

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 71

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CONSUMER PROTECTION; ENACTING THE PATIENTS' DEBT COLLECTION PROTECTION ACT; PREVENTING COLLECTION FROM INDIGENT PATIENTS; REQUIRING HEALTH CARE FACILITIES TO SCREEN PATIENTS FOR ASSISTANCE ELIGIBILITY; REQUIRING HEALTH CARE FACILITIES AND THIRD-PARTY HEALTH CARE PROVIDERS TO REPORT HOW CERTAIN PUBLIC FUNDS ARE SPENT; LIMITING ENFORCEABILITY OF CERTAIN JUDGMENTS; ADDING TO THE DEFINITION OF "COLLECTION AGENCY" IN

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THE COLLECTION AGENCY REGULATORY ACT; REMOVING ATTORNEY FEES AND COSTS FOR CERTAIN SUITS BY COLLECTION AGENCIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

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

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 10 of this act may be cited as the "Patients' Debt Collection Protection Act"."

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

"[NEW MATERIAL] DEFINITIONS.--As used in the Patients' Debt Collection Protection Act:

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

(1) selling a person's medical debt to another party, including a medical debt collector, but not including medical debt as part of the assets and liabilities when selling a health care facility or third-party health care provider; or

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

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

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

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

(d) garnishing a person's wages;

B. "consumer" means a natural person;

C. "department" means the human services

department;

Hf11→~~D. "health care facility" means the following entities and their practice groups: a public hospital; a profit or nonprofit private hospital; a general or special hospital; a practice owned by, affiliated with or operating under the license of a hospital; a freestanding emergency facility or other outpatient clinic or facility; a crisis triage center; a freestanding birth center; an ambulance or air ambulance provider; an ambulatory surgical or urgent care center; a nursing home; an intermediate care facility; an assisted living facility; a diagnostic and treatment center; a rehabilitation center; an infirmary; a community mental health center that serves both children and adults or adults only; a residential treatment center; a day treatment center; a health service organization operating as a freestanding hospice or a home health agency; or facilities that must be licensed by the state to obtain or maintain full or partial, permanent or temporary federal funding;~~←Hf11

Hf11→D. "health care facility" means:

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

- (a) an adult day care facility;
- (b) a boarding home not under the control of an institution of higher learning;
- (c) a child care center; and
- (d) a shelter care home; or

(2) a health facility that is an urgent care center or freestanding emergency room that is required to be licensed by the regulation and licensing department; ←Hf11

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

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

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

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

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

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

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

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

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

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

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

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"[NEW MATERIAL] REQUIREMENT TO PROVIDE SCREENING FOR INSURANCE AND PROGRAM ELIGIBILITY.--

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

(1) offer to and, if requested, verify whether a patient has any health insurance;

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

(a) all available public insurance;

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

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

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

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

B. In addition to any other actions required by applicable state or federal law or local government ordinance,

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a third-party health care provider shall not seek payment for emergency or medically necessary care until the third-party health care provider receives the information required pursuant to Paragraph (4) of Subsection A of this section.

C. The superintendent shall promulgate rules to establish minimum standards governing the requirements of this section and shall provide health care facilities and third-party health care providers with guidance on billing and screening best practices ~~HHHC~~→, based on health care facility type and size, ←HHHC that includes policies to prevent the disclosure of patients' personal information to third parties."

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

"[NEW MATERIAL] INDIGENT PATIENTS--PATIENTS' DEBT COLLECTION PROTECTIONS.--

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

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

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

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

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

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

"[NEW MATERIAL] BILLING INFORMATION.--

A. All bills sent from a health care facility, third-party health care provider or medical creditor to a patient shall include a complete and plain-language description of the date, amount and nature of all charges; if the patient is verified as having health insurance; if the health care facility screened the patient for programs that assist with

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health care costs; and if the health care facility or third-party health care provider has billed or will bill insurance or public programs that may assist with health care costs for the services provided. Prior to initiating communication with a consumer or a collection action over medical debt, a medical debt collector shall have all billing information required in this subsection as allowed under the provisions of the federal Health Insurance Portability and Accountability Act of 1996.

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

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

"[NEW MATERIAL] RECEIPTS FOR PAYMENTS.--

A. Within thirty business days of receipt of a payment on a medical debt, the health care facility, third-party health care provider, medical creditor, medical debt collector or their agents receiving the payment shall send

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a receipt to the person who made the payment. The receipt may take the form of a billing statement. All receipts shall show:

- (1) the amount paid;
- (2) the date payment was received;
- (3) the new balance after application of the payment;
- (4) the interest rate and interest accrued since the consumer's last payment;
- (5) the consumer's account number;
- (6) the name of the current owner of the debt and, if different, the name of the medical creditor; and
- (7) whether the payment is accepted as payment in full of the debt.

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

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

"[NEW MATERIAL] INDIGENT CARE REPORTING REQUIREMENTS.--

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

- (1) indigent care funds and safety net care

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pool funds pursuant to the Indigent Hospital and County Health Care Act; and

(2) funds raised to pay the cost of operating and maintaining county hospitals, pay contracting hospitals in accordance with health care facilities contracts or pay a county's transfer to the county-supported medicaid fund pursuant to the Hospital Funding Act.

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

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

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

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

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

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"[NEW MATERIAL] WAIVER OF RIGHTS.--

A. A consumer shall not be required to exhaust any administrative remedies provided by the provisions of the Patients' Debt Collection Protection Act or other applicable law before seeking legal or equitable relief.

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

(1) injunctive, declaratory or other equitable relief;

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

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

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

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

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D. A waiver by a patient or other consumer of any protection provided by or any right of the patient or other consumer pursuant to the Patients' Debt Collection Protection Act is void and shall not be enforced by any court or any other person."

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

"[NEW MATERIAL] ENFORCEMENT.--

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

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

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

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"37-1-2. JUDGMENTS.--Actions founded upon [~~any~~] a judgment of [~~any~~] a court of the state may be brought within fourteen years from the date of the judgment and not afterward. Actions founded upon [~~any~~] a judgment of [~~any~~] a court of record of [~~any other~~] another state or territory of the United States, or of the federal courts, may be brought within the applicable period of limitation within that jurisdiction, not to exceed fourteen years from the date of the judgment, and not afterward. A judgment obtained through a common law action on a prior judgment or through any other means of revival of a prior judgment shall not be enforceable after fourteen years from the date of the original judgment upon which it is founded."

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

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

- A. "division" means the financial institutions division of the regulation and licensing department;
- B. "director" means the director of the division or a duly authorized agent designated by the director;
- C. "collection agency" means a person engaging in business for the purpose of collecting or attempting to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, where such person is so engaged by

two or more creditors, or a person engaging in the business the principal purpose of which is the collection of debts. The term also includes a creditor who, in the process of collecting the creditor's own debts, uses any name other than the creditor's own that would indicate that a third person is collecting or attempting to collect the debts. The term does not include:

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

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

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

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

(5) a nonprofit organization that, at the request of debtors, performs bona fide consumer credit

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counseling and assists debtors in the liquidation of their debts by receiving payments from such debtors and distributing such amounts to creditors;

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

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

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

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

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

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

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

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

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another;

F. "debt" means an obligation or alleged obligation of a debtor to pay money arising out of a transaction in which the money, property, insurance or services that are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment;

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

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

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

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

K. "nationwide multistate licensing system and registry" means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act

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of 2008 to manage mortgage licenses and other financial services licenses, or a successor registry;

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

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

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

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

"61-18A-26. ASSIGNMENTS--RIGHT TO SUE.--Nothing in the Collection Agency Regulatory Act shall be construed to prevent collection agencies from taking assignments of claims in their own name as real parties in interest for the purpose of billing and collection and bringing suit in their own names [~~thereon~~]; provided that no suit [~~authorized~~] allowed by this section may be instituted on behalf of a collection agency in [~~any~~] a court

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unless the collection agency appears by a duly authorized and licensed attorney-at-law. [~~In such suit, the court may, in its discretion, authorize payment of reasonable attorney fees and costs to the prevailing party.~~]"

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

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