SPONSOR: Sen. Mantzavinos & Rep. K. Williams
Sens. Gay, Hansen, Hoffner, Huxtable, Lawson, S. McBride, Poore, Townsend; Reps. Heffernan, K. Johnson, Lambert, Morrison, Wilson-Anton

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 8

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO MEDICAL DEBT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 6 of the Delaware Code by adding a new Chapter 25J and by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2501J. Purpose.

This Chapter is known as the "Medical Debt Protection Act." The purpose of this chapter is to reduce burdensome medical debt and to protect patients in their dealings with medical creditors, medical debt buyers, and medical debt collectors with respect to such debt. This chapter is to be construed as a consumer protection statute and must be liberally and remedially construed to effectuate its purposes.

§ 2502J. Definitions.

For purposes of this chapter:

(1) "Consumer" means an individual and excludes nonhuman entities.

(2) "Consumer reporting agency" means any person, which, 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. This includes the three large nationwide providers of consumer reports, Equifax, TransUnion, and Experian.

(3) "External review" means a review of an adverse benefit determination (including a final internal adverse benefit determination) conducted pursuant to any applicable state external review process, a federal external review process as described at 42 U.S.C. § 300gg-19, a review pursuant to 29 U.S.C. 1133, a Medicare appeals process, a Medicaid appeals process, or another applicable appeals process.

(4) "Extraordinary collection action" means any of the following:

a. Selling an individual's debt to another party, except if, prior to the sale, the medical creditor has entered into a legally binding written agreement with the medical debt buyer of the debt under which all of the following apply:

1. The medical debt buyer or collector is prohibited from engaging in any extraordinary collection actions to obtain payment for the care.

2. The medical debt buyer is prohibited from charging interest on the debt.

3. The debt is returnable to or recallable by the medical creditor upon a determination by the medical creditor or medical debt buyer that the individual is eligible for financial assistance.

4. The medical debt buyer is required to adhere to procedures which must be specified in the agreement that ensure that the individual does not pay, and has no obligation to pay, the medical debt buyer and the medical creditor together more than they are personally responsible for paying in compliance with this chapter.

b. Reporting adverse information about the patient to a consumer reporting agency.

c. Actions that require a legal or judicial process, including any of the following:

1. Placing a lien on an individual's property.

2. Attaching or seizing an individual's bank account or any other personal property.

3. Commencing a civil action against an individual.

4. Garnishing an individual's wages.

(5) "Financial assistance policy" means a written policy made pursuant to 26 U.S.C. § 501(r)(4) or its implementing regulations, including 26 CFR § 1.501(r)-1.

(6) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a physical, dental, behavioral, substance use disorder, or mental health condition, illness, injury, or disease. These services include any procedures, products, devices, or medications.

(7) "Internal review or internal appeal" means review by a health insurance plan or other insurer of an adverse benefit determination.

(8) "Large health care facility" means any of the following entities:

a. A hospital licensed under Chapter 10 of Title 16, whether a nonprofit subject to 26 U.S.C. § 501(c)(3), a not-for-profit entity, or a for-profit entity.

b. An outpatient clinic or facility affiliated with a hospital or operating under the license of a hospital as defined in Chapter 10 of Title 16.

c. Any ambulatory or surgical center, including a licensed freestanding surgical center as defined in § 122 of Title 16.

d. A licensed freestanding emergency department ad defined in § 122 of Title 16.

e. Any practice which provides outpatient medical, surgical, behavioral, optical, radiology, laboratory, dental, or other health care services with revenues of at least $20,000,000 annually.

f. Any licensed health care professional who provides health care services in one or more of the settings listed in paragraphs (10)a.-e. of this section.

(9) "Medical assistance" means any public assistance program that assists patients with health care costs and includes Medicaid assistance as defined in § 505 of Title 31, insurance offered through the state health insurance exchange, and financial assistance policies as defined in this title.

(10) "Medical creditor" means any entity that provides health care services and to whom the consumer owes money for health care services, or the entity that provided health care services and to whom the consumer owes money for health care services, or the entity 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.

(11) "Medical debt buyer" means an individual or entity 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.

(12) "Medical debt collector" means any person that regularly collects or attempts to collect, directly or indirectly, medical debts originally owed or due or asserted to be owed or due another. A medical debt buyer is a medical debt collector.

(13) "Patient" means the individual who received health care services, and for the purposes of this chapter, includes a parent if the patient is a minor or a legal guardian if the patient is an adult under guardianship.

(14) "Time of service" means before a patient leaves or is discharged from a large health care facility, or within 5 days of discharge if the patient receives emergency care.

§ 2503J. Requirement to provide information on medical assistance.

(a) All large health care facilities must provide uninsured patients with a written notice containing information regarding eligibility and the application process for medical assistance at the time of service.

(b) Each billing statement that a large health care facility sends to an uninsured patient must include a written notice containing information regarding medical assistance and the application process for medical assistance.

(c) The written notice required by subsections (a) and (b) of this section must include all of the following:

(1) A statement that the patient may qualify for medical assistance.

(2) A statement describing how patients may apply for medical assistance, including a website and telephone number where information on applying may be obtained.

(3) A list of local organizations or agencies (public or private) that may provide assistance with an application for medical assistance.

(4) A person to contact at the large health care facility who can assist the patient with an application for medical assistance.

(d) The written notice required by subsections (a) and (b) of this section must be provided in the patient's primary language.

§ 2504J. Interest and payment plans.

(a) Large health care facilities and medical debt collectors may not charge any interest or late fees to patients.

(b) Large health care facilities and medical debt collectors must offer to any patient with outstanding debt totaling $200 or more a payment plan and may not require the patient to make monthly payments that exceed 5% of the patient's gross monthly income. Failure to provide proof of income may not be used as a basis to deny any patient a payment plan.

(c) No initial payment on a monthly payment plan may be due under any of the following circumstances:

(1) Within the first 30 days after the health care services were provided.

(2) Within 30 days after the first bill is sent.

(3) Within 30 days after the payment plan is established.

(4) During any period in which a medical creditor or medical debt collector has requested any form of documentation from a patient.

(d) Prepayment or early payment penalties or fees, service or administrative charges or fees, or any other fees or charges unrelated to the care provided are prohibited, including on any payment plans.

(e) Notwithstanding any other provisions in this section, a patient is not prohibited from voluntarily making any additional or early payments on any medical debt at any time.

§ 2505J. Billing and collections rules; limits on creditors.

(a) The following extraordinary collections actions may not be used by any medical creditor or medical debt collector to collect debts owed for health care services:

(1) Causing an individual's arrest.

(2) Causing an individual to be subject to a writ of body attachment or capias.

(3) Foreclosing on an individual's real property.

(4) Garnishing the wages, disability insurance payments or any other disability benefits, workers' compensation payments, or unemployment benefits of a patient.

(5) Garnishing or attaching a bank account, pension, annuity, or retirement account of a patient.

(b) A large health care facility or medical creditor that sells medical debt to a medical debt buyer or medical debt collector under a contract described in § 2502J(4)a. remains liable for any actions taken by the medical debt buyer or medical debt collector, including any violations of any provisions of this chapter.

(c) No medical creditor or medical debt collector may engage in any permissible extraordinary collection actions until 120 days after the first bill for a medical debt has been sent.

(d) At least 30 days before taking any extraordinary collection actions, a medical creditor or medical debt collector must provide to the patient a notice containing all of the following:

(1) In the case of large health care facilities and medical debt collectors collecting debt for health care services provided by such facilities, stating whether financial assistance is available for eligible individuals and providing a plain-language summary of any such financial assistance policy.

(2) Identifying the extraordinary collection actions that will be initiated in order to obtain payment.

(3) Providing a deadline after which such extraordinary collection actions will be initiated which may be no earlier than thirty days after the date of the notice.

(e) A large health care facility or a medical debt collector collecting the debt for health care services provided by such a facility may not use any extraordinary collection actions unless these actions are described in the large health care facility's billing and collections policy.

(f) If the patient has paid any part of the medical debt in excess of the amount the patient owes after any financial assistance or charity care offered by the large health care facility, the large health care facility or medical debt collector must refund any excess amount to the patient within 60 days. If a change in the financial circumstances of the patient makes the patient eligible for any financial assistance or charity care, any payments made prior to the change in circumstances that make the patient eligible for such financial assistance or charity care are not required to be refunded.

(g) A large health care facility or medical creditor that sells medical debt to a medical debt buyer or medical debt collector under a contract described in § 2502J(4)a. remains liable for any actions taken by the medical debt buyer or medical debt collector, including any violations of any provisions of this chapter.

§ 2506J. Liability for medical debt.

(a) Parents are jointly liable for any medical debts incurred by children under the age of 18.

(b) No spouse or other person may be liable for the medical debt or nursing home debt of any other person age 18 or older. A spouse may voluntarily consent to assume liability, but such consent:

(1) Must be on a separate standalone document signed by the person.

(2) May not be solicited in an emergency room or during an emergency situation.

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

§ 2507J. Medical debt and consumer reporting agencies.

(a) For a period of 1 year following the date when the consumer was first given a bill for medical debt or 3 months following the date of the most recent payment made towards a payment plan on medical debt, whichever is later, no medical creditor or medical debt collector may communicate with or report any information to any consumer reporting agency regarding such medical debt.

(b) After the time period described in subsection (a) of this section, medical creditors and medical debt collectors must give consumers at least one additional bill before reporting a medical debt to any consumer reporting agency. The amount reported to the consumer reporting agency must be the same as the amount stated in this bill, and such bill must state that the debt is being reported to a consumer reporting agency. Medical debt collectors must also provide the notice required by 15 U.S.C. § 1692g before reporting a debt to a consumer reporting agency.

§ 2508J. Prohibition against collection of medical debt during health insurance appeals.

(a) No medical creditor or medical debt collector that knows or should know about an internal review, external review, or other appeal of a health insurance decision that is pending or was pending within the previous 60 days may do any of the following:

(1) Provide information relative to unpaid charges for health care services to a consumer reporting agency.

(2) Communicate with the consumer regarding the unpaid charges for health care services for the purpose of seeking to collect the charges.

(3) Initiate a lawsuit or arbitration proceeding against the consumer relative to unpaid charges for health care services.

(b) If a medical debt has already been reported to a consumer reporting agency and the medical creditor or medical debt collector who reported the information learns of an internal review, external review, or other appeal of a health insurance decision that is pending or was pending within the previous 60 days, such medical creditor or medical debt collector shall instruct the consumer reporting agency to delete the information about the debt.

(c) No medical creditor that knows or should have known about an internal review, external review, or other appeal of a health insurance decision that is pending or was pending within the previous 60 days may refer, place, or send the unpaid charges for health care services to a medical debt collector including by selling the debt to a medical debt buyer.

§ 2509J. Interest on medical debt.

(a) Patients may not be charged interest or late fees on medical debt, regardless of any agreements to the contrary.

(b) Subsection (a) of this section also applies to any judgments resulting from medical debt, regardless of any agreements to the contrary.

§ 2510J. Remedies.

(a) In addition to any remedies a consumer may have at law or in equity, any violation of this chapter is an unlawful practice under § 2513 of this title and a violation of subchapter II of Chapter 25 of this title.

(b) Any consumer may sue for injunctive or other appropriate equitable relief to enforce this chapter.

(c) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer nor must the consumer exhaust any administrative remedies provided under this chapter or any other applicable law.

(d) No agreement between the patient and a large health care provider or medical debt collector may contain a provision that, prior to a dispute arising, waives or inhibits or has the practical effect of waiving or inhibiting any rights under this chapter or the rights of a patient to resolve that dispute by obtaining any of the following:

(1) Injunctive, declaratory, or other equitable relief.

(2) Multiple or minimum damages as specified by statute.

(3) Attorney's fees and costs as specified by statute or as available at common law.

(4) A hearing at which that party can present evidence.

(5) Requiring any form of alternative dispute resolution, including arbitration.

(e) Any provision in a written agreement violating subsection (d) of this section or any other provision of this chapter is void and unenforceable. A court may refuse to enforce any written agreement as equity may require.

SYNOPSIS

This Act is a substitute for Senate Bill No. 8. Like Senate Bill No. 8, this act protects patients from unfair debt collection practices for medical debt, including prohibiting large health care facilities from charging interest and late fees, requiring facilities to offer reasonable payment plans, limiting the sale of debt to debt collectors unless an agreement is made to keep protections in place, providing minimum time before certain collections actions may be taken, limiting liability for the medical debt of others, and preventing the reporting of medical debt to consumer credit reporting agencies for at least one year after the debt was incurred. Violations of the provisions of this Act are considered Prohibited Trade Practices and Consumer Fraud violations. This Act differs from Senate Bill No. 8 as it requires large health-care facilities to provide information to uninsured patients regarding eligibility and the application process for medical assistance. This information must be provided at the time of service or prior to discharge and again with each billing statement. It also creates a minimum threshold for eligibility for payment plans, and it reduces the timeframe in which a bill under a payment plan may be first due. This Act also defines "medical assistance" and "time of service," which were not defined in Senate Bill No. 8.

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