

October 2, 2024

During the SFY 2025 state budget process this year, we had reported on a far-reaching proposal in the budget focused on addressing patient protections in medical billing and debt. Please see attached Part O from the final budget and a summary embedded below from the RMS Final Budget chart (our government relations firm) that outlines this section.

These provisions take effect later this month on October 20th however to this point we have not seen the release of corresponding regulations from the DoH. Nevertheless, we wanted to highlight two provisions related to patient consent and patient use of credit cards for payment which we are seeking further guidance and clarity on related to applicability to NYS Council member agencies. We will share more information as soon as possible.

As always, if you have immediate concerns regarding this information, please feel free to reach out to me at: lauri@nyscouncil.org or call me at (518) 461-8200 at your convenience.

Stand by for more.

(1) Section 18-c of Public Health Law (see language below)

This establishes a new section related to separate patient consent for treatment and payment for health care services. It requires informed consent from a patient to provide care to be obtained separately from a patient's consent to pay for the services. Further, it states that consent to pay by a patient shall not be given prior to the patient receiving such services and discussing treatment costs. The law defines consent to mean:

(a) clearly and conspicuously communicates the individual's authorization of an act or practice;

(b) is made in the absence of any mechanism in the user interface that has the purpose or substantial effect of obscuring, subverting, or impairing decision-making or choice to obtain consent; and

c) cannot be inferred from inaction.

Note this section was included in a broad area of public health law (general provisions) and does not specifically define the "health care services" this applies to. We are seeking further guidance from the O agencies and NYSDOH in this regard.

* § 18-c. Separate patient consent for treatment and payment for health care services. Informed consent from a patient to provide any treatment, procedure, examination or other direct health care services shall be obtained separately from such patient's consent to pay for the services. Consent to pay for any health care services by a patient shall not be given prior to the patient receiving such services and discussing treatment costs. For purposes of this section, "consent" means an action which: (a) clearly and conspicuously communicates the individual's authorization of an act or practice; (b) is made in the absence of any mechanism in the user interface that has the purpose or substantial effect of obscuring, subverting, or impairing decision-making or choice to obtain consent; and (c) cannot be inferred from inaction.

* NB Effective October 20, 2024

(2) Sections 349-g & 519-a of General Business Law (see language below)

Section 349-g prohibits hospitals or health care providers to complete any portion of an application for medical financial products for a patient or otherwise arrange for or establish an application that is not completely filled out by the patient.

Section 519a states that no hospital or health care provider shall require credit card pre-authorization nor require the patient to have a credit card on file prior to providing emergency or medically necessary medical services to a patient. It further states that hospitals and health care providers shall notify all patients about the risks of paying for

medical services with a credit card, and highlight that in using a credit card the patient is forgoing state and federal protections regarding medical debt. This section gives the commissioner of NYSDOH the authority and sole discretion to set requirements for the contents of such notices.

Note, the section defined "health care provider" as one licensed, registered or certified under Title Eight of the Education Law so these are

the licensed professionals by NYSED. Further, we are seeking guidance from the O agencies and NYSDOH related to what services these apply to

since language says "emergency necessary medical services."

* § 349-g. Restrictions on applications for and use of credit cards

and medical financial products. 1. For purposes of this section, the following terms shall have the following meanings:

(a) "Medical financial products" shall mean medical credit cards and third-party medical installment loans.

(b) "Health care provider" shall mean a health care professional licensed, registered or certified pursuant to title eight of the education law.

(c) "Medical credit card" shall mean a credit card issued under an open-end or closed-end plan offered specifically for the payment of health care services, products, or devices provided to a person.

2. It shall be prohibited for any hospital or health care provider, or employee or agent of a hospital or health care provider, to complete any portion of an application for medical financial products for the patient or otherwise arrange for or establish an application that is not completely filled out by the patient.

* NB Effective October 20, 2024

* § 519-a. Credit cards and payment for health care services. 1. For purposes of this section, the term "credit card" shall have the same meaning as in section five hundred eleven of this article.

2. No hospital or health care provider shall require credit card pre-authorization nor require the patient to have a credit card on file prior to providing emergency or medically necessary medical services to such patient.

3. Hospitals and health care providers shall notify all patients about the risks of paying for medical services with a credit card. Such notification shall highlight the fact that by using a credit card to pay for medical services, the patient is forgoing state and federal protections that regard medical debt. The commissioner of health shall have the authority and sole discretion to set requirements for the contents of such notices.

* NB Effective October 20, 2024

From RMS Final Budget Summary:

Medical Debt Patient Protections: Includes a proposal to update and expand hospital financial assistance programs for low-income and underinsured patients. Limits the ability of hospitals to commence legal actions for unpaid bills by patients with income below 200% of FPL. For those below 200% of FPL it says hospitals shall waive all charges and no nominal payments shall be required. For those between 200% and 300% of FPL and for the underinsured, hospitals shall collect a maximum of 10% of patient cost sharing. For those with income 301% and 400% of FPL and underinsured, hospitals shall collect a maximum of 10% of patient cost sharing amount. It also expands hospital financial assistance programs, limits the size of monthly payments for medical debt, imposes limits on when legal action can be commenced, states hospitals cannot deny admission to emergency department with unpaid medical bills and other protections. Also includes a proposal to require that informed consent for health care services be obtained separately from such patient's consent to pay for the services. It will also require that

- 1) A hospital, health care provider, or employee of the provider to complete an application for medical financial assistance and

2) Hospitals or health care providers to require credit card pre-authorization or require the patient to have cash on hand for providing services.