STATE OF NEW YORK

7005

2023-2024 Regular Sessions

IN SENATE

May 16, 2023

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, the general business law and the public health law, in relation to medical debt

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

Section 1. Subdivision (a) of section 5201 of the civil practice law and rules is amended to read as follows:

(a) Debt against which a money judgment may be enforced. A money judgment may be enforced against any debt, which is past due or which is yet to become due, certainly or upon demand of the judgment debtor, whether it was incurred within or without the state, to or from a resident or non-resident, unless it is exempt from application to the satisfaction of the judgment. A debt may consist of a cause of action which could be assigned or transferred accruing within or without the state. **No money judgment shall be sought, entered, or enforced in an action arising from non-payment of facility items and services by a patient or patient guarantor that is brought by a facility, as defined under section twenty-eight hundred thirty-one of the public health law, that is in material noncompliance with section twenty-eight hundred thirty-one of the public health law on the date that the relevant facility items or services are purchased from a provider to a patient by the facility in material noncompliance.**

§ 2. Section 7501 of the civil practice law and rules, as amended by chapter 532 of the laws of 1963, is amended to read as follows:

§ 7501. Effect of arbitration agreement. A written agreement to submit any controversy thereafter arising or any existing controversy to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award. In determining any matter arising under this article, the court shall not consider whether the

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

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claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute. No facility, as defined under section twenty-eight hundred thirty-one of the public health law, shall enforce an arbitration agreement or clause in any facility document, including contracts, agreements, statements, or bills, in an action arising from patient or patient guarantor non-payment of facility items or services, if that facility is in material noncompliance with section twenty-eight hundred thirty-one of the public health law on the date that the relevant facility items or services are purchased from a provider to a patient by the facility in material noncompliance.

§ 3. Section 601 of the general business law is amended by adding two new subdivisions 12 and 13 to read as follows:

12. Attempt to collect a medical debt, or debt arising from nonpayment of facility items and services, from a patient or patient guarantor by referring the debt, directly or indirectly, to a debt collector or debt collection agency if the principal creditor is a facility, as defined by section twenty-eight hundred thirty-one of the public health law, or an affiliate, that is in material noncompliance with section twenty-eight hundred thirty-one of the public health law on the date that the relevant facility items or services are purchased from a provider to a patient by the facility; or

13. Disclose or cause to be disclosed information affecting the debtor's reputation for credit worthiness, including to a consumer credit reporting agency as defined in article twenty-five of this chapter, if the principal creditor is a facility, as defined by section twenty-eight hundred thirty-one of the public health law, or an affiliate, that is in material noncompliance with section twenty-eight hundred thirty-one of the public health law on the date that the relevant facility items or services are purchased from a provider to a patient by the facility, and the action arose from patient or patient guarantor non-payment of facility items or services.

§ 4. The public health law is amended by adding a new section 2831 to read as follows:

§ 2831. The hospital price transparency act. 1. As used in this section:

(a) "Ancillary service" means a facility item or service that a facility customarily provides as part of or in conjunction with a shoppable primary service.

(b) "Chargemaster" means the list of all facility items and services maintained by a facility for which the facility has established a charge.

(c) "Collections action" includes any of the following actions taken with respect to a debt for items and services that were purchased from or provided to a patient by a facility:

(i) attempting to collect a debt from a patient or patient guarantor by referring the debt, directly or indirectly, to a debt collector, a collection agency, or other third-party retained by or on behalf of the facility;

(ii) initiating a lawsuit against the patient or patient guarantor, or enforcing an arbitration or mediation clause in any facility documents including contracts, agreements, statements, or bills; or

(iii) directly or indirectly causing a report to be made to a consumer reporting agency.

(d) "De-identified maximum negotiated charge" means the highest charge that a facility has negotiated with all third-party payers for a facility item or service.

(e) "De-identified minimum negotiated charge" means the lowest charge that a facility has negotiated with all third-party payers for a facility item or service.

(f) "Discounted cash price" means the charge that applies to an individual who pays cash, or cash equivalent, for a facility item or service.

(g) "Facility" includes the following:

(i) general hospitals as defined in section twenty-eight hundred one of this article; and

(ii) any hospital, as defined in section twenty-eight hundred one of this article, to which the department determines this section should apply.

(h) "Gross charge" means the charge for a facility item or service that is reflected on a facility's chargemaster, absent any discounts.

(i) "Facility items and services" and any variation of this phrase means all items and services, including individual items and services and service packages, that may be provided by a facility to a patient in connection with an inpatient admission or an outpatient department visit for which the facility has established a standard charge. This includes, but is not limited to:

(i) supplies and procedures;

(ii) room and board;

(iii) use of the facility and other areas, the charges for which are generally referred to as facility fees;

(iv) services of physicians and non-physician practitioners, employed by the facility, the charges for which are generally referred to as professional charges; and

(v) any other item or service for which a facility has established a standard charge.

(j) "Machine-readable format" means a digital representation of data or information in a file that can be imported or read into a computer system for further processing, including .XML, .JSON, and .CSV formats.

(k) "Payer-specific negotiated charge" means the charge that a facility has negotiated with a third-party payer for a facility item or service.

(l) "Service package" means an aggregation of individual facility items and services into a single service with a single charge.

(m) "Shoppable service" means a service that may be scheduled by a health care consumer in advance.

(n) "Standard charge" means the regular rate established by the facility for a facility item or service provided to a specific group of paying patients. This term includes all of the following, as defined under this section:

(i) the gross charge;

(ii) the payer-specific negotiated charge;

(iii) the de-identified minimum negotiated charge;

(iv) the de-identified maximum negotiated charge; and

(v) the discounted cash price.

(o) "Third-party payer" means an entity that is, by statute, contract, or agreement, legally responsible for payment of a claim for a facility item or service.

2. Notwithstanding any other law, a facility must make public the following:

(a) a digital file in a machine-readable format that contains a list of all standard charges for all facility items and services as provided in subdivision three of this section; and

(b) a consumer-friendly list of standard charges for a limited set of shoppable services as provided in subdivision three of this section.

3. (a) A facility shall maintain a list of all standard charges for all facility items and services in accordance with this section. This list must include, as applicable:

(i) a description of each facility item or service provided by the facility; and

(ii) the following charges for each individual facility item or service when provided in either an inpatient setting or an outpatient department setting, as applicable:

(A) the gross charge;

(B) the de-identified minimum negotiated charge;

(C) the de-identified maximum negotiated charge;

(D) the discounted cash price; and

(E) the payer-specific negotiated charge, listed by the name of the third-party payer and plan associated with the charge and displayed in a manner that clearly associates the charge with each third-party payer and plan; and

(iii) any code used by the facility for purposes of accounting or billing for the facility item or service, including, but not limited to, the Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the Diagnosis Related Group (DRG) code, the National Drug Code (NDC), or other common payer identifier.

(b) The standard charges contained in the list required to be maintained by a facility under paragraph (a) of this subdivision must reflect the standard charges applicable to that location of the facility, regardless of whether the facility operates in more than one location or operates under the same license or approval as another facility.

(c) The information contained in the list required under paragraph (a) of this subdivision must be published in a single digital file that is in a machine-readable format.

(d) The list required under paragraph (a) of this subdivision must be displayed in a prominent location on the home page of the facility's publicly accessible internet website or accessible by selecting a dedicated link that is prominently displayed on the home page of the facility's publicly accessible internet website. If the facility operates multiple locations and maintains a single internet website, the list required under paragraph (a) of this subdivision must be posted for each location the facility operates in a manner that clearly associates the list with the applicable location of the facility.

(e) The list required under paragraph (a) of this subdivision must:

(i) be available:

(A) free of charge;

(B) without having to register or establish a user account or password;

(C) without having to submit personal identifying information;

(D) without having to enter a code to access the list; and

(E) without having to overcome any other barrier that limits the availability or accessibility of the list;

(ii) be accessible to a common commercial operator of an internet search engine to the extent necessary for the search engine to index the list and display the list as a result in response to a search query of a user of the search engine;

(iii) be formatted in a manner prescribed by the department under subdivision five of this section;

(iv) be digitally searchable; and

(v) use the following naming convention specified by the Centers for Medicare and Medicaid Services, specifically: name> standardcharges.{json/xml/csv}.

(f) The facility must update the list required under paragraph (a) of this subdivision at least once a year. The facility must clearly indicate the date on which the list was most recently updated, either within the list itself or in a manner that is clearly associated with the list.

4. (a) Except as provided by paragraph (c) of this subdivision, a facility shall maintain and make publicly available a list of the standard charges described in subparagraphs (i), (ii), (iii), (iv) and (v) of paragraph (d) of this subdivision for at least three hundred shoppable services provided by the facility. The facility may select the shoppable services to be included in the list, except that the list must include:

(i) the seventy services specified as shoppable services by the Centers for Medicare and Medicaid Services; or

(ii) if the facility does not provide all of the seventy services specified as shoppable services by the Centers for Medicare and Medicaid Services, as many of those shoppable services the facility does provide.

(b) In selecting a shoppable service for purposes of inclusion in the list required under paragraph (a) of this subdivision, a facility must:

(i) consider how frequently the facility provides the service and the facility's billing rate for that service; and

(ii) prioritize the selection of services that are among the services most frequently provided by the facility.

(c) If a facility does not provide three hundred shoppable services, the facility must maintain a list of all of the shoppable services that the facility provides in a manner that otherwise complies with the requirements of paragraph (a) of this subdivision.

(d) The list required under paragraph (a) or (c) of this subdivision, as applicable, must include:

(i) a plain-language description of each shoppable service included on the list;

(ii) the payer-specified negotiated charge that applies to each shoppable service included on the list, and any corresponding ancillary service as applicable, listed by the name of the third-party payer and plan associated with the charge and displayed in a manner that clearly associates the charge with the third-party payer and plan;

(iii) the discounted cash price that applies to each shoppable service included on the list, and any corresponding ancillary service as applicable, or if the facility does not offer a discounted cash price for one or more of the shoppable or ancillary services on the list, the gross charge for the shoppable or ancillary service, as applicable;

(iv) the de-identified minimum negotiated charge that applies to each shoppable service included on the list and any corresponding ancillary service, as applicable;

(v) the de-identified maximum negotiated charge that applies to each shoppable service included on the list and any corresponding ancillary service, as applicable;

(vi) any code used by the facility for purposes of accounting or billing for each shoppable service included on the list and any ancillary service, including the Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the Diagnosis Related Group (DRG) code, the National Drug Code (NDC), or other common payer identifier;

(vii) each location at which the facility provides the shoppable service and whether the standard charges identified in subparagraphs (ii), (iii), (iv) and (v) of this paragraph apply at that location to the provision of that shoppable service in an inpatient setting, an outpatient department setting, or in both of those settings, as applicable; and

(viii) if applicable, indicate if one of more of the shoppable services specified by the Centers for Medicare and Medicaid Services is not provided by the facility.

(e) The list required under paragraph (a) or (c) of this subdivision, as applicable, must be displayed in a prominent location on the home page of the facility's publicly accessible internet website or accessible by selecting a dedicated link that is prominently displayed on the home page of the facility's publicly accessible internet website. If the facility operates multiple locations and maintains a single internet website, the list required under paragraph (a) or (c) of this subdivision, as applicable, must be posted for each location the facility operates in a manner that clearly associates the list with the applicable location of the facility.

(f) The list required under paragraph (a) or (c) of this subdivision, as applicable, must be:

(i) easily accessible and available:

(A) free of charge;

(B) without having to register or establish a user account or password;

(C) without having to submit personal identifying information;

(D) without having to enter a code to access the list; and

(E) without having to overcome any other barrier that limits the availability or accessibility of the list; and

(ii) digitally searchable by service description, billing code, and payer;

(iii) accessible to a common commercial operator of an internet search engine to the extent necessary for the search engine to index the list and display the list as a result in response to a search query of a user of the search engine;

(iv) formatted in a manner that is consistent with the format prescribed by the department under subdivision five of this section; and

(v) updated at least once a year. The facility must clearly indicate the date on which the list was most recently updated, either within the list itself or in a manner that is clearly associated with the list.

(g) Notwithstanding any other provision of this section, a facility is considered to meet the requirements of this subdivision if the facility maintains, as determined by the department, an internet-based price estimator tool that meets the following requirements:

(i) provides a reasonably accurate cost estimate for each shoppable service and any corresponding ancillary service included on the list maintained by the facility under paragraph (a) or (c) of this subdivision, as applicable;

(ii) allows a person to obtain a reasonably accurate estimate of the amount the person will be obligated to pay the facility if the person elects to use the facility to provide the service; and

(iii) is prominently displayed on the facility's publicly accessible internet website and is accessible to the public without charge and without having to register or establish a user account or password.

5. In prescribing the format of the list under subparagraph (iii) of paragraph (e) of subdivision three and subparagraph (iv) of paragraph

(f) of subdivision four of this section, the department shall develop a template that each facility must use in formatting the list, and in developing this template, the department must:

(a) consider any applicable federal guidelines for formatting similar lists required by federal law or regulation and ensure that the design of the template enables healthcare researchers to compare the charges contained in the lists maintained by each facility; and

(b) design the template to be substantially similar to the template used by the Centers for Medicare and Medicaid Services for purposes similar to those of this section, if the department determines that designing the template in that manner serves the purposes of paragraph (a) of this subdivision and that the department benefits from developing and requiring that substantially similar design.

6. Each time a facility updates a list as required under paragraph (f) of subdivision three and subparagraph (v) of paragraph (f) of subdivision four of this section, the facility shall submit the updated list to the department. The department may prescribe the form in which the updated list must be submitted to the department.

7. (a) The department shall monitor each facility's compliance with the requirements of this section using, but not limited to, the following methods:

(i) evaluating complaints made by individuals or entities to the department, including through a complaint form on the department's internet website;

(ii) reviewing any analysis prepared by individuals or entities regarding noncompliance with this section;

(iii) auditing the internet websites of facilities for compliance with this section; and

(iv) confirming that each facility submitted the lists required under subdivision six of this section.

(b) If the department determines that any facility is not in compliance with any provision of this section, the department may take any of the following actions, without regard to the order of the actions:

(i) provide a written notice to the facility that clearly explains the manner in which the facility is not in compliance with this section;

(ii) request a corrective action plan from the facility if the facility is in material noncompliance with this section, as determined under subdivision eight of this section;

(iii) share information with government agencies, the Centers for Medicare and Medicaid Services, or other entities as it deems appropriate; and

(iv) impose an administrative penalty on the facility and publicize the penalty on the commission's internet website if the facility fails to respond to the department's request to submit a corrective action plan or comply with the requirements of a corrective action plan submitted to the department, pursuant to subdivision nine of this section.

8. (a) A facility is in material noncompliance with this section if the facility fails to:

(i) comply with the requirements of subdivision two of this section; or

(ii) publicize the facility's standard charges in the form and manner required under subdivision three or four of this section.

(b) If the department determines that a facility is in material noncompliance with this section, the department may issue a notice of material noncompliance to the facility and request that the facility submit a corrective action plan. The notice must indicate the form and

manner in which the corrective action plan must be submitted to the department, and clearly state the date by which the facility must submit the plan.

(c) A facility that receives a notice under paragraph (b) of this subdivision must:

(i) submit a corrective action plan in the form and manner, and by the specified date, prescribed by the notice of violation; and

(ii) as soon as practicable after submission of a corrective action plan to the department, act to comply with the plan.

(d) A corrective action plan submitted to the department must:

(i) describe in detail the corrective action the facility will take to address any violation identified by the department in the notice provided under paragraph (b) of this subdivision; and

(ii) provide a date by which the facility will complete the corrective action plan.

(e) A corrective action plan is subject to review and approval by the department. After the department reviews and approves a facility's corrective action plan, the department may monitor and evaluate the facility's compliance with the plan.

(f) A facility is considered to have failed to respond to the department's request to submit a corrective action plan if the facility fails to submit a corrective action plan in the form and manner specified in the notice under paragraph (b) of this subdivision or by the date specified in the notice under paragraph (b) of this subdivision.

(g) A facility is considered to have failed to comply with a corrective action plan if the facility fails to address a violation within the specified period of time contained in the plan.

(h) A facility that is in material noncompliance with this section shall be placed onto a list of facilities in material noncompliance that is published on the department's public internet website, except where:

(i) the facility in material noncompliance has submitted a corrective action plan that has been approved by the department; and

(ii) the facility remains compliant with this section.

9. (a) The department may impose an administrative penalty on a facility if the facility fails to:

(i) respond to the department's request to submit a corrective action plan; or

(ii) comply with the requirements of a corrective action plan submitted to the department.

(b) The department may impose an administrative penalty on a facility for a violation of each requirement of this section. The department shall set the penalty in an amount sufficient to ensure compliance by the facility with the provisions of this section subject to the limitations in paragraph (c) of this subdivision.

(c) Using the most recently updated number of beds reported to the Centers for Medicaid and Medicare Services, the department, or another entity designated by the department, for each day a facility is determined by the department to be out of compliance, the daily civil monetary penalty may not exceed:

(i) three hundred dollars for each day the facility violated this section for a facility with a number of beds equal to or less than thirty, even if the facility is in violation of multiple discrete requirements of this section;

(ii) the number of beds multiplied by ten dollars for each day the facility violated this section for a facility with at least thirty-one beds and up to and including five hundred fifty beds, even if the facil-

ity is in violation of multiple discrete requirements of this section; or

(iii) five thousand dollars for each day the facility violated this section for a facility with a number of beds greater than five hundred fifty, even if the facility is in violation of multiple discrete requirements of this section.

(d) Each day a violation continues is considered a separate violation.

(e) In determining the amount of the penalty, the department shall consider:

(i) previous violations by the facility operator;

(ii) the seriousness of the violation;

(iii) the demonstrated good faith of the facility's operator; and

(iv) any other matters as justice may require.

(f) An administrative penalty collected under this section shall be appropriated only to the department.

10. The department may prepare and submit a report of recommendations for amending this section to the governor, the temporary president of the senate, and the speaker of the assembly, including recommendations in response to amendments by the Centers for Medicare and Medicaid Services to 45 C.F.R. Part 180.

11. No facility shall enforce any clause mandating mediation or alternative dispute resolution in any facility document, including contracts, agreements, statements, or bills, in an action arising from patient or patient guarantor non-payment of facility items or services if that facility is in material noncompliance with this section on the date that the relevant facility items or services are purchased from a provider to a patient by the facility in material noncompliance.

12. (a) If a patient believes that a facility was in material noncompliance with this section on or after the date that the relevant items or services are purchased by or provided to the patient, and the facility takes a collections action, as defined in this section, against the patient or patient guarantor, and the patient or patient guarantor believes that the material noncompliance is related to the relevant facility item or service, the patient or patient guarantor may file suit to determine if the facility was in material noncompliance with this section. The facility shall not take a collections action against the patient or patient guarantor related to the relevant facility item or service, and must stay any related pending collections action against the patient or patient guarantor, while the lawsuit is pending.

(b) A facility that has been found by a court to be in material noncompliance with this section:

(i) shall refund the third-party payer any amount of the medical debt the third-party payer has paid and shall pay a penalty to the patient or patient guarantor in an amount equal to the total amount of the debt;

(ii) shall dismiss or cause to be dismissed any court action and collections action with prejudice and pay any attorney fees and costs incurred by the patient or patient guarantor relating to the action; and

(iii) remove or cause to be removed from the patient's or patient guarantor's credit report any report made to a consumer reporting agency relating to the debt.

13. Nothing in this section:

(a) prohibits a facility from billing a patient, patient guarantor, or third-party payer, including health insurer, for items or services provided to the patient; or

(b) requires a facility to refund any payment made to the hospital for items or services provided to the patient, so long as no collection action is taken in violation of this section.

§ 5. This act shall take effect one year after it shall have become a law.