

1 AN ACT

2 RELATING TO CONSUMER PROTECTION; ENACTING THE PATIENTS' DEBT
3 COLLECTION PROTECTION ACT; PREVENTING COLLECTION FROM
4 INDIGENT PATIENTS; REQUIRING HEALTH CARE FACILITIES TO SCREEN
5 PATIENTS FOR ASSISTANCE ELIGIBILITY; REQUIRING HEALTH CARE
6 FACILITIES AND THIRD-PARTY HEALTH CARE PROVIDERS TO REPORT
7 HOW CERTAIN PUBLIC FUNDS ARE SPENT; LIMITING ENFORCEABILITY
8 OF CERTAIN JUDGMENTS; ADDING TO THE DEFINITION OF "COLLECTION
9 AGENCY" IN THE COLLECTION AGENCY REGULATORY ACT; REMOVING
10 ATTORNEY FEES AND COSTS FOR CERTAIN SUITS BY COLLECTION
11 AGENCIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

14 SECTION 1. A new section of Chapter 57 NMSA 1978 is
15 enacted to read:

16 "SHORT TITLE.--Sections 1 through 10 of this act may be
17 cited as the "Patients' Debt Collection Protection Act"."

18 SECTION 2. A new section of Chapter 57 NMSA 1978 is
19 enacted to read:

20 "DEFINITIONS.--As used in the Patients' Debt Collection
21 Protection Act:

22 A. "collection action" means any of the following:

23 (1) selling a person's medical debt to
24 another party, including a medical debt collector, but not
25 including medical debt as part of the assets and liabilities

1 when selling a health care facility or third-party health
2 care provider; or

3 (2) actions that require a legal or judicial
4 process, including:

5 (a) placing a lien on a person's
6 property;

7 (b) attaching or seizing a person's
8 bank account or any other personal property;

9 (c) commencing a civil action against a
10 person; or

11 (d) garnishing a person's wages;

12 B. "consumer" means a natural person;

13 C. "department" means the human services
14 department;

15 D. "health care facility" means:

16 (1) a health facility required to be
17 licensed by the department of health, except for:

18 (a) an adult day care facility;

19 (b) a boarding home not under the
20 control of an institution of higher learning;

21 (c) a child care center; and

22 (d) a shelter care home; or

23 (2) a health facility that is an urgent care
24 center or freestanding emergency room that is required to be
25 licensed by the regulation and licensing department;

1 E. "health care services" means services for the
2 diagnosis, prevention, treatment, cure or relief of a
3 physical, dental, behavioral or mental health condition,
4 substance use disorder, illness, injury or disease, which
5 services include procedures, products, devices or
6 medications;

7 F. "household income" means income calculated by
8 using the methods used to calculate medicaid eligibility;

9 G. "indigent patient" means a patient with a
10 household income that does not exceed two hundred percent of
11 the federal poverty level;

12 H. "medical creditor" means a person that provides
13 health care services and to whom the consumer owes money for
14 those services or the person that provided health care
15 services and to whom the consumer previously owed money if
16 the medical debt has been purchased by one or more medical
17 debt buyers;

18 I. "medical debt" means a debt arising from the
19 receipt of health care services;

20 J. "medical debt buyer" means a person that is
21 engaged in the business of purchasing medical debts for
22 collection purposes, whether that person collects the debt or
23 hires a third party for collection or an attorney for
24 litigation in order to collect such debt;

25 K. "medical debt collector" means a person that

1 regularly collects or attempts to collect, directly or
2 indirectly, medical debts originally owed or due or asserted
3 to be owed or due to another person. A medical debt buyer is
4 considered to be a medical debt collector for all purposes of
5 the Patients' Debt Collection Protection Act;

6 L. "patient" means the person who received health
7 care services or a parent or legal guardian of a minor or an
8 adult under guardianship who received health care services;

9 M. "superintendent" means the superintendent of
10 insurance; and

11 N. "third-party health care provider" means a
12 licensed health care professional or an entity with revenues
13 of at least twenty million dollars (\$20,000,000) annually,
14 when billing patients independently for health care services
15 provided in a health care facility."

16 SECTION 3. A new section of Chapter 57 NMSA 1978 is
17 enacted to read:

18 "REQUIREMENT TO PROVIDE SCREENING FOR INSURANCE AND
19 PROGRAM ELIGIBILITY.--

20 A. In addition to any other actions required by
21 applicable state or federal law or local government
22 ordinance, health care facilities shall take the following
23 steps before seeking payment for emergency or medically
24 necessary care:

25 (1) offer to and, if requested, verify

1 whether a patient has any health insurance;

2 (2) if the patient is uninsured, offer
3 information about, offer to screen the patient for and, if
4 requested, screen the patient for:

5 (a) all available public insurance;

6 (b) any other public programs that may
7 assist with health care costs; and

8 (c) any financial assistance offered by
9 the health care facility;

10 (3) offer to and, if requested, provide
11 assistance with the application process for programs
12 identified during the screening; and

13 (4) if a third-party health care provider
14 will bill the patient, send the information gathered during
15 the steps required pursuant to this subsection to the
16 third-party health care provider.

17 B. In addition to any other actions required by
18 applicable state or federal law or local government
19 ordinance, a third-party health care provider shall not seek
20 payment for emergency or medically necessary care until the
21 third-party health care provider receives the information
22 required pursuant to Paragraph (4) of Subsection A of this
23 section.

24 C. The superintendent shall promulgate rules to
25 establish minimum standards governing the requirements of

1 this section and shall provide health care facilities and
2 third-party health care providers with guidance on billing
3 and screening best practices, based on health care facility
4 type and size, that includes policies to prevent the
5 disclosure of patients' personal information to third
6 parties."

7 SECTION 4. A new section of Chapter 57 NMSA 1978 is
8 enacted to read:

9 "INDIGENT PATIENTS--PATIENTS' DEBT COLLECTION
10 PROTECTIONS.--

11 A. For patients who are determined to be indigent
12 patients, charges for health care services and medical debt
13 shall not be pursued through collection actions. All
14 collection actions through which charges for health care
15 services and medical debt are pursued shall be terminated
16 upon the determination that a patient is an indigent patient.
17 Health care facilities, third-party health care providers and
18 medical creditors shall not hire or otherwise engage third
19 parties to perform collection actions against or otherwise
20 recover debts from indigent patients.

21 B. The superintendent shall promulgate rules to
22 establish the process by which a patient is determined to be
23 an indigent patient for purposes of this section. The rules
24 shall take into account both permanent and temporary sources
25 of income."

1 SECTION 5. A new section of Chapter 57 NMSA 1978 is
2 enacted to read:

3 "DEPARTMENT GUIDANCE ON FUNDING SOURCES, BILLING AND
4 SCREENING.--The department shall provide health care
5 facilities and third-party health care providers with
6 guidance on accessing available sources of funding for care
7 that maximizes the use of funds in the following order of
8 priority:

- 9 A. federal funds;
- 10 B. state funds; and
- 11 C. other available funds."

12 SECTION 6. A new section of Chapter 57 NMSA 1978 is
13 enacted to read:

14 "BILLING INFORMATION.--

15 A. All bills sent from a health care facility,
16 third-party health care provider or medical creditor to a
17 patient shall include a complete and plain-language
18 description of the date, amount and nature of all charges; if
19 the patient is verified as having health insurance; if the
20 health care facility screened the patient for programs that
21 assist with health care costs; and if the health care
22 facility or third-party health care provider has billed or
23 will bill insurance or public programs that may assist with
24 health care costs for the services provided. Prior to
25 initiating communication with a consumer or a collection

1 action over medical debt, a medical debt collector shall have
2 all billing information required in this subsection as
3 allowed under the provisions of the federal Health Insurance
4 Portability and Accountability Act of 1996.

5 B. In communications with a consumer about medical
6 debt, including communication related to collection actions,
7 a health care facility, third-party health care provider,
8 medical creditor or medical debt collector shall inform the
9 consumer of the availability of the information required
10 pursuant to Subsection A of this section and offer to provide
11 that information to the consumer; provided that the
12 information required pursuant to this section need only be
13 provided to a requester once every thirty days."

14 SECTION 7. A new section of Chapter 57 NMSA 1978 is
15 enacted to read:

16 "RECEIPTS FOR PAYMENTS.--

17 A. Within thirty business days of receipt of a
18 payment on a medical debt, the health care facility,
19 third-party health care provider, medical creditor, medical
20 debt collector or their agents receiving the payment shall
21 send a receipt to the person who made the payment. The
22 receipt may take the form of a billing statement. All
23 receipts shall show:

24 (1) the amount paid;

25 (2) the date payment was received;

1 (3) the new balance after application of the
2 payment;

3 (4) the interest rate and interest accrued
4 since the consumer's last payment;

5 (5) the consumer's account number;

6 (6) the name of the current owner of the
7 debt and, if different, the name of the medical creditor; and

8 (7) whether the payment is accepted as
9 payment in full of the debt.

10 B. All health care facilities, third-party health
11 care providers, medical creditors and medical debt collectors
12 shall apply payments as of the date payment was received or,
13 if received after business hours, the next business day, and
14 use that date when assessing penalties or interest
15 accumulation."

16 SECTION 8. A new section of Chapter 57 NMSA 1978 is
17 enacted to read:

18 "INDIGENT CARE REPORTING REQUIREMENTS.--

19 A. Health care facilities and third-party health
20 care providers shall annually report to the department how
21 the following funds are used:

22 (1) indigent care funds and safety net care
23 pool funds pursuant to the Indigent Hospital and County
24 Health Care Act; and

25 (2) funds raised to pay the cost of

1 operating and maintaining county hospitals, pay contracting
2 hospitals in accordance with health care facilities contracts
3 or pay a county's transfer to the county-supported medicaid
4 fund pursuant to the Hospital Funding Act.

5 B. A health care facility's or third-party health
6 care provider's report to the department shall include:

7 (1) the number of indigent patients whose
8 health care costs were paid directly from the funds described
9 in Subsection A of this section and the total amount of funds
10 expended for these health care costs; and

11 (2) as applicable, the health care
12 facility's estimated annual amount and percentage of the
13 health care facility's bad debt expense attributable to
14 patients eligible under the health care facility's financial
15 assistance policy and an explanation of the methodology used
16 by the health care facility to estimate this amount and
17 percentage.

18 C. A health care facility's or third-party health
19 care provider's report shall be available to the public via a
20 link from the homepage of the health care facility's or
21 third-party health care provider's website."

22 SECTION 9. A new section of Chapter 57 NMSA 1978 is
23 enacted to read:

24 "WAIVER OF RIGHTS.--

25 A. A consumer shall not be required to exhaust any

1 administrative remedies provided by the provisions of the
2 Patients' Debt Collection Protection Act or other applicable
3 law before seeking legal or equitable relief.

4 B. A financial assistance policy or agreement
5 between a patient and a health care facility, third-party
6 health care provider, medical creditor or medical debt
7 collector shall not contain any provision that, prior to a
8 dispute arising, waives or has the practical effect of
9 waiving the rights of a patient to resolve that dispute by
10 obtaining:

11 (1) injunctive, declaratory or other
12 equitable relief;

13 (2) multiple or minimum damages as specified
14 by statute;

15 (3) attorney fees and costs as specified by
16 statute or as available at common law; or

17 (4) a hearing at which that party can
18 present evidence in person.

19 C. A provision in a financial assistance policy
20 or other written agreement that violates the provisions of
21 Subsection B of this section is void and unenforceable. A
22 court may refuse to enforce other provisions of the financial
23 assistance policy or other written agreement as equity may
24 require.

25 D. A waiver by a patient or other consumer of any

1 protection provided by or any right of the patient or other
2 consumer pursuant to the Patients' Debt Collection Protection
3 Act is void and shall not be enforced by any court or any
4 other person."

5 SECTION 10. A new section of Chapter 57 NMSA 1978 is
6 enacted to read:

7 "ENFORCEMENT.--

8 A. The attorney general shall enforce the
9 provisions of the Patients' Debt Collection Protection Act
10 and shall adopt rules in accordance with that act to provide
11 for the protection of patients and their families and to
12 assist market participants in interpreting that act.

13 B. The attorney general shall establish a
14 complaint process whereby an aggrieved patient or a member of
15 the public may file a complaint against a health care
16 facility, third-party health care provider, medical creditor
17 or medical debt collector that violates a provision of the
18 Patients' Debt Collection Protection Act. All complaints
19 shall be considered public records pursuant to the Inspection
20 of Public Records Act, with the exception of the
21 complainant's name, address or protected personal identifier
22 information defined in the Inspection of Public Records Act."

23 SECTION 11. Section 37-1-2 NMSA 1978 (being Laws 1891,
24 Chapter 53, Section 2, as amended) is amended to read:

25 "37-1-2. JUDGMENTS.--Actions founded upon a judgment of

1 a court of the state may be brought within fourteen years
2 from the date of the judgment and not afterward. Actions
3 founded upon a judgment of a court of record of another state
4 or territory of the United States, or of the federal courts,
5 may be brought within the applicable period of limitation
6 within that jurisdiction, not to exceed fourteen years from
7 the date of the judgment, and not afterward. A judgment
8 obtained through a common law action on a prior judgment or
9 through any other means of revival of a prior judgment shall
10 not be enforceable after fourteen years from the date of the
11 original judgment upon which it is founded."

12 SECTION 12. Section 61-18A-2 NMSA 1978 (being Laws
13 1987, Chapter 252, Section 2, as amended) is amended to read:

14 "61-18A-2. DEFINITIONS.--As used in the Collection
15 Agency Regulatory Act:

16 A. "division" means the financial institutions
17 division of the regulation and licensing department;

18 B. "director" means the director of the division
19 or a duly authorized agent designated by the director;

20 C. "collection agency" means a person engaging in
21 business for the purpose of collecting or attempting to
22 collect, directly or indirectly, debts owed or due or
23 asserted to be owed or due another, where such person is so
24 engaged by two or more creditors, or a person engaging in the
25 business the principal purpose of which is the collection of

1 debts. The term also includes a creditor who, in the process
2 of collecting the creditor's own debts, uses any name other
3 than the creditor's own that would indicate that a third
4 person is collecting or attempting to collect the debts.

5 The term does not include:

6 (1) an officer or employee of a creditor
7 while, in the name of the creditor, collecting debts for such
8 creditor;

9 (2) a person while collecting debts for
10 another person, both of whom are related by common ownership
11 or affiliated by corporate control, if the person collects
12 debts only for persons to whom it is so related or affiliated
13 and if the principal business of such person is not the
14 collection of debts;

15 (3) an officer or employee of the
16 United States, a state or a political subdivision thereof to
17 the extent that collecting or attempting to collect a debt is
18 in the performance of official duties;

19 (4) a person while serving or attempting to
20 serve legal process on any other person in connection with
21 the judicial enforcement of a debt;

22 (5) a nonprofit organization that, at the
23 request of debtors, performs bona fide consumer credit
24 counseling and assists debtors in the liquidation of their
25 debts by receiving payments from such debtors and

1 distributing such amounts to creditors;

2 (6) an attorney-at-law collecting a debt as
3 an attorney on behalf of and in the name of a client; or

4 (7) a person collecting or attempting to
5 collect a debt owed or due or asserted to be owed or due to
6 another to the extent such activity:

7 (a) is incidental to a bona fide
8 fiduciary obligation or a bona fide escrow arrangement;

9 (b) concerns a debt that was originated
10 by such person;

11 (c) concerns a debt that was not in
12 default at the time it was obtained by such person; or

13 (d) concerns a debt obtained by such
14 person as a secured party in a commercial credit transaction
15 involving the creditor;

16 D. "communication" means the conveying of
17 information regarding a debt directly or indirectly to a
18 person through any medium;

19 E. "creditor" means a person who offers or extends
20 credit creating a debt or to whom a debt is owed, but the
21 term does not include a person to the extent that the person
22 receives an assignment or transfer of a debt in default
23 solely for the purpose of facilitating collection of such
24 debt for another;

25 F. "debt" means an obligation or alleged

1 obligation of a debtor to pay money arising out of a
2 transaction in which the money, property, insurance or
3 services that are the subject of the transaction are
4 primarily for personal, family or household purposes, whether
5 or not such obligation has been reduced to judgment;

6 G. "debt collector" means a collection agency, a
7 reposessor, a manager, a solicitor and an attorney-at-law
8 collecting a debt as an attorney on behalf of and in the name
9 of a client;

10 H. "debtor" means a natural person obligated or
11 allegedly obligated to pay a debt;

12 I. "location information" means a debtor's place
13 of abode and the telephone number at such place or the
14 debtor's place of employment;

15 J. "manager" means a natural person who qualifies
16 under the Collection Agency Regulatory Act to be in full-time
17 charge of a licensed collection agency and to whom a
18 manager's license has been issued by the director;

19 K. "nationwide multistate licensing system and
20 registry" means a licensing system developed and maintained
21 by the conference of state bank supervisors and the American
22 association of residential mortgage regulators pursuant to
23 the federal Secure and Fair Enforcement for Mortgage
24 Licensing Act of 2008 to manage mortgage licenses and other
25 financial services licenses, or a successor registry;

1 L. "person" means an individual, corporation,
2 partnership, association, joint-stock company, trust where
3 the interests of the beneficiaries are evidenced by a
4 security, unincorporated organization, government or
5 political subdivision of a government;

6 M. "repossessor" means a person engaged solely in
7 the business of repossessing personal property for others for
8 a fee. The term does not include a duly licensed collection
9 agency; and

10 N. "solicitor" means a natural person who, through
11 lawful means, communicates with debtors or solicits the
12 payment of debts for a collection agency licensee by the use
13 of telephone, personal contact, letters or other methods of
14 collection conducted from and within the licensee's office."

15 SECTION 13. Section 61-18A-26 NMSA 1978 (being Laws
16 1987, Chapter 252, Section 26) is amended to read:

17 "61-18A-26. ASSIGNMENTS--RIGHT TO SUE.--Nothing in the
18 Collection Agency Regulatory Act shall be construed to
19 prevent collection agencies from taking assignments of claims
20 in their own name as real parties in interest for the purpose
21 of billing and collection and bringing suit in their own
22 names; provided that no suit allowed by this section may be
23 instituted on behalf of a collection agency in a court unless
24 the collection agency appears by a duly authorized and
25 licensed attorney-at-law."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SECTION 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021. _____