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DELAWARE STATE SENATE  
152nd GENERAL ASSEMBLY

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:

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

3 § 2501J. Purpose.

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

8 § 2502J. Definitions.

9 For purposes of this chapter:

10 (1) “Consumer” means an individual and excludes nonhuman entities.

11 (2) “Consumer reporting agency” means any person, which, for monetary fees, dues, or on a cooperative  
12 nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit  
13 information or other information on consumers for the purpose of furnishing consumer reports to third parties. This  
14 includes the three large nationwide providers of consumer reports, Equifax, TransUnion, and Experian.

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

19 (4) “Extraordinary collection action” means any of the following:

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

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

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

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

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

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

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

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

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

36 3. Commencing a civil action against an individual.

37 4. Garnishing an individual's wages.

38 (7) "Financial assistance policy" means a written policy made pursuant to 26 U.S.C. § 401(r)(4) or its  
39 implementing regulations, including 26 CFR § 1.501(r)-1.

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

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

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

46 a. Any hospital licensed under Chapter 10 of this title, whether a nonprofit subject to 26 U.S.C. §  
47 501(c)(3), a not-for-profit entity, or a for-profit entity.

48 b. Any outpatient clinic or facility affiliated with a hospital or operating under the license of a hospital as  
49 defined in Chapter 10 of this title.

50 c. Any ambulatory or surgical center.

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

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

55 (11) “Medical creditor” means any entity that provides health care services and to whom the consumer owes  
56 money for health care services, or the entity that provided health care services and to whom the consumer owes money  
57 for health care services, or the entity that provided health care services and to whom the consumer previously owed  
58 money if the medical debt has been purchased by one or more debt buyers.

59 (12) “Medical debt buyer” means an individual or entity that is engaged in the business of purchasing medical  
60 debts for collection purposes, whether it collects the debt itself or hires a third party for collection or an attorney for  
61 litigation in order to collect such debt.

62 (13) “Medical debt collector” means any person that regularly collects or attempts to collect, directly or  
63 indirectly, medical debts originally owed or due or asserted to be owed or due another. A medical debt buyer is a  
64 medical debt collector.

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

67 § 2503J. Interest and payment plans.

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

69 (b) Large health care facilities and medical debt collectors must offer to any patient a payment plan and may not  
70 require the patient to make monthly payments that exceed 5% of the patient’s gross monthly income. Failure to provide  
71 proof of income may not be used as a basis to deny any patient a payment plan.

72 (c) No initial payment on a monthly payment plan may be due within the first 90 days after the health care services  
73 were provided or during any period in which a medical creditor or medical debt collector has requested any form of  
74 documentation from a patient.

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

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

79 § 2504G. Billing and collections rules; limits on creditors.

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

82 (1) Causing an individual’s arrest.

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

84                   (3) Foreclosing on an individual’s real property.

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

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

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

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

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

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

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

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

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

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

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

112                   § 2505G. Liability for medical debt.

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

114 (b) No spouse or other person may be liable for the medical debt or nursing home debt of any other person age 18

115 or older. A spouse may voluntarily consent to assume liability, but such consent:

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

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

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

119 § 2506G. Medical debt and consumer reporting agencies.

120 (a) For a period of 1 year following the date when the consumer was first given a bill for medical debt or 3 months

121 following the date of the most recent payment made towards a payment plan on medical debt, whichever is later, no

122 medical creditor or medical debt collector may communicate with or report any information to any consumer reporting

123 agency regarding such medical debt.

124 (b) After the time period described in subsection (a) of this section, medical creditors and medical debt collectors

125 must give consumers at least one additional bill before reporting a medical debt to any consumer reporting agency. The

126 amount reported to the consumer reporting agency must be the same as the amount stated in this bill, and such bill must

127 state that the debt is being reported to a consumer reporting agency. Medical debt collectors must also provide the notice

128 required by 15 U.S.C. § 1692g before reporting a debt to a consumer reporting agency.

129 § 2507G. Prohibition against collection of medical debt during health insurance appeals.

130 (a) No medical creditor or medical debt collector that knows or should know about an internal review, external

131 review, or other appeal of a health insurance decision that is pending or was pending within the previous 60 days may do

132 any of the following:

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

134 (2) Communicate with the consumer regarding the unpaid charges for health care services for the purpose of

135 seeking to collect the charges.

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

137 services.

138 (b) If a medical debt has already been reported to a consumer reporting agency and the medical creditor or medical

139 debt collector who reported the information learns of an internal review, external review, or other appeal of a health

140 insurance decision that is pending or was pending within the previous 60 days, such medical creditor or medical debt

141 collector shall instruct the consumer reporting agency to delete the information about the debt.

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

145 § 2508G. Interest on medical debt.

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

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

149 § 2509G. Remedies.

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

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

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

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

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

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

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

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

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

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

#### SYNOPSIS

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.

Author: Senator Mantzavinos