

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
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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; 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:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 10 of
.220299.3

underscored material = new
[bracketed material] = delete

1 this act may be cited as the "Patients' Debt Collection
2 Protection Act".

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

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

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

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

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

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

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

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

20 (d) garnishing a person's wages;

21 B. "consumer" means a natural person;

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

24 D. "health care facility" means the following
25 entities and their practice groups: a public hospital; a

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

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

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

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

.220299.3

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

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

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

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

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

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

24 N. "third-party health care provider" means a
25 licensed health care professional or an entity with revenues of

1 at least twenty million dollars (\$20,000,000) annually, when
2 billing patients independently for health care services
3 provided in a health care facility."

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

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

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

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

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

17 (a) all available public insurance;

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

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

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

25 (4) if a third-party health care provider will

.220299.3

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

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

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

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

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

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

.220299.3

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

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

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

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

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

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

23 "[NEW MATERIAL] BILLING INFORMATION.--

24 A. All bills sent from a health care facility,
 25 third-party health care provider or medical creditor to a

.220299.3

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 [bracketed material] = delete

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

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

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

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

.220299.3

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

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

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

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

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

.220299.3

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

4 (1) indigent care funds and safety net care
5 pool funds pursuant to the Indigent Hospital and County Health
6 Care Act; and

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

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

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

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

24 C. A health care facility's or third-party health
25 care provider's report shall be available to the public via a

1 link from the homepage of the health care facility's or
2 third-party health care provider's website."

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

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

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

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

16 (1) injunctive, declaratory or other equitable
17 relief;

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

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

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

24 C. A provision in a financial assistance policy or
25 other written agreement that violates the provisions of

.220299.3

1 Subsection B of this section is void and unenforceable. A
2 court may refuse to enforce other provisions of the financial
3 assistance policy or other written agreement as equity may
4 require.

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

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

12 "[NEW MATERIAL] ENFORCEMENT.--

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

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

.220299.3

1 protected personal identifier information defined in the
2 Inspection of Public Records Act."

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

5 "37-1-2. JUDGMENTS.--Actions founded upon [~~any~~] a
6 judgment of [~~any~~] a court of the state may be brought within
7 fourteen years from the date of the judgment and not afterward.
8 Actions founded upon [~~any~~] a judgment of [~~any~~] a court of
9 record of [~~any other~~] another state or territory of the United
10 States, or of the federal courts, may be brought within the
11 applicable period of limitation within that jurisdiction, not
12 to exceed fourteen years from the date of the judgment, and not
13 afterward. A judgment obtained through a common law action on
14 a prior judgment or through any other means of revival of a
15 prior judgment shall not be enforceable after fourteen years
16 from the date of the original judgment upon which it is
17 founded."

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

20 "61-18A-2. DEFINITIONS.--As used in the Collection Agency
21 Regulatory Act:

22 A. "division" means the financial institutions
23 division of the regulation and licensing department;

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

.220299.3

1 C. "collection agency" means a person engaging in
2 business for the purpose of collecting or attempting to
3 collect, directly or indirectly, debts owed or due or asserted
4 to be owed or due another, where such person is so engaged by
5 two or more creditors, or a person engaging in the business the
6 principal purpose of which is the collection of debts. The
7 term also includes a creditor who, in the process of collecting
8 the creditor's own debts, uses any name other than the
9 creditor's own that would indicate that a third person is
10 collecting or attempting to collect the debts. The term does
11 not include:

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

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

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

25 (4) a person while serving or attempting to

.220299.3

1 serve legal process on any other person in connection with the
2 judicial enforcement of a debt;

3 (5) a nonprofit organization that, at the
4 request of debtors, performs bona fide consumer credit
5 counseling and assists debtors in the liquidation of their
6 debts by receiving payments from such debtors and distributing
7 such amounts to creditors;

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

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

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

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

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

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

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

25 E. "creditor" means a person who offers or extends

.220299.3

1 credit creating a debt or to whom a debt is owed, but the term
2 does not include a person to the extent that the person
3 receives an assignment or transfer of a debt in default solely
4 for the purpose of facilitating collection of such debt for
5 another;

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

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

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

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

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

25 K. "nationwide multistate licensing system and

1 registry" means a licensing system developed and maintained by
 2 the conference of state bank supervisors and the American
 3 association of residential mortgage regulators pursuant to the
 4 federal Secure and Fair Enforcement for Mortgage Licensing Act
 5 of 2008 to manage mortgage licenses and other financial
 6 services licenses, or a successor registry;

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

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

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

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

23 "61-18A-26. ASSIGNMENTS--RIGHT TO SUE.--Nothing in the
 24 Collection Agency Regulatory Act shall be construed to prevent
 25 collection agencies from taking assignments of claims in their

.220299.3

1 own name as real parties in interest for the purpose of billing
2 and collection and bringing suit in their own names [~~thereon~~];
3 provided that no suit [~~authorized~~] allowed by this section may
4 be instituted on behalf of a collection agency in [~~any~~] a court
5 unless the collection agency appears by a duly authorized and
6 licensed attorney-at-law. [~~In such suit, the court may, in its~~
7 ~~discretion, authorize payment of reasonable attorney fees and~~
8 ~~costs to the prevailing party.]"~~

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

underscoring material = new
~~[bracketed material] = delete~~