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Creditor's Rights Attorney Association of Nevada  
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Hon. Pat Spearman  
Chair, Senate Commerce and Labor Committee

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To the Members of the Senate Commerce and Labor Committee:

The Creditors' Rights Attorney Association of Nevada (CRAAN) is opposed to Senate Bill 248 which on its face seeks to revise provisions relating to the collection of medical debt.

We believe the bill attempts to unnecessarily legislate restrictions on debt collection by collection attorneys where consumer education is a better fix.

As an initial matter, the collection of medical debts by third parties, whether placed with a collection agency or a collection law firm, are subject to the FDCPA, 15 U.S.C. 1692 *et sequ*.

We clarify that we use the words debt collectors, collection agencies, and collection attorneys as terms of art: collection agencies are licensed and regulated pursuant to NRS Chapter 649 while collection attorneys are licensed by the State Bar of Nevada and are the only ones who can represent others in court and the only ones who can charge attorney fees. Both are regulated as third-party debt collectors under the FDCPA.

Further, SB 248 conflicts with laws already in place in Nevada. Here is but a sample: in addition to the FDCPA regulating collection, NRS 449.757 already regulates when collections may begin for hospital debt and when interest may begin to accrue. It prohibits costs and attorney fees except as provided by a court. NRS 629.071 requires a provider of health care to furnish a patient with an itemized bill. NRS 649.332 and the FDCPA already regulate dunning, verification, and disputes of the debt. There is a very heavy set of federal laws on debt collection practice, including medical debt and Medicaid, and specifically when Medicare copayments may be waived.

This opposition does not even begin unpacking the separate requirements of insurance companies to provide Explanations of Benefits to their customers. But, in our professional experience, a Defendant's most common defense is that they believed their insurance was to pay 100% of their bill. This is almost never the case. Patients have co-pays, unmet deductibles and the co-insurance responsibility, such as 80/20 for specialists. These have all increased since the enactment of the ACA because the ACA requires insurance be offered, but does not require insurers to offer good insurance. For example, a person with a preexisting condition will have a policy, but the deductible

will be around \$6000 per year or more, with high co-pays plus a co-insurance percentage. The plans with the lowest premiums also have the highest deductibles, copays, and co-insurance.

We fear the unintended consequence of SB 249 will be to increase the present doctor shortage in Nevada. When a provider charges off a debt, it is an accounting method only. It is mere shorthand to 'charged off to profit and loss.' The bill remains due and owing and owned by the provider. Even if the bill is assigned to a collection agency for the specific purpose of collection, the collection agency is a servicer, and only an attorney can sue in court. Title has not passed, and the medical provider still owns the debt. The costs of suit are paid by the provider and not the collection agency. The provider also must retain counsel in most if not all cases.

So yes, this bill would absolutely hurt the bottom line of doctors and physicians.

We also oppose the proposals to regulate attorney fees caps and confessions of judgments, which are entwined. As it exists currently, an attorney must apply to a court for an award of attorney's fees, and these must be objectively reasonable based on the time, issues, and the complexity of work. The confession of judgment limits or excludes attorney fees because attorneys are not required to try the case and their work is limited. Even if a writ issues on the confession of judgment, that does not make the debt automatically collectible. Nevada has robust exemptions against garnishment and no public assistance is collectible. Additionally, individuals are guaranteed automatic minimum protections against bank garnishment and wage garnishment to "keep the lights on."

Finally, Section 8 of the bill would likely deny recovery of the bill to all medical providers in Nevada to Courts in cases with amounts less than \$10,000.00. We take the position that this is a direct infringement of the first amendment right to petition the court for redress of grievances as well as a constitutional takings problem. We do not think it would survive direct challenge.

CRAAN supports responsible debt collection. We are available to answer questions.

Respectfully,

/s/ Roberta Ohlinger-Johnson, Esq.

Legislative Chair,  
Creditor's Rights Attorney Association of Nevada