STATE OF NEW YORK

1753

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. GOTTFRIED, ENGLEBRIGHT, SEAWRIGHT -- read once and referred to the Committee on Judiciary

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:

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

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

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

(i) 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:

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

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

(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; and

(4) If the individual is determined to be eligible for financial assistance and the debt is not returned to or recalled by the medical creditor, the medical debt buyer is required to adhere to procedures which shall 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 he or she is personally 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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(ii) Reporting adverse information about a patient to a consumer reporting agency; or

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

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

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

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

(4) Garnishing an individual's wages; or

(5) Any other involuntary collection activity.

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

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

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

(e) "Healthcare 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, but are not limited to, any procedures, products, devices or medications.

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

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

(h) "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.

(i) "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.

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

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

2. Involuntary collection activity. No hospital or healthcare professional shall engage in any collection actions during the period of suspension.

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

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

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

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

creditor, the medical debt buyer is required to adhere to procedures which shall 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 he or she is personally responsible for paying in compliance with this section.

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

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

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

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

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

(iv) Garnishing an individual's wages; or

(v) Any other involuntary collection activity.

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

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

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

5. "Healthcare 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, but are not limited to, any procedures, products, devices or medications.

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

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

8. "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.

9. "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.

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

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

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

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

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

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

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

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

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

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

(iv) that the program described under 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; and

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

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 medical debt buyer or collector 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.

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

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

to such premium payment; (3) shall provide information to the policyholder or contract holder regarding alternate policies available from the insurer, HMO, or student health plan and provide contact information for the NY state of health established pursuant to title seven of article two of the public health law; and (4) shall provide information regarding health insurance and medical debt consumer assistance available from the state designated consumer assistance program.

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

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

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

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

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

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

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

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

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

§ 4331. 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 this article.

(b) Extension of premium payment periods. Every medical expense indemnity corporation, HMO, hospital service corporation or health service corporation subject to this article which issues direct pay, small group or student blanket comprehensive contracts, as well as any issuer of child health plus coverage where the subscriber pays the entire premium, subject to consideration by the superintendent of the liquidity and solvency of the applicable medical expense indemnity corporation, HMO, hospital service corporation or health service corporation, shall 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 a medical expense indemnity corporation, HMO, hospital service corporation or health service corporation shall be responsible for the payment of claims during such period and may not retroactively terminate the contract for non-payment of the premium during such period.

(c) Requirements. With regard to a direct pay, small group, or student blanket comprehensive health insurance 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 medical expense indemnity corporation, HMO, hospital service corporation or health service corporation: (1) shall not impose any late fees relating to such premium payment; (2) shall not report the contract holder to a credit reporting agency or refer the contract holder to a medical debt buyer or collector with respect to such premium payment; (3) shall provide information to the contract holder regarding alternate policies available from the medical expense indemnity corporation, hospital service corporation or health service corporation; and (4) shall provide information regarding health insurance and medical debt consumer assistance available from the state designated consumer assistance program.

(d) Other provisions. (1) Subject to consideration by the superintendent of the liquidity and solvency of the applicable medical expense

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

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

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

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

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

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

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

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

§ 6. This act shall take effect immediately.