SENATE BILL 71

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

INTRODUCED BY

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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 TO PROVIDE PRICE AND PAYMENT INFORMATION; PROHIBITING DISCRIMINATORY PRICING; REQUIRING HEALTH CARE FACILITIES TO REPORT HOW INDIGENT CARE FUNDS ARE SPENT; LIMITING ENFORCEABILITY OF CERTAIN JUDGMENTS; MAKING VIOLATIONS OF THE PATIENTS' DEBT COLLECTION PROTECTION ACT AND THE COLLECTION AGENCY REGULATORY ACT UNFAIR OR DECEPTIVE TRADE PRACTICES; ADDING TO THE DEFINITION OF "COLLECTION AGENCY" IN THE COLLECTION AGENCY REGULATORY ACT; INCREASING SURETY BOND COVERAGE REQUIREMENTS; REMOVING ATTORNEY FEES AND COSTS FOR CERTAIN SUITS BY COLLECTION AGENCIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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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 15 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;

(2) reporting adverse information about a patient to a consumer reporting agency; or

(3) 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;

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

(d) garnishing a person's wages;
B. "consumer" means a natural person;

C. "consumer reporting agency" means a person, that, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties;

D. "department" means the human services department;

E. "gross charges" means a health care facility's full, established price for health care services that the facility charges uninsured patients before applying any contractual allowances, discounts or deductions;

F. "health care facility" means:

   (1) a public hospital, profit or nonprofit private hospital, general or special hospital, outpatient facility, crisis triage center, freestanding birth center, ambulatory surgical center, adult daycare facility, nursing home, intermediate care facility, assisted living facility, boarding home not under the control of an institution of higher learning, child care center, shelter care home, diagnostic and treatment center, rehabilitation center, infirmary, community mental health center that serves both children and adults or adults only, residential treatment center that serves persons up to twenty-one years of age, community mental health center...
that serves only persons up to twenty-one years of age, day
treatment center that serves persons up to twenty-one years of
age or a health service organization operating as a
freestanding hospice or a home health agency. "Health care
facility" also includes those facilities that must be licensed
by the state to obtain or maintain full or partial, permanent
or temporary federal funding;

(2) a practice that provides medical,
surgical, behavioral, optical, radiology, laboratory, dental or
other health care services in New Mexico with revenues of at
least two million dollars ($2,000,000) annually; or

(3) a licensed health care professional who
provides health care services in one or more of the settings
listed in Paragraph (1) or (2) of this subsection, but bills
patients independently;

G. "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;

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

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

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

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

M. "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; and

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

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

"[NEW MATERIAL] REQUIREMENT TO PROVIDE SCREENING FOR INSURANCE AND PROGRAM ELIGIBILITY.--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 an emergency or medically necessary care:

A. ask if the patient has health insurance;

B. if the patient is uninsured, offer information about and offer to screen the patient for all available public and private insurance, any other public programs that may assist with health care costs and any financial assistance offered by that facility; and

C. offer to provide assistance with the application process and, if requested, provide that assistance for programs identified during screening."

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

"[NEW MATERIAL] INDIGENT PATIENTS--PATIENTS' DEBT COLLECTION PROTECTIONS.--For indigent patients, charges for health care services and medical debt shall not be pursued through collection actions. Health care facilities and medical creditors shall not hire or otherwise engage third parties to perform collection actions against or otherwise recover debts from indigent patients."

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

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

(1) federal funds;
(2) state funds; and
(3) other available funds.

B. The department shall provide health care facilities with guidance on billing and screening best practices that include policies to prevent the disclosure of patients' personal information to third parties."

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

"[NEW MATERIAL] PRICE INFORMATION.--All health care facilities shall post price information on their websites. The information shall be accessible via a link from the website's homepage and, at a minimum, shall include:

A. a list of gross charges for all health care services;

B. the amount that medicare would reimburse for the health care service, next to the relevant gross charge; and

C. plain-language titles or descriptions of health care services that can be understood by the average consumer."

SECTION 7. 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 or medical creditor to a patient shall include a complete and plain-language description of the date, amount and nature of all charges and all efforts undertaken by the health care facility or medical creditor to bill insurance or public programs for the services provided. Prior to initiating a communication with a consumer or a collection action over medical debt, a medical debt collector shall have all required billing information.

B.  In all communications with a consumer about medical debt, including communication related to collection actions, a health care facility, 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."

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

"[NEW MATERIAL] RECEIPTS FOR PAYMENTS.--

A.  Within ten business days of receipt of a payment on a medical debt, the health care facility, medical creditor, medical debt collector or their agents receiving the payment shall furnish a receipt to the person who made the payment. All receipts shall show:

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

B. All health care facilities, medical creditors and medical debt collectors shall apply payments as of the date payment was received and use that date when assessing penalties or interest accumulation."

SECTION 9. A new section of Chapter 57 NMSA 1978 is enacted to read:
"[NEW MATERIAL] PROHIBITION OF DISCRIMINATORY PRICING.--Health care facilities shall charge for services provided to uninsured patients an amount no greater than the applicable payment rate for those services under the federal medicare program."

SECTION 10. A new section of Chapter 57 NMSA 1978 is enacted to read:
"[NEW MATERIAL] INDIGENT CARE REPORTING REQUIREMENTS.--

A. Health care facilities that receive indigent care funds pursuant to the Indigent Hospital and County Health Care Act or Section 4-48B-8 NMSA 1978 shall annually report to the department how the funds were used. A health care facility's report shall:

1. list each health care service and how many patients the funds covered and demonstrate that each dollar received was spent on charity care; and
2. specify 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 explain the methodology used by the health care facility to estimate this amount and percentage.

B. A health care facility's report shall be available to the public via a link from the homepage of the health care facility's website."

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

"[NEW MATERIAL] LIABILITY FOR MEDICAL DEBT.--

A. Parents and legal guardians are jointly liable for any medical debts incurred by minors.  

B. A spouse or other person shall not be liable for the medical debt or nursing home debt of another person.
eighteen years or older. A person may voluntarily consent to assume liability, but such consent shall:

(1) be on a separate, stand-alone document signed by the person;

(2) not be solicited in an emergency room or during an emergency situation; and

(3) not be required as a condition of providing emergency or non-emergency health care services.

C. A person who assumes liability for medical or nursing home debt for a spouse or other person pursuant to Subsection B of this section shall be considered the patient and shall receive all the same rights and protections provided to other patients under the provisions of the Patients' Debt Collection Protection Act."

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

"[NEW MATERIAL] PRIVATE REMEDY.--

A. A violation of the Patients' Debt Collection Protection Act constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act.

B. A consumer may sue for injunctive or other appropriate equitable relief to enforce the provisions of the Patients' Debt Collection Protection Act.

C. The remedies provided in this section are not intended to be the exclusive remedies available to a consumer.
nor shall the consumer be required to exhaust any
administrative remedies provided by the provisions of the
Patients' Debt Collection Protection Act or other applicable
law.

D. A financial assistance policy or agreement
between a patient and a health care facility, 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.

E. A provision in a financial assistance policy or
other written agreement that violates the provisions of
Subsection D 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."

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

"NEW MATERIAL] ENFORCEMENT.--

A. The attorney general may enforce the provisions of the Patients' Debt Collection Protection Act, and may adopt rules in accordance with that act to effectuate the purposes of 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, 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 other personal identifying information."

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

"NEW MATERIAL] PROHIBITION OF WAIVER OF RIGHTS.--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 may not be enforced by any court or any other person."

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

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"[NEW MATERIAL] SEVERABILITY.--If any part or application of the Patients' Debt Collection Protection Act is held invalid, the remainder or its application to other situations or persons shall not be affected."

SECTION 16. Section 37-1-2 NMSA 1978 (being Laws 1891, Chapter 53, Section 2, as amended) is amended to read:

"37-1-2. JUDGMENTS.--Actions founded upon any judgment of any court of the state may be brought within fourteen years from the date of the judgment and not afterward. Actions founded upon any judgment of any court of record of any other 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 17. 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 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 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 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 repossessor, 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 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 18. Section 61-18A-6 NMSA 1978 (being Laws 1987, Chapter 252, Section 6) is amended to read:

"61-18A-6. PENALTY FOR VIOLATIONS.--

A. In addition to any other penalty, [any] a
person, [or any] including an officer or director of [any] a partnership, corporation or association conducting business as a collection agency or repossessor, who without first having been licensed pursuant to the Collection Agency Regulatory Act or who carries on such business after the revocation or expiration of [any] a license [which] that the director has refused to renew is guilty of a fourth degree felony.


C. A violation of the Collection Agency Regulatory Act constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act."

SECTION 19. Section 61-18A-15 NMSA 1978 (being Laws 1987, Chapter 252, Section 15) is amended to read:

"61-18A-15. SURETY BOND.--

A. Prior to the issuance of any collection agency or repossessor's license or renewal thereof, a surety bond in the penal sum of [five thousand dollars ($5,000)] twenty thousand dollars ($20,000), which may by regulation or order of the director be increased, shall be filed with the division. The bond shall run to the people of the state of New Mexico and shall be executed and acknowledged by the applicant as principal and by a corporation [which] that is licensed by the superintendent of insurance of this state to transact the
business of fidelity and surety insurance as surety.

B. The surety bond shall provide for suit thereon
by any person who has a cause of action under the Collection
Agency Regulatory Act or rules [and regulations] established
[thereunder] pursuant to that act.

C. No action shall be brought upon any bond after
the expiration of three years from the date of the occurrence
of the act upon which a claim is based.

D. The bond shall be continuous in form and remain
in full force and effect concurrently with the license and any
renewals thereof unless terminated or canceled by action of the
surety as provided in the Collection Agency Regulatory Act.

E. Upon the filing of thirty days' written notice
with the director by any surety company of its withdrawal as
the surety of any licensee, the director shall [forthwith]

immediately give notice to the licensee of the withdrawal,
which notice shall be by certified mail with request for return
receipt and shall be addressed to the licensee at its main
office in New Mexico as shown by the records of the director.
The license of any licensee shall be void upon the termination
of the bond by the surety company unless, prior to termination,
a new bond has been filed with the division.

F. Should the license of any company to transact
fidelity and surety insurance business in this state be
canceled, revoked or otherwise terminated, all collection
agency bonds for which such surety company is surety are thereupon and thereby canceled. Upon such cancellation, the license of any licensee having such a bond posted is suspended and shall remain suspended until a new and valid bond is filed; provided, however, that failure of any such licensee to file a new bond within thirty days after being advised by the director in writing of the necessity of doing so shall ipso facto revoke the license."

SECTION 20. 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 by this section may be instituted on behalf of a collection agency in any court 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.]"