

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

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

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; PROVIDING FOR PRICING PARITY;  
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 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:

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1 "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of  
2 this act may be cited as the "Patients' Debt Collection  
3 Protection Act"."

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

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

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

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

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

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

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

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

21 (d) garnishing a person's wages;

22 B. "consumer" means a natural person;

23 C. "department" means the human services  
24 department;

25 D. "health care facility" means the following

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1 entities and their practice groups: a public hospital; a  
 2 profit or nonprofit private hospital; a general or special  
 3 hospital; a practice owned by, affiliated with or operating  
 4 under the license of a hospital; a freestanding emergency  
 5 facility or other outpatient clinic or facility; a crisis  
 6 triage center; a freestanding birth center; an ambulance or air  
 7 ambulance provider; an ambulatory surgical or urgent care  
 8 center; a nursing home; an intermediate care facility; an  
 9 assisted living facility; a diagnostic and treatment center; a  
 10 rehabilitation center; an infirmary; a community mental health  
 11 center that serves both children and adults or adults only; a  
 12 residential treatment center; a day treatment center; a health  
 13 service organization operating as a freestanding hospice or a  
 14 home health agency; or facilities that must be licensed by the  
 15 state to obtain or maintain full or partial, permanent or  
 16 temporary federal funding;

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

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

24 G. "indigent patient" means a patient with a  
 25 household income that does not exceed two hundred percent of

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1 the federal poverty level;

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

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

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

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

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

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

25 N. "third-party health care provider" means a

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1 licensed health care professional or an entity with revenues of  
 2 at least twelve million dollars (\$12,000,000) annually, when  
 3 billing patients independently for health care services  
 4 provided in a health care facility."

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

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

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

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

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

18 (a) all available public insurance;

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

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

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

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

5 B. In addition to any other actions required by  
6 applicable state or federal law or local government ordinance,  
7 a third-party health care provider shall not seek payment for  
8 emergency or medically necessary care until the third-party  
9 health care provider receives the information required pursuant  
10 to Paragraph (4) of Subsection A of this section.

11 C. The superintendent shall promulgate rules to  
12 establish minimum standards governing the requirements of this  
13 section and shall provide health care facilities and third-  
14 party health care providers with guidance on billing and  
15 screening best practices that includes policies to prevent the  
16 disclosure of patients' personal information to third parties."

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

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

21 A. For patients who are determined to be indigent  
22 patients, charges for health care services and medical debt  
23 shall not be pursued through collection actions. All  
24 collection actions through which charges for health care  
25 services and medical debt are pursued shall be terminated upon

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1 the determination that a patient is an indigent patient.  
 2 Health care facilities, third-party health care providers and  
 3 medical creditors shall not hire or otherwise engage third  
 4 parties to perform collection actions against or otherwise  
 5 recover debts from indigent patients.

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

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

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

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

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

24 "[NEW MATERIAL] BILLING INFORMATION.--

- 25 A. All bills sent from a health care facility,

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1 third-party health care provider or medical creditor to a  
2 patient shall include a complete and plain-language description  
3 of the date, amount and nature of all charges; if the patient  
4 is verified as having health insurance; if the health care  
5 facility screened the patient for programs that assist with  
6 health care costs; and if the health care facility or  
7 third-party health care provider has billed or will bill  
8 insurance or public programs that may assist with health care  
9 costs for the services provided. Prior to initiating  
10 communication with a consumer or a collection action over  
11 medical debt, a medical debt collector shall have all billing  
12 information required in this subsection as allowed under the  
13 provisions of the federal Health Insurance Portability and  
14 Accountability Act of 1996.

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

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

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1           "[NEW MATERIAL] RECEIPTS FOR PAYMENTS.--

2           A. Within thirty business days of receipt of a  
3 payment on a medical debt, the health care facility,  
4 third-party health care provider, medical creditor, medical  
5 debt collector or their agents receiving the payment shall send  
6 a receipt to the person who made the payment. The receipt may  
7 take the form of a billing statement. All receipts shall show:

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

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

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

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1           "[NEW MATERIAL] PROVIDING FOR PRICING PARITY.--Health care  
2 facilities and third-party health care providers shall charge  
3 for emergency or medically necessary care provided to uninsured  
4 patients an amount no greater than, as applicable, one hundred  
5 fifty percent of the applicable payment rate for such care  
6 pursuant to the federal medicare program if state or federal  
7 law does not otherwise set the amount the health care facility  
8 or third-party health care provider charges for such care."

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

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

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

15                   (1) indigent care funds and safety net care  
16 pool funds pursuant to the Indigent Hospital and County Health  
17 Care Act; and

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

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

25                   (1) the number of indigent patients whose

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1 health care costs were paid directly from the funds described  
 2 in Subsection A of this section and the total amount of funds  
 3 expended for these health care costs; and

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

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

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

16 "[NEW MATERIAL] WAIVER OF RIGHTS.--

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

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

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1 the rights of a patient to resolve that dispute by obtaining:

2 (1) injunctive, declaratory or other equitable  
3 relief;

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

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

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

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

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

21 SECTION 11. A new section of Chapter 57 NMSA 1978 is  
22 enacted to read:

23 "[NEW MATERIAL] ENFORCEMENT.--

24 A. The attorney general shall enforce the  
25 provisions of the Patients' Debt Collection Protection Act and

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1 shall adopt rules in accordance with that act to provide for  
 2 the protection of patients and their families and to assist  
 3 market participants in interpreting that act.

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

14 SECTION 12. Section 37-1-2 NMSA 1978 (being Laws 1891,  
 15 Chapter 53, Section 2, as amended) is amended to read:

16 "37-1-2. JUDGMENTS.--Actions founded upon [~~any~~] a  
 17 judgment of [~~any~~] a court of the state may be brought within  
 18 fourteen years from the date of the judgment and not afterward.  
 19 Actions founded upon [~~any~~] a judgment of [~~any~~] a court of  
 20 record of [~~any other~~] another state or territory of the United  
 21 States, or of the federal courts, may be brought within the  
 22 applicable period of limitation within that jurisdiction, not  
 23 to exceed fourteen years from the date of the judgment, and not  
 24 afterward. A judgment obtained through a common law action on  
 25 a prior judgment or through any other means of revival of a

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1 prior judgment shall not be enforceable after fourteen years  
2 from the date of the original judgment upon which it is  
3 founded."

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

6 "61-18A-2. DEFINITIONS.--As used in the Collection Agency  
7 Regulatory Act:

8 A. "division" means the financial institutions  
9 division of the regulation and licensing department;

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

12 C. "collection agency" means a person engaging in  
13 business for the purpose of collecting or attempting to  
14 collect, directly or indirectly, debts owed or due or asserted  
15 to be owed or due another, where such person is so engaged by  
16 two or more creditors, or a person engaging in the business the  
17 principal purpose of which is the collection of debts. The  
18 term also includes a creditor who, in the process of collecting  
19 the creditor's own debts, uses any name other than the  
20 creditor's own that would indicate that a third person is  
21 collecting or attempting to collect the debts. The term does  
22 not include:

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

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

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

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

14                   (5) a nonprofit organization that, at the  
15 request of debtors, performs bona fide consumer credit  
16 counseling and assists debtors in the liquidation of their  
17 debts by receiving payments from such debtors and distributing  
18 such amounts to creditors;

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

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

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

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

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

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

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

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

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

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

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1 of a client;

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

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

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

11 K. "nationwide multistate licensing system and  
12 registry" means a licensing system developed and maintained by  
13 the conference of state bank supervisors and the American  
14 association of residential mortgage regulators pursuant to the  
15 federal Secure and Fair Enforcement for Mortgage Licensing Act  
16 of 2008 to manage mortgage licenses and other financial  
17 services licenses, or a successor registry;

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

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

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1 agency; and

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

7 SECTION 14. Section 61-18A-26 NMSA 1978 (being Laws 1987,  
8 Chapter 252, Section 26) is amended to read:

9 "61-18A-26. ASSIGNMENTS--RIGHT TO SUE.--Nothing in the  
10 Collection Agency Regulatory Act shall be construed to prevent  
11 collection agencies from taking assignments of claims in their  
12 own name as real parties in interest for the purpose of billing  
13 and collection and bringing suit in their own names [~~thereon~~];  
14 provided that no suit [~~authorized~~] allowed by this section may  
15 be instituted on behalf of a collection agency in [~~any~~] a court  
16 unless the collection agency appears by a duly authorized and  
17 licensed attorney-at-law. [~~In such suit, the court may, in its~~  
18 ~~discretion, authorize payment of reasonable attorney fees and~~  
19 ~~costs to the prevailing party.]"~~

20 SECTION 15. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2021.