

STATE OF NEW YORK

8365--A

IN SENATE

May 19, 2020

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, the debtor and creditor law, the civil practice law and rules and the insurance law, in relation to COVID-19 pandemic medical debt requirements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public health law is amended by adding a new section
2 2828 to read as follows:

3 § 2828. COVID-19 pandemic medical debt requirements. 1. Definitions.
4 The following words or phrases, as used in this section, shall have the
5 following meanings:

6 (a) "Collection action" means any of the following:

7 (i) Selling an individual's debt to another party, except if, prior to
8 the sale, the medical creditor has entered into a legally binding writ-
9 ten agreement with the medical debt buyer of the debt pursuant to which:

10 (1) The medical debt buyer or collector is prohibited from engaging in
11 any collection actions, as defined herein, to obtain payment for the
12 care;

13 (2) The medical debt buyer is prohibited from charging interest on the
14 debt in excess of that described in subdivision three of this section;

15 (3) The debt is returnable to or recallable by the medical creditor
16 upon a determination by the medical creditor or medical debt buyer that
17 the individual is eligible for financial assistance; and

18 (4) If the individual is determined to be eligible for financial
19 assistance and the debt is not returned to or recalled by the medical
20 creditor, the medical debt buyer is required to adhere to procedures
21 which shall be specified in the agreement that ensure that the individ-
22 ual does not pay, and has no obligation to pay, the medical debt buyer
23 and the medical creditor together more than he or she is personally
24 responsible for paying in compliance with this section.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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

3 (iii) Actions that require a legal or judicial process, including but
4 not limited to:

5 (1) Placing or executing a lien on the individual's property;

6 (2) Attaching or seizing an individual's bank account or any other
7 personal property;

8 (3) Commencing or prosecuting a civil action against an individual;

9 (4) Garnishing an individual's wages; or

10 (5) Any other involuntary collection activity.

11 (b) "Consumer reporting agency" has the same meaning as such term is
12 defined in section three hundred eighty-a of the general business law.

13 (c) "Declared state disaster emergency" means the declaration of a
14 state of emergency pursuant to article two-B of the executive law.

15 (d) "Healthcare professional" means a person licensed or certified
16 pursuant to title eight of the education law.

17 (e) "Healthcare services" means services for the diagnosis,
18 prevention, treatment, cure or relief of a physical, dental, behavioral
19 substance use disorder or mental health condition, illness, injury or
20 disease. These services include, but are not limited to, any procedures,
21 products, devices or medications.

22 (f) "Hospital" means all providers licensed under this article.

23 (g) "Medical debt" means a debt arising from the receipt of healthcare
24 services.

25 (h) "Medical debt buyer" means a person or entity that is engaged in
26 the business of purchasing medical debts for collection purposes, wheth-
27 er it collects the debt itself or hires a third party for collection or
28 an attorney for litigation in order to collect such debt.

29 (i) "Medical debt collector" means any person or entity that regularly
30 collects or attempts to collect, directly or indirectly, medical debts
31 originally owed or due or asserted to be owed or due to another. A
32 medical debt buyer is considered to be a medical debt collector for all
33 purposes.

34 (j) "Patient" means the person who received healthcare services, and
35 for the purposes of this section shall include: a parent if the patient
36 is a minor; a legal guardian if the patient is an adult under guardian-
37 ship; an authorized representative; or a guarantor.

38 (k) "Period of suspension" means a period consisting of the first day
39 of a declared state disaster emergency related to the COVID-19 pandemic
40 and until no less than sixty days after a declared state disaster emer-
41 gency related to the COVID-19 pandemic is no longer in effect anywhere
42 in the state.

43 2. Involuntary collection activity. No hospital or healthcare profes-
44 sional shall engage in any collection actions during the period of
45 suspension.

46 3. No accrual of interest. Interest shall not accrue on any medical
47 debt described under subdivision two for which collection was suspended
48 for the period of suspension.

49 4. Notice. To inform patients of the actions taken in accordance with
50 this section and ensure an effective transition, all hospitals and
51 healthcare professionals shall:

52 (a) Not later than fifteen days after the effective date of this
53 section, notify patients:

54 (i) of the actions taken in accordance with subdivisions two and three
55 of this section for whom collections have been suspended and interest
56 waived;

(ii) of the option to continue making payments toward any amount due; and

(iii) that the program described in this section is a temporary program.

(b) Within fifteen days after the expiration of the period of suspension, carry out a program to provide no fewer than three notices by postal mail, telephone or electronic communication to patients indicating:

(i) when the patient's normal payment obligations will resume;

(ii) with respect to notices submitted by hospitals, that the patient may be eligible to enroll in the hospital's financial assistance plan pursuant to section twenty-eight hundred seven-k of this article; and

(iii) with respect to notices submitted by healthcare professionals, that the patient may be eligible to enroll in a financial assistance plan, if the healthcare professional has a financial assistance policy for his or her patients.

5. Proof of submission of claim. With respect to patients who are uninsured on the date that the treating hospital or healthcare professional renders testing or treatment services related to COVID-19, including, but not limited to, diagnostic evaluations, testing or other methods to rule out diseases with similar symptoms to COVID-19, no hospital or healthcare professional may engage in any collection actions to collect payment for such services, unless the treating hospital or healthcare professional produces a sworn affidavit that he, she or it submitted a claim for payment for such services to the federal department of health and human services, health resources and services administration (HRSA), in accordance with federal law, and that HRSA denied the claim.

6. Private right of action. Every violation of this section shall be deemed a deceptive act and practice subject to enforcement under article twenty-two-A of the general business law. Nothing in this section shall be construed to restrict any right which any person may have under any other statute or the common law.

§ 2. The debtor and creditor law is amended by adding a new article 10-B to read as follows:

ARTICLE 10-B

TEMPORARY RELIEF FROM COLLECTION OF MEDICAL DEBT DURING THE COVID-19 PANDEMIC

Section 286. Definitions.

287. Requirements.

§ 286. Definitions. As used in this article, the following terms shall have the following meanings:

1. "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 pursuant to which:

(i) The medical debt buyer or collector is prohibited from engaging in any collection actions, as defined herein, to obtain payment for the care;

(ii) The medical debt buyer is prohibited from charging interest on the debt in excess of that described in this section;

(iii) 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; and

(iv) If the individual is determined to be eligible for financial assistance and the debt is not returned to or recalled by the medical

1 creditor, the medical debt buyer is required to adhere to procedures
2 which shall be specified in the agreement that ensure that the individ-
3 ual does not pay, and has no obligation to pay, the medical debt buyer
4 and the medical creditor together more than he or she is personally
5 responsible for paying in compliance with this section.

6 (b) Reporting adverse information about a patient to a consumer
7 reporting agency; or

8 (c) Actions that require a legal or judicial process, including but
9 not limited to:

10 (i) Placing or executing a lien on the individual's property;

11 (ii) Attaching or seizing an individual's bank account or any other
12 personal property;

13 (iii) Commencing or prosecuting a civil action against an individual;

14 (iv) Garnishing an individual's wages; or

15 (v) Any other involuntary collection activity.

16 2. "Consumer reporting agency" has the same meaning as such term is
17 defined in section three hundred eighty-a of the general business law.

18 3. "Declared state disaster emergency" means the declaration of a
19 state of emergency pursuant to article two-B of the executive law.

20 4. "Healthcare professional" means a person licensed or certified
21 pursuant to title eight of the education law.

22 5. "Healthcare services" means services for the diagnosis, prevention,
23 treatment, cure or relief of a physical, dental, behavioral substance
24 use disorder or mental health condition, illness, injury or disease.
25 These services include, but are not limited to, any procedures,
26 products, devices or medications.

27 6. "Hospital" means all hospitals licensed under article twenty-eight
28 of the public health law.

29 7. "Medical debt" means a debt arising from the receipt of healthcare
30 services.

31 8. "Medical debt buyer" means a person or entity that is engaged in
32 the business of purchasing medical debts for collection purposes, wheth-
33 er it collects the debt itself or hires a third party for collection or
34 an attorney for litigation in order to collect such debt.

35 9. "Medical debt collector" means any person or entity that regularly
36 collects or attempts to collect, directly or indirectly, medical debts
37 originally owed or due or asserted to be owed or due to another. A
38 medical debt buyer is considered to be a medical debt collector for all
39 purposes.

40 10. "Patient" means the person who received healthcare services, and
41 for the purposes of this article shall include: a parent if the patient
42 is a minor; a legal guardian if the patient is an adult under guardian-
43 ship; an authorized representative; or a guarantor.

44 11. "Period of suspension" means a period consisting of the first day
45 of a declared state disaster emergency related to the COVID-19 pandemic
46 and until no less than sixty days after a declared state disaster emer-
47 gency related to the COVID-19 pandemic is no longer in effect anywhere
48 in the state.

49 § 287. Requirements. 1. Temporary relief from collection of medical
50 debt. All medical debt buyers and collectors shall suspend all payments
51 due for medical debt through the period of suspension.

52 2. No accrual of interest. Interest shall not accrue on any medical
53 debt described under subdivision one of this section for which payment
54 was suspended for the period of suspension.

55 3. Involuntary collection activity. No medical debt buyer or collector
56 shall engage in any collection actions during the period of suspension.

1 4. Notice. To inform patients of the actions taken in accordance with
2 this section and ensure an effective transition, all medical debt buyers
3 and collectors shall:

4 (a) Not later than fifteen days after the effective date of this
5 section, notify patients:

6 (i) of the actions taken in accordance with subdivisions one and two
7 of this section for whom payments have been suspended and interest
8 waived;

9 (ii) of the actions taken in accordance with subdivision three of this
10 section for whom collections have been suspended;

11 (iii) of the option to continue making payments toward any amount due;
12 and

13 (iv) that the program described under this section is a temporary
14 program.

15 (b) Within fifteen days after the expiration of the period of suspen-
16 sion, carry out a program to provide no fewer than three notices by
17 postal mail, telephone or electronic communication to patients indicat-
18 ing:

19 (i) when the patient's normal payment obligations will resume; and

20 (ii) that the patient may be eligible to enroll in a financial assist-
21 ance plan pursuant to any applicable and available financial assistance
22 policy of either the medical debt buyer or collector.

23 5. Proof of submission of claim. With respect to patients who are
24 uninsured on the date that the treating hospital or healthcare profes-
25 sional renders testing or treatment services related to COVID-19,
26 including, but not limited to, diagnostic evaluations, testing or other
27 methods to rule out diseases with similar symptoms to COVID-19, no
28 medical debt buyer or collector may engage in any collection actions to
29 collect payment for such services, unless the treating hospital or
30 healthcare professional produces a sworn affidavit that he, she or it
31 submitted a claim for payment for such services to the federal depart-
32 ment of health and human services, health resources and services admin-
33 istration (HRSA), in accordance with federal law, and that HRSA denied
34 the claim.

35 6. Private right of action. Every violation of this section shall be
36 deemed a deceptive act and practice subject to enforcement under article
37 twenty-two-A of the general business law. Nothing in this section shall
38 be construed to restrict any right which any person may have under any
39 other statute or the common law.

40 § 3. Section 5004 of the civil practice law and rules, as amended by
41 chapter 258 of the laws of 1981, is amended to read as follows:

42 § 5004. Rate of interest. Interest shall be at the rate of nine per
43 centum per annum, except where otherwise provided by statute, provided
44 that the annual rate of interest to be paid on a judgment or accrued
45 claim in an action arising from a medical debt, as defined by section
46 two thousand eight hundred twenty-eight of the public health law, where
47 the purchaser, borrower or debtor is the defendant shall be calculated
48 at the one-year United States treasury bill rate; and provided further
49 that no interest shall accrue on a judgment or accrued claim in an
50 action arising from a medical debt while the state disaster emergency
51 order related to the COVID-19 pandemic is in effect. For the purposes of
52 this section, the "one-year United States treasury bill rate" means the
53 weekly average one-year constant maturity treasury yield, as published
54 by the board of governors of the federal reserve system, for the calen-
55 dar week preceding the date of the entry of the judgment awarding
56 damages.

§ 4. The insurance law is amended by adding a new section 3244 to read as follows:

§ 3244. Extension of premium payment periods; COVID-19. (a) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Credit reporting agency" means a reporting agency that regularly engages in the practice of assembling or evaluating and maintaining, for the purpose of furnishing credit reports to third parties bearing on a person's credit worthiness, credit standing, or credit capacity, and credit account information from persons who furnish that information regularly and in the ordinary course of business.

(2) "Late fee" means a fee associated with an insurance premium payment that is made at a time later than the premium due date, but prior to both insurance policy or contract termination and the time in which an insurer, HMO, or student health plan may reject premium payment.

(3) "Medical debt buyer" means a person 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.

(4) "Medical debt collector" means any person or entity 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. A medical debt buyer is considered to be a medical debt collector for all purposes.

(5) "Student health plan" has the meaning set forth in paragraph five of subsection (a) of section one thousand one hundred twenty-four of this chapter.

(6) "Child health plus" means coverage issued pursuant to section two thousand five hundred eleven of the public health law.

(7) "HMO" shall mean a health maintenance organization operating in accordance with the provisions of article forty-four of the public health law or article forty-three of this chapter.

(b) Extension of premium payment periods. Every issuer of individual, small group and student blanket comprehensive health insurance policies subject to this article, as well as any issuer of a child health plus policy where the policyholder or contract holder pays the entire premium, shall, subject to consideration by the superintendent of the liquidity and solvency of the applicable insurer, HMO, or student health plan, extend the period for the payment of premiums for any policyholder or contract holder who can demonstrate financial hardship as a result of the COVID-19 pandemic to the later of the expiration of the applicable contractual grace period and the date sixty days after a state disaster emergency is no longer in effect with respect to the COVID-19 pandemic anywhere in the state. Such an insurer, HMO, and student health plan shall be responsible for the payment of claims during such period and may not retroactively terminate the insurance policy for non-payment of the premium during such period.

(c) Requirements. With regard to an individual, small group, or student blanket comprehensive health insurance policyholder or contract holder who does not make a timely premium payment and can demonstrate financial hardship as a result of the COVID-19 pandemic, the applicable insurer, HMO, or student health plan: (1) shall not impose any late fees relating to such premium payment; (2) shall not report the policyholder or contract holder to a credit reporting agency or refer the policyholder or contract holder to a medical debt buyer or collector with respect

1 to such premium payment; (3) shall provide information to the policy-
2 holder or contract holder regarding alternate policies available from
3 the insurer, HMO, or student health plan and provide contact information
4 for the NY state of health established pursuant to title seven of arti-
5 cle two of the public health law; and (4) shall provide information
6 regarding health insurance and medical debt consumer assistance avail-
7 able from the state designated consumer assistance program.

8 (d) Other provisions. (1) Subject to consideration by the superinten-
9 dent of the liquidity and solvency of the applicable insurer, HMO, or
10 student health plan, the insurer, HMO, or student health plan also
11 shall, within ten business days following the effective date of this
12 section:

13 (A) mail or deliver, which may include electronic mail, written notice
14 to every individual, small group, or student blanket comprehensive
15 health insurance policyholder and contract holder of the provisions of
16 this section and a toll-free number that the individual, small group, or
17 student blanket comprehensive health insurance policyholder or contract
18 holder may call to discuss billing and make alternative payment arrange-
19 ments; and

20 (B) notify insurance producers and any third-party administrators with
21 whom or which the insurer does business of the provisions of this
22 section.

23 (2) A licensed insurance producer who procured the individual, small
24 group, or student blanket comprehensive health insurance policy for the
25 policyholder or contract holder shall mail or deliver, which may include
26 electronic mail, notice to the policyholder or contract holder of the
27 provisions of this section within ten business days following the effec-
28 tive date of this section.

29 (3) Solely for the purposes of this section, an insurer, HMO, or
30 student health plan shall accept a written attestation from an individ-
31 ual, small group, or student blanket comprehensive policyholder or
32 contract holder as proof of financial hardship as a result of the
33 COVID-19 pandemic.

34 (4) Nothing in this section shall prohibit an individual, small group,
35 or student blanket comprehensive health insurance policyholder or
36 contract holder from voluntarily cancelling a health insurance policy.

37 (5) The period to pay insurance premiums set forth in this section
38 shall not constitute a waiver or forgiveness of the premium.

39 (6) The period set forth in subsection (b) of this section applies
40 only to terminations attributed to a failure by an individual, small
41 group, or student blanket comprehensive health insurance policyholder or
42 contract holder to pay premiums during such period. If an insurer, HMO,
43 or student health plan terminates a policy for any other reason permit-
44 ted by law, the insurer, HMO, or student health plan shall comply with
45 statutory notice requirements.

46 § 5. The insurance law is amended by adding a new section 4331 to read
47 as follows:

48 § 4331. Extension of premium payment periods; COVID-19. (a) Defi-
49 nitions. As used in this section, the following terms shall have the
50 following meanings:

51 (1) "Credit reporting agency" means a reporting agency that regularly
52 engages in the practice of assembling or evaluating and maintaining, for
53 the purpose of furnishing credit reports to third parties bearing on a
54 person's credit worthiness, credit standing, or credit capacity, and
55 credit account information from persons who furnish that information
56 regularly and in the ordinary course of business.

1 (2) "Late fee" means a fee associated with an insurance premium
2 payment that is made at a time later than the premium due date, but
3 prior to both insurance policy or contract termination and the time in
4 which an insurer, HMO, or student health plan may reject premium
5 payment.

6 (3) "Medical debt buyer" means a person or entity that is engaged in
7 the business of purchasing medical debts for collection purposes, wheth-
8 er it collects the debt itself or hires a third-party for collection or
9 an attorney for litigation in order to collect such debt.

10 (4) "Medical debt collector" means any person or entity that regularly
11 collects or attempts to collect, directly or indirectly, medical debts
12 originally owed or due or asserted to be owed or due to another. A
13 medical debt buyer is considered to be a medical debt collector for all
14 purposes.

15 (5) "Student health plan" has the meaning set forth in paragraph five
16 of subsection (a) of section one thousand one hundred twenty-four of
17 this chapter.

18 (6) "Child health plus" means coverage issued pursuant to section two
19 thousand five hundred eleven of the public health law.

20 (7) "HMO" shall mean a health maintenance organization operating in
21 accordance with the provisions of article forty-four of the public
22 health law or this article.

23 (b) Extension of premium payment periods. Every medical expense indem-
24 nity corporation, HMO, hospital service corporation or health service
25 corporation subject to this article which issues direct pay, small group
26 or student blanket comprehensive contracts, as well as any issuer of
27 child health plus coverage where the subscriber pays the entire premium,
28 subject to consideration by the superintendent of the liquidity and
29 solvency of the applicable medical expense indemnity corporation, HMO,
30 hospital service corporation or health service corporation, shall extend
31 the period for the payment of premiums for any policyholder or contract
32 holder who can demonstrate financial hardship as a result of the COVID-
33 19 pandemic to the later of the expiration of the applicable contractual
34 grace period and the date sixty days after a state disaster emergency is
35 no longer in effect with respect to the COVID-19 pandemic anywhere in
36 the state. Such a medical expense indemnity corporation, HMO, hospital
37 service corporation or health service corporation shall be responsible
38 for the payment of claims during such period and may not retroactively
39 terminate the contract for non-payment of the premium during such peri-
40 od.

41 (c) Requirements. With regard to a direct pay, small group, or student
42 blanket comprehensive health insurance contract holder who does not make
43 a timely premium payment and can demonstrate financial hardship as a
44 result of the COVID-19 pandemic, the applicable medical expense indem-
45 nity corporation, HMO, hospital service corporation or health service
46 corporation: (1) shall not impose any late fees relating to such premium
47 payment; (2) shall not report the contract holder to a credit reporting
48 agency or refer the contract holder to a medical debt buyer or collector
49 with respect to such premium payment; (3) shall provide information to
50 the contract holder regarding alternate policies available from the
51 medical expense indemnity corporation, hospital service corporation or
52 health service corporation; and (4) shall provide information regarding
53 health insurance and medical debt consumer assistance available from the
54 state designated consumer assistance program.

55 (d) Other provisions. (1) Subject to consideration by the superinten-
56 dent of the liquidity and solvency of the applicable medical expense

1 indemnity corporation, HMO, hospital service corporation or health
2 service corporation, medical expense indemnity corporation, hospital
3 service corporation or health service corporation also shall, within ten
4 business days following the effective date of this section:

5 (A) mail or deliver, which may include electronic mail, written notice
6 to every direct pay, small group, or student blanket comprehensive
7 health insurance contract holder of the provisions of this section and a
8 toll-free number that the direct pay small group, or student blanket
9 comprehensive health contract holder may call to discuss billing and
10 make alternative payment arrangements;

11 (B) notify insurance producers and any third-party administrators with
12 whom or which the medical expense indemnity corporation, HMO, hospital
13 service corporation or health service corporation does business of the
14 provisions of this section.

15 (2) A licensed insurance producer who procured the direct pay, small
16 group, or student blanket comprehensive contract for the contract holder
17 shall mail or deliver, which may include electronic mail, notice to the
18 contract holder of the provisions of this section within ten business
19 days following the effective date of this section.

20 (3) Solely for the purposes of this section, a medical expense indem-
21 nity corporation, HMO, hospital service corporation or health service
22 corporation shall accept a written attestation from a direct pay, small
23 group, or student blanket comprehensive contract holder as proof of
24 financial hardship as a result of the COVID-19 pandemic.

25 (4) Nothing in this section shall prohibit a direct pay, small group,
26 or student blanket comprehensive contract holder from voluntarily
27 cancelling a contract.

28 (5) The period to pay premiums set forth in this section shall not
29 constitute a waiver or forgiveness of the premium.

30 (6) The period set forth in subsection (b) of this section applies
31 only to terminations attributed to a failure by a direct pay, small
32 group, or student blanket comprehensive contract holder to pay premiums
33 during such period. If a medical expense indemnity corporation, hospital
34 service corporation or health service corporation terminates a policy
35 for any other reason permitted by law, the insurer medical expense
36 indemnity corporation, hospital service corporation or health service
37 corporation shall comply with statutory notice requirements.

38 § 6. This act shall take effect immediately.