

CHAPTER 305

HEALTH CARE POLICY AND FINANCING

SENATE BILL 23-252

BY SENATOR(S) Van Winkle and Gonzales, Buckner, Coleman, Cutter, Danielson, Exum, Fields, Hansen, Jaquez Lewis, Marchman, Moreno, Priola, Rodriguez;
 also REPRESENTATIVE(S) Daugherty and Hartsook, Amabile, Bacon, Boesenecker, Bradley, Brown, Dickson, English, Froelich, Garcia, Gonzales-Gutierrez, Hamrick, Herod, Jodeh, Joseph, Kipp, Lieder, Lindsay, Lindstedt, Lukens, Lynch, Mabrey, Marshall, Martinez, Mauro, McCormick, McLachlan, Michaelson Jenet, Ortiz, Ricks, Sharbini, Sirota, Snyder, Soper, Titone, Valdez, Weissman, Woodrow, McCluskie.

AN ACT**CONCERNING HOSPITAL MEDICAL PRICE TRANSPARENCY.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 6-1-105, **add** (1)(bbbb) as follows:

6-1-105. Unfair or deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

(bbbb) VIOLATES SECTION 25.5-1-904.

SECTION 2. Repeal of provisions being relocated in this act. In Colorado Revised Statutes, **repeal** part 8 of article 3 of title 25.

SECTION 3. In Colorado Revised Statutes, **add with amended and relocated provisions** part 9 to article 1 of title 25.5 as follows:

**PART 9
 HOSPITAL PRICE TRANSPARENCY**

25.5-1-901. [Formerly 25-3-801] Legislative declaration. (1) The general assembly finds and declares that:

(a) Section 1001 of the "Patient Protection and Affordable Care Act", ~~of 2010~~;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

Pub.L. 111-148, as amended by section 10101 of the "Health Care and Education Reconciliation Act of 2010", Pub.L. 111-152, amended Title XXVII of the "Public Health Service Act", Pub.L. 78-410, in part, by adding a new section 2718 (e), requiring, in part, that each hospital operating within the United States establish, update, and make public a list of the hospital's standard charges for the items and services that the hospital provides;

(b) Effective January 1, 2021, the federal centers for medicare and medicaid services published the final rule to implement the law, codified at 45 CFR 180;

(c) In its summary of the final rule, CMS states that information on hospital standard charges is necessary for the public to "make more informed decisions about their care" and that the "impact of these final policies will help to increase market competition, and ultimately drive down the cost of health care services, making them more affordable for all patients";

(d) On July 9, 2021, President Biden, building upon efforts of past presidents, issued the "Executive Order on Promoting Competition in the American Economy", directing the secretary of the United States department of health and human services to support new and existing price transparency initiatives for hospitals;

(e) Health-care price transparency is in the best interest of all Coloradans, including:

(I) The state government, which purchases health-care services for almost a quarter ONE-FOURTH of all Coloradans;

(II) Colorado businesses, which fund employee medical expenses; and

(III) Colorado residents, who ultimately bear the brunt of high health-care costs in the form of higher taxes, lower wages, and residents' own out-of-pocket spending;

(f) Moreover, health-care prices in Colorado are among the highest in the nation;

(g) However, not all Colorado hospitals are in compliance with all of the disclosure requirements under federal law and other state laws governing health-care price transparency; and

(h) This lack of compliance with health-care price transparency laws by Colorado hospitals decreases the likelihood that Colorado consumers will be fully aware of affordable health-care options before purchasing items and services from hospitals, placing health-care consumers at greater risk of collection actions and other adverse actions relating to unpaid medical bills.

(2) Therefore, the general assembly finds and declares that it is imperative to protect Colorado health-care consumers from collection actions and other adverse actions taken by Colorado hospitals during the time when the hospital was not in material compliance with hospital price transparency laws intended to protect health-care consumers.

25.5-1-902. [Formerly 25-3-802] Definitions. As used in this ~~section~~ PART 9, unless the context otherwise requires:

(1) "Collection action" means 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 hospital on a date during which the hospital was not in material compliance with hospital price transparency laws:

(a) 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 hospital;

(b) Suing the patient or patient guarantor or enforcing an arbitration or mediation clause in any hospital documents, including contracts, agreements, statements, or bills; or

(c) Directly or indirectly causing a report to be made to a consumer reporting agency.

(2) (a) "Collection agency" means any:

(I) Person who engages in a business, the principal purpose of which is the collection of debts; or

(II) Person who:

(A) Regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another;

(B) Takes assignment of debts for collection purposes;

(C) Directly or indirectly solicits for collection debts owed or due or asserted to be owed or due to another; or

(D) Collects debt for the department of personnel.

(b) "Collection agency" does not include:

(I) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(II) Any person while acting as a collection agency for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a collection agency does so only for creditors to whom it is so related or affiliated and if the principal business of the person is not the collection of debts;

(III) Any officer or employee of the United States or any state to the extent that collecting or attempting to collect any debt is in the performance of the officer's or employee's official duties;

(IV) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(V) Any debt-management services provider operating in compliance with or exempt from the "Uniform Debt-Management Services Act", part 2 of article 19 of title 5;

(VI) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that:

(A) The activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(B) The activity concerns a debt that was extended by the person;

(C) The activity concerns a debt that was not in default at the time it was obtained by the person; or

(D) The activity concerns a debt obtained by the person as a secured party in a commercial credit transaction involving the creditor;

(VII) Any person whose principal business is the making of loans or the servicing of debt not in default and who acts as a loan correspondent, seller and servicer for the owner, or holder of a debt that is secured by a deed of trust on real property, whether or not the debt is also secured by an interest in personal property;

(VIII) A limited gaming or racing licensee acting pursuant to article 33 of title 44.

(c) Notwithstanding the provisions of subsection (2)(b) of this section, "collection agency" includes any person who, in the process of collecting the person's own debts, uses another name that would indicate that a third person is collecting or attempting to collect such debts.

(3) (a) "Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties. "Consumer reporting agency" includes any person defined in 15 U.S.C. sec. 1681a (f) or section 5-18-103 (4).

(b) "Consumer reporting agency" does not include any business entity that provides check verification or check guarantee services only.

(4) (a) "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not the obligation has been reduced to judgment.

(b) "Debt" does not include a debt for business, investment, commercial, or agricultural purposes or a debt incurred by a business.

(5) "Debt collector" means any person employed or engaged by a collection

agency to perform the collection of debts owed or due or asserted to be owed or due to another.

(6) "Federal centers for medicare and medicaid services" or "CMS" means the centers for medicare and medicaid services in the United States department of health and human services.

(7) "Hospital" means, consistent with 45 CFR 180.20, a hospital:

(a) Licensed or certified by the department OF PUBLIC HEALTH AND ENVIRONMENT pursuant to section 25-1.5-103 (1)(a); or

(b) Approved by the department OF PUBLIC HEALTH AND ENVIRONMENT as meeting the standards established for licensing a hospital.

(8) "Hospital price transparency laws" means section 2718 (e) of the "Public Health Service (PHS) Act", Pub.L. 78-410, as amended, and rules adopted by the United States department of health and human services implementing section 2718 (e).

(9) "Items and services" or "items or services" means "items and services" as defined in 45 CFR 180.20.

25.5-1-903. [Formerly 25-3-803] Failure to comply with hospital price transparency laws - prohibiting collection of debt - penalty. (1) ~~(a) Except as provided in subsection (1)(b) of this section, on and after August 10, 2022, A hospital that is not in material compliance with hospital price transparency laws on the date that items or services are purchased from or provided to a patient by the hospital shall not initiate or pursue a collection action against the patient or patient guarantor for a debt owed for the items or services.~~

~~(b) This part 8 applies, on and after February 15, 2023, to critical access hospitals licensed and certified by the department pursuant to 42 CFR 485 subpart F.~~

(2) If a patient believes that a hospital was not in material compliance with hospital price transparency laws on ~~a THE date on or after August 10, 2022,~~ that items or services were purchased by or provided to the patient, and the hospital takes a collection action against the patient or patient guarantor, the patient or patient guarantor may file suit to determine if:

(a) The hospital was materially out of compliance with ~~the hospital price transparency laws, and rules, and~~ OR regulations on the date ~~of service~~ THE ITEMS OR SERVICES WERE PROVIDED; and if

(b) The noncompliance is related to the items or services. The hospital shall not take a collection action against the patient or patient guarantor while the lawsuit is pending.

(3) ~~A hospital that has been found by~~ If a judge or jury, considering compliance standards issued by the federal centers for medicare and medicaid services, FINDS

A HOSPITAL to be materially out of compliance with hospital price transparency laws, ~~and~~ rules, ~~and~~ OR regulations, THE HOSPITAL SHALL:

(a) ~~Shall~~ Refund the payer any amount of the debt the 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;

(b) ~~Shall~~ Dismiss or cause to be dismissed any court action with prejudice and pay any attorney fees and costs incurred by the patient or patient guarantor relating to the action; ~~and~~

(c) 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; AND

(d) NOTIFY THE STATE DEPARTMENT OF THE MATERIAL NONCOMPLIANCE WITH HOSPITAL PRICE TRANSPARENCY LAWS, RULES, OR REGULATIONS.

(4) Nothing in this ~~part 8~~ PART 9:

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

(b) Requires a hospital 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 ~~part 8~~ PART 9.

25.5-1-904. Transparency - hospitals - standard charges - shoppable services - enforcement. (1) ON OR BEFORE OCTOBER 1, 2023, EACH HOSPITAL SHALL MAKE PUBLIC AND POST THE HOSPITAL'S MEDICARE REIMBURSEMENT RATES, IF APPLICABLE.

(2) (a) THE STATE DEPARTMENT SHALL CONDUCT PERFORMANCE ASSESSMENTS FOR ADHERENCE TO FEDERAL TRANSPARENCY RULES BY:

(I) REVIEWING RELEVANT INFORMATION PROVIDED TO THE STATE DEPARTMENT CONCERNING A HOSPITAL'S PERFORMANCE ASSESSMENT IN CONNECTION WITH THIS SECTION;

(II) AUDITING HOSPITAL WEBSITES FOR PERFORMANCE RELATIVE TO FEDERAL PRICE TRANSPARENCY RULES, AND IN EVALUATING PERFORMANCE, THE DEPARTMENT SHALL FOLLOW RULES, STANDARDS, AND GUIDANCE PUBLISHED BY THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID; AND

(III) CONFIRMING THAT EACH HOSPITAL SUBMITTED THE LISTS REQUIRED BY THIS SECTION.

(b) IF THE STATE DEPARTMENT DETERMINES THAT A HOSPITAL HAS PERFORMED POORLY IN ITS PERFORMANCE ASSESSMENT, THE STATE DEPARTMENT MAY:

(I) ISSUE A WRITTEN NOTICE TO THE HOSPITAL THAT CLEARLY EXPLAINS THE

MANNER IN WHICH THE DEPARTMENT DETERMINED THAT THE HOSPITAL PERFORMED POORLY ON THE ADHERENCE TO PRICE TRANSPARENCY; AND

(II) PROVIDE TECHNICAL ASSISTANCE TO THE HOSPITAL TO IMPROVE PERFORMANCE.

(3) ON OR BEFORE FEBRUARY 1, 2024, THE STATE DEPARTMENT SHALL CREATE AND MAINTAIN A PUBLICLY AVAILABLE LIST ON ITS WEBSITE OF HOSPITALS THAT PERFORM POORLY ON THE DEPARTMENT'S PERFORMANCE ASSESSMENT. SUCH NOTICES AND COMMUNICATIONS ARE SUBJECT TO PUBLIC DISCLOSURE UNDER 5 U.S.C. SEC. 552, AS AMENDED, NOTWITHSTANDING ANY EXEMPTIONS OR EXCLUSIONS TO THE CONTRARY, IN FULL WITHOUT REDACTION. THE STATE DEPARTMENT SHALL UPDATE THE LIST AT LEAST ANNUALLY.

(4) A PERSON THAT VIOLATES SUBSECTION (1) OF THIS SECTION COMMITS A DECEPTIVE TRADE PRACTICE UNDER SECTION 6-1-105.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 2, 2023