority to garnish wages or seize a consumer’s bank accounts and assets to satisfy the debt. Some states, such as Maryland and New Mexico, have moved to prohibit or heavily restrict the ability of hospitals and debt collectors to garnish and seize assets to satisfy medical debts, and others, such as New York, limit the post-judgment interest that can be applied to medical debt. These reforms can limit the volume of medical debt claims on state court dockets and incentivize earlier, out-of-court resolutions, which serves to keep costs down for courts, consumers, and creditors.

Impact of SB23-093 in Colorado

As states like Colorado contemplate and enact reforms aimed at ensuring protections and reducing the prevalence of medical debt, it is important they also address the role of the courts in enforcing these reforms. The judiciary provisions included in SB23-093 already establish Colorado as a leading state on this topic. Over the past 2 years, four other states—Arizona, New Mexico, Nevada, and New York—have passed medical debt reforms with judiciary provisions. Here is how these states and Colorado with SB23-093 address the solutions discussed above in their laws or court rules. Some courts in these states may have developed individual processes to identify and handle medical debt lawsuits that are not reflected in this table:

State	Identify medical debt in litigation	Require specific proof for medical debt claims	Create medical debt court answer form & affirmative defenses	Further restrict garnishment on medical debt
Colorado w/ SB23-093	Sale of medical debt restricted	If consumer requests AND with complaint & upon default	Not addressed	Not addressed
Arizona	Not addressed	Not addressed	Not addressed	Greater protections for medical debt
New Mexico	Sale of medical debt restricted	If consumer requests	Not addressed	Prohibited for indigent patients
Nevada	Not addressed	If consumer requests	Voluntary payment not admission of liability	Not addressed
New York	Not addressed	Not addressed	Not addressed	Liens and wage garnishment prohibited

Over the past few years, Colorado has taken important steps to address transparency in medical billing practices. By including provisions for the courts to enforce these reforms, Colorado is positioned to address gaps in its current medical debt policy landscape and establish itself as a national leader enabling courts to review medical debt claims for validity.

Thank you again to the Committee for the opportunity to provide input and for your continued dedication to this issue. Pew is experienced in analyzing court processes and data related to debt collection lawsuits and we offer our continued assistance to further explore any of the issues covered in this analysis. Please contact Joshua Alvarez (jalvarez@pewtrusts.org) in our Government Relations office for additional information or questions.

Sincerely,

Erika J. Rickard, Esq.
Project Director, Civil Legal System Modernization

-
- ¹ The Pew Charitable Trusts, “How Debt Collectors Are Transforming the Business of State Courts,” May 6, 2020, <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debtcollectors-are-transforming-the-business-of-state-courts>.
- ² Aspen Institute, “A Financial Security Threat in the Courtroom,” September 2021, https://www.aspeninstitute.org/wp-content/uploads/2021/09/ASP-FSP_DebtCollectionsPaper_092221.pdf.
- ³ Colorado Judicial Branch, Annual Statistical Reports, 2021 <https://www.courts.state.co.us/Administration/Unit.cfm?Unit=annrep>
- ⁴ Consumer Financial Protection Bureau, “Medical Debt Burden in the United States,” March 2022, https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf.
- ⁵ Levey, Noam N. “100 Million People in America Are Saddled with Health Care Debt,” Kaiser Health News, June 16, 2022, <https://khn.org/news/article/diagnosis-debt-investigation-100-million-americans-hidden-medical-debt/>.
- ⁶ Ibid.
- ⁷ Levey, Noam, and Aneri Pattani. “How Banks and Hospitals Are Cashing in When Patients Can’t Pay for Health Care.” NPR, November 17, 2022, www.npr.org/sections/health-shots/2022/11/17/1136201685/medical-debt-high-interest-credit-cards-hospitals-profit.
- ⁸ Poor, Profiting from the. “What It Looks like When a Hospital We Investigated Erases \$11.9 Million in Medical Debt.” ProPublica, December 24, 2019, www.propublica.org/article/what-it-looks-like-when-a-hospital-we-investigated-erases-millions-in-medical-debt.
- ⁹ White House Briefing Room. “FACT SHEET: New Data Show 8.2 Million Fewer Americans Struggling with Medical Debt Under the Biden-Harris Administration,” February 14, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/14/fact-sheet-new-data-show-8-2-million-fewer-americans-struggling-with-medical-debt-under-the-biden-harris-administration/>
- ¹⁰ Utah Bar Foundation, “Utah Bar Foundation Report on Debt Collection and Utah’s Courts,” April 2022, <https://www.utahbarfoundation.org/static/media/UBF2022.912d30c10e5681bf5f8c.pdf>.
- ¹¹ Levey, Noam. “Investigation: Many U.S. hospitals sue patients for debts or threaten their credit.” NPR, December 22, 2022, <https://www.npr.org/sections/health-shots/2022/12/21/1144491711/investigation-many-u-s-hospitals-sue-patients-for-debts-or-threaten-their-credit>
- ¹² Colorado Judicial Branch, Annual Statistical Reports, 2021
- ¹³ Vanderveen, Chris and Katie Wilcox. “How you can visit the hospital, then get a lien on your home,” 9News, November 5, 2018. <https://www.9news.com/article/news/investigations/medical-cost/how-you-can-visit-the-hospital-then-get-a-lien-on-your-home/73-611424288>
- ¹⁴ Abbi, Sarika, and Raquan Wedderburn. “The AFN Debt Series MEDICAL DEBT and ITS IMPACT on HEALTH and WEALTH: WHAT PHILANTHROPY CAN DO to HELP,” March 2021, https://www.aspeninstitute.org/wp-content/uploads/2021/03/AFN_MedDebtBrief_Final.pdf
- ¹⁵ Michigan Justice for All Commission, “Advancing Justice for All in Debt Collection Lawsuits,” November 2022, https://www.courts.michigan.gov/4ac33d/siteassets/reports/special-initiatives/justice-for-all/jfa_advancing_justice_for_all_in_debt_collection_lawsuits.pdf



Fw: SB-23-093 and HB-23-1215 Health and Insurance Committee AOL Mail® to:
committees.lcs.ga@coleg.gov 03/21/2023 08:36 AM

----- Forwarded Message -----

From: AOL Mail® <stargazejb@aol.com>

To: Matthu.Beck@coleg.gov <matthu.beck@coleg.gov>

Sent: Tuesday, March 21, 2023 at 04:31:04 AM MDT

Subject: SB-23-093 and HB-23-1215 Health and Insurance Committee

March 21, 2023

Dear Legislators,

I am in support of SB-23-093, the Increase Consumer Protections Medical Transactions legislation. 100 million Americans owe over \$195 billion in medical debt, and 12% owe more than \$10,000. Capping the interest rate at 3% will help those in debt be able to pay it off in time. (I happen to believe we need a single payer, universal healthcare system.) For the impoverished the deductibles and copayments are a burden resulting in them not seeking care when it is necessary because of the increased debt.

I am in support of HB-23-1215, the Limits on Hospital Facility Fees bill. This legislation defines who can charge a facility fee and the fact they must inform the consumer of such a fee in advance. It makes it deceptive to charge a fee when the fee is charged by a practitioner who is affiliated with or owner of the facility. Extra medical expenses have escalated and many consumers are not able to afford the additional costs. Also the owner of the facility should not be able to add the facility fee in the practice of patient treatment.

Thank you for your consideration!

Janice Brown
Retired critical care RN
Englewood, CO 80110

House Health & Insurance
03/21/2023 Upon Adjournment
SB23-093 Increase Consumer Protections Medical Transactions
Typed Text of Testimony Submitted

Name, Position, Representing	Typed Text of Testimony
Virginia Gebhart For Colorado Foundation for Universal Health Care	<p>My adult sons have received surprise medical bills even though they have insurance. I have covered it because I don't want them to go without needed care for fear of medical debt. It is like pulling teeth to get them to see a doctor when needed because they are angry and afraid of medical debt. They feel they have been betrayed by the very providers and institutions who are supposed to help them get healthy and stay healthy.</p> <p>It's unfortunate that so many of us find ourselves worried about medical debt, whether we are carrying it now or we are worried about incurring it in the future. This bill seems to chip away at addressing the worst abuses by health care providers and/or institutions and the debt collectors they employ.</p> <p>Wouldn't it be great if we had a publicly financed health care system that would be funded by all of us based on our ability to pay predictable premiums up front, no surprises? It will happen someday because this messed up way we pay for health care now is killing us.</p> <p>In the meantime, please vote yes to pass this bill to protect our families, friends and neighbors from the worst abuses utilized to collect on medical debt.</p>