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FISCAL IMPACT REPORT

ORIGINAL DATE 03/09/21
 SPONSOR SJC LAST UPDATED 03/17/21 HB CS/CS/71/SJCS/SJCS/
 SHORT TITLE Patients' Debt Collection Protection Act SB aHHHC/aHF1#1
 ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
HSD Staffing		\$34.3	\$34.3	\$68.6	Recurring	Federal Funds
HSD Staffing		\$34.3	\$34.3	\$68.6	Recurring	General Fund
NMAG Staffing		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Aging and Long-Term Services Department (ALTSD)
 Attorney General's Office (NMAG)
 Children, Youth and Families Department (CYFD)
 Human Services Department (HSD)
 Office of Superintendent of Insurance (OSI)

No Response Received

Department of Health (DOH)
 University of New Mexico Health Sciences Center (UNM-HSC)

SUMMARY

Synopsis of HF1#1 Amendment

The House floor #1 amendment to Senate Judiciary Committee substitute for Senate Judiciary Committee substitute for Senate Bill 71 as amended by the House Health and Human Services Committee provides a new, narrower definition of health care facility to include 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 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.

Synopsis of HHC Amendment

The House Health and Human Services Committee amendment to Senate Judiciary Committee substitute for Senate Judiciary Committee substitute for Senate Bill 71 adds that *based on healthcare facility type and size*, the Superintendent of Insurance shall provide healthcare facilities and third party healthcare providers with guidance on billing and screening best practices that includes policies to prevent the disclosure of patients' personal information to third parties.

Synopsis of Original Bill

The Senate Judiciary Committee substitute for Senate Judiciary Committee substitute for Senate Bill 71 proposes creating the Patients' Debt Collection Protection Act (PDCPA) to

- Prohibit collection actions for healthcare services and medical debt for indigent patients,
- Require all collection actions through which charges for healthcare services and medical debt are pursued be terminated on the determination the patient is an indigent patient, and
- Prohibit healthcare facilities and medical creditors from hiring third parties to perform collection actions against or otherwise recover debts from indigent patients.

In the second SJC substitute, Section 2 revises the definition of “collection action” to remove the “reporting adverse information about a patient to a consumer reporting agency” from the definition; removes the definition for “consumer reporting agency”; and expands the definition of “health care facility.”

Section 3 is revised to add additional steps a healthcare facility must take before seeking payment for emergency or medically necessary care.

Section 6 removes the requirement that health care facilities make available description and cost of all healthcare services. Section 6 combines the prior Section 7 to include the billings information requirements.

Section 8 adds a requirement that the account's balance before the most recent payment be included on receipts for payment.

The second SJC substitute removes the previous section 9 “providing for pricing parity.” The current Section 9 adds a new section, “waiver of rights,” which allows a consumer to seek legal or equitable relief from a court before exhausting their administrative remedies under this act. It does not allow a healthcare facility to request a waiver of a patient's rights. Any waiver is null and void.

Under the SJC substitute for SB71, the definition of healthcare facility is limited to mean only those specified entities with revenues of at least \$5 million.

The Senate Judiciary Committee substitute for SB71 revises and adds a revenue threshold to the definition of healthcare facility. It also adds definitions for third-party healthcare provider.

Section 10 now mandates that the Attorney General shall enforce the provisions of the act and establish a complaint process.

Section 11 seeks to amend Section 37-1-2 to state that 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 was founded.

Section 12 and 13 seek to amend the definition of “collection agency” as defined in the Collection Agency Regulatory Act (Section 61-18A-2) to include a person engaging in the business the principal purpose of which is the collection of debts. The section also amends Section 61-18A-26 to remove the allowance of a court to authorize reasonable attorneys’ fees and costs to a prevailing party in a suit initiated by a collection agency.

Section 14 provides a July 1, 2021, effective date.

FISCAL IMPLICATIONS

Senate Bill 71 does not include an appropriation.

The office of Attorney General (NMAG) reports the bill would require NMAG to establish a complaint process that may increase the amount of complaints received and would require additional staff resources. This requirement would increase the agency’s operating budget for personnel.

HSD reports under the provisions of the substitute bill, the department would require new staff to implement the HSD-specific requirements. A management analyst-A position would be needed to implement the requirements around training more presumptive eligibility determiners (PEDs), reviewing the annual indigent fund report, revising provider agreements with report requirements, and implementing billing and screening best practices. The total cost for the position is \$68.6 thousand. HSD receives a 50 percent federal match, which translates to \$34.3 thousand in federal funds and \$34.3 thousand in state funds.

The Hospital Association indicates the bill could have significant cost implications for facilities, which would need to pursue IT redesign, training, and administrative follow-up with all of the providers included in the bill.

SIGNIFICANT ISSUES

Office of Attorney General’s Issues

Office of Attorney General writes regarding the substitute bill:

Upon screening of an indigent patient, the bill does not state if a health care facility is required to treat the patient. The bill only states that the charges for health care services and medical debts shall not be pursued through collection actions.

The bill requires all health care facilities to post their pricing information on their websites. Many indigent patients will not have access to a computer or the Internet. The NMAG suggests considering adding the requirement to post in additional places such as on the front door of the health care facility, patient intake forms they are required to fill out and sign, etc.

The substitute also imposes restrictions on health care facilities, medical creditors, and medical debt collectors, but not medical debt buyer. NMAG suggests adding them to the list.

Administrative Office of the Courts Issues

The Administrative Office of the Courts writes the SB71/SJCS/SJCS removes the ability of a person to bring an action under the Unfair Practices Act, and to sue for injunctive or other appropriate relief to enforce the provisions of the Patients' Debt Collection Protection Act. Additionally, the second SJC substitute removes the amendment to Section 61-18A-6 NMSA 1978, providing that a violation of the Collection Agency Regulatory Act constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act, and that a person violating any other provision of the Collection Agency Regulatory Act is guilty of a misdemeanor.

Both of the substitutes for SB71 remove Section 11 in the original bill, providing that parents and legal guardians are jointly liable for any medical debts incurred by minors, and prohibiting a spouse or other person from being liable for the medical debt or nursing home debt of another person 18 or older. Under the original bill, a person may voluntarily consent to assume liability, and shall be considered the patient and shall receive all the same rights and protections provided to other patients under the provisions of the PDCPA.

Hospital Association Issues

The Hospital Association reports providers with revenues of \$20 million or more may be an option for consideration because many groups with smaller numbers of providers would fall above the current proposed \$5 million threshold and yet do not have the infrastructure to meet the obligations of proposed in the bill. Also, in regards to the targeting of pricing for the uninsured to either Medicare or Medicaid, this could remove the incentive to obtain commercial insurance for those who can afford to purchase insurance. Using the rates established in the Balance Billing Act, which are set by OSI, is an option.

PERFORMANCE IMPLICATIONS

NMAG indicates the bill would allow the Attorney General to enforce the provisions of the Patients' Debt Collection Protection Act and to adopt rules in accordance with the act to effectuate the purposes of the act.

The bill would require the Attorney General to establish a complaint process.

ADMINISTRATIVE IMPLICATIONS

Under the provisions of the bill, there would most likely be additional staffing required by the office of Attorney General (NMAG) Consumer Protection Division to enforce the provisions of the act. The act would require NMAG to establish a complaint process where any aggrieved patient or member of the public may file a complaint against a healthcare facility, medical creditor, or medical debt collector that violates a provision of the Patients' Debt Collection Protection Act (PDCPA).

HSD reports the department currently offers application assistance by presumptive eligibility

determiners (PEDs) who are certified in healthcare facilities across the state. Presumptive eligibility (PE) allows for staff within these healthcare facilities to be trained and certified by HSD to screen for Medicaid and other insurance programs. PEDs can process PE determinations, which provides for a presumptively eligible period of Medicaid coverage and submission of an application for ongoing Medicaid coverage. HSD audits PEDs to ensure that PE and ongoing applications are submitted correctly.

There are no requirements that hospitals have PE certified staff. Rather, the hospital can contact HSD to request staff training to make PE determinations. If SB71/SJCS/SJCS is enacted, there would likely be more requests for healthcare facility staff to be PE-certified by HSD, which would require additional staff resources for the department.

HSD currently has 734 certified PE determiners statewide broken down by the following healthcare settings: hospitals, 122; Indian Health Services (IHS) clinic, hospital or 638, 99; clinic or primary care physician, 173; community organization, 60; Department of Health, 22; schools or Head Start, 19; managed care organizations, state offices, county health offices, and other settings, 70; and correctional facilities and detention centers, 140.

SB71/SJCS/SJCS states HSD must provide healthcare facilities with guidance on billing and screening best practices that include policies to prevent the disclosure of patients' personal information to third parties. In terms of billing guidance, HSD generally provides information to healthcare facilities, however, it is assumed that codifying these requirements in law would have an administrative impact on HSD and require additional staff to assure each component of SB71/SJCS/SJCS is met in accordance with the new statute.

SB71/SJCS/SJCS states facilities that receive indigent care funds must annually report to HSD. HSD may need to amend provider agreements to make this report mandatory and update New Mexico administrative code around this requirement. Additional staff resources would be necessary to review the new reports.

TECHNICAL ISSUES

AOC indicates the SB71/SJCS/SJCS removes Section 11 in the original bill, providing that parents and legal guardians are jointly liable for any medical debts incurred by minors and prohibiting a spouse or other person from being liable for the medical debt or nursing home debt of another person 18 or older. Under the original bill, a person may voluntarily consent to assume liability and shall be considered the patient and shall receive all the same rights and protections provided to other patients under the provisions of the PDCPA.

OTHER SUBSTANTIVE ISSUES

The Aging and Long-Term Services Department's ombudsman indicates indigent residents have experienced continual struggles in long-term care facilities throughout New Mexico. Complaints of being coerced for payment, forced to unsafely discharge, and family members being called to pay have been filed with the Department of Health and are still ongoing for many residents. These practices not only cause stress but also create unsafe conditions within the facility with regard to attention to care and trust with management. This legislation complements the mission of the ALTSD ombudsman program.

ALTERNATIVES

The Administrative Office of the Courts suggests review of the National Consumer Law Center's (NCLC) Model Medical Debt Collection Act, with commentary, at <https://www.nclc.org/images/pdf/medical-debt/model-medical-debt-protection-act-082017.pdf>. The NCLC has also published a fact sheet on medical debt collection at <https://www.nclc.org/images/Medical-Debt-Collection.pdf>, and numerous other documents concerning medical debt can be accessed at <https://www.nclc.org/issues/medical-debt.html>.

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