

## CHAPTER 112

AN ACT concerning the collection of unpaid hospital accounts and supplementing Title 17B of the New Jersey Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.17B:30-41 Findings, declarations relative to collection of unpaid hospital accounts.

1. The Legislature finds and declares that:

a. The rising cost of hospital-based health care in this State impedes the ability of the State and insurers to provide reasonably priced, comprehensive health insurance to the citizens of the State.

b. Hospitals located within the State report more than \$1 billion annually in debts that they are unable to collect.

c. The cost of covering the unpaid care represented by the debt is spread among citizens, private insurers, hospitals and the State in the form of higher bills for hospital-based care.

d. A significant portion of the uncollected debt is related to copayments and deductibles that are difficult for hospitals to collect efficiently.

e. The State's Set off of Individual Liability (SOIL) program has proven to be an administratively efficient means of collecting debts owed to State agencies.

f. It is, therefore, in the public interest to create a New Jersey Hospital Care Payment Commission, the duties of which would include, but not be limited to, creating a system for using the State's SOIL program to collect valid hospital debts.

C.17B:30-42 Definitions relative to collection of unpaid hospital accounts.

2. As used in this act:

"Coinsurance" means the percentage of a charge covered by a health plan that must be paid by a person covered under the health plan.

"Collection agency" means the Department of the Treasury and any company, agency or law firm engaged in collecting debts that the Department of the Treasury may determine to engage to assist it in collecting debts.

"Commission" means the Hospital Care Payment Commission created pursuant to this act.

"Debt" means money owed by a patient to a hospital, or by someone who is legally responsible for payment for a patient, and includes late payment penalties and interest thereon. It does not include monies owed to a hospital by a health plan for services provided by the hospital to a person with coverage under that plan, or amounts subject to dispute between a health plan and a hospital.

"Debtor" means an individual owing money to or having a delinquent account with a hospital, which obligation has not been adjudicated, satisfied by court order, set aside by court order or discharged in bankruptcy.

"Deductible" means the amount of covered charges under a health plan that an individual must pay for a services before a health plan begins to pay on a covered charge.

"General Hospital" and "hospital" have the meanings set forth in N.J.A.C.8:43G-1.2.

"Health plan" means an individual or group health benefits plan that provides or pays the cost of hospital and medical expenses, dental or vision care, or prescription drugs, and is provided by or through an insurer, health maintenance organization, the Medicaid program, the Medicare program, a Medicare+Choice provider or Medicare supplemental insurer, an employer-sponsored group health benefits plan, government or church-sponsored health benefits plan or a multi-employer welfare arrangement.

"Medicaid" means the program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

"Medicare" means the program established by Pub.L.89-97 (42 U.S.C. s.1395 et seq.) as amended, or its successor plan or plans.

"Patient" means a person who receives services in a hospital on an inpatient or outpatient basis.

C.17B:30-43 "Hospital Care Payment Commission."

3. a. There is established, within the Department of Banking and Insurance, a "Hospital Care Payment Commission." The commission is constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the commission of

the powers conferred by this act shall be deemed and held to be an essential governmental function of the State.

b. The commission shall consist of the Commissioners of Banking and Insurance, Health and Senior Services and Human Services and the State Treasurer, who shall serve ex officio, and a representative of the hospital community appointed by the Governor for a term of three years. The Commissioner of Banking and Insurance shall serve as chair of the commission.

The powers of the commission shall be vested in the members thereof, and a majority of the total authorized membership of the commission shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the commission at any meeting of the commission by the affirmative vote of a majority of the members present. A vacancy in the membership of the commission shall not impair the right of a quorum of the members to exercise all the powers and perform all the duties of the commission.

c. Each ex officio member may designate an officer or employee of the member's department to serve as the member's representative at meetings of the commission, and each such designee may lawfully vote and otherwise act on behalf of the member. Any such designation shall be in writing delivered to the commission, and shall continue in effect until revoked or amended by a writing delivered to the commission.

d. On or before March 31 in each year, the commission shall make an annual report of its activities for the preceding calendar year to the Governor and the Legislature. Each report shall set forth at least the following: the number of hospitals participating in the program; the number and value of the debts processed; the number of challenges received by the commission; the number of debts returned to hospitals for incomplete information or a finding of lack of validity of the debt; the total level of funds recovered; and the total funds returned to hospitals. The commission shall also report at least quarterly to each participating hospital on the results regarding debts assigned by that hospital.

e. The director of the Division of Budget and Accounting in the Department of the Treasury is authorized to provide all necessary accounting services to the commission, and to maintain the books, records and accounts of the commission, including receipts, disbursements, contracts and any other matter related to its financial standing.

#### C.17B:30-44 "New Jersey Hospital Care Payment Fund."

4. a. There is established the "New Jersey Hospital Care Payment Fund" in the Department of the Treasury.

b. The fund shall be comprised of monies collected from debtors of hospitals pursuant to this act, and any other monies appropriated thereto to carry out the purposes of this act.

c. The fund shall be a nonlapsing fund, from which costs shall be paid in the following order, for each hospital participating:

(1) administrative costs of the commission;

(2) administrative fees to the collection agency;

(3) 50% of the remainder, but only from monies collected from debtors of hospitals pursuant to this act after paragraphs (1) and (2) of this subsection are paid, shall be payable to the hospital from which the debt originated within 90 days of receipt of monies related to discharge of the assigned debt into the fund; and

(4) the remainder, after paragraphs (1), (2) and (3) of this subsection are paid, shall be deposited into the General Fund.

#### C.17B:30-45 Authority of commission.

5. The commission is authorized to:

a. Accept assignment of debts from hospitals which have followed the procedures outlined in section 7 of this act, or such other procedures as the commission shall adopt.

b. Pursue collection of debts pursuant to this act. The commission shall initiate the program in phases. The first phase may involve acceptance of assignment of debt that:

(1) derives from a limited number of hospitals;

(2) consists of coinsurance and deductibles that remain payable after adjudication by a health plan;

- (3) is assigned by a general hospital;
- (4) is less than two years old at the date of assignment to the commission, as determined by the date of discharge for inpatient services and date of service for outpatient services;
- (5) involves any of the above or any combination of the above, or includes such other limitations as the commission determines are desirable to smooth implementation of the program created by this act.

After the first phase, the commission may expand acceptance of assignments as it shall determine pursuant to this act.

c. Test assignment data received from the hospitals to determine whether the records are sufficient to make set-off practicable, and return records that do not pass the test to the hospitals.

d. Conduct such fact-finding, as is necessary, in preparation for making a determination as to the validity of debts.

e. Make final determinations as to the validity of debts.

f. Determine the payment to be collected from the debtor, based upon a "fairness formula" to be determined by the commission. For debt processed by the commission during the fiscal year starting on July 1, 2003, the fairness formula shall be based upon the Department of Health and Senior Services' report entitled "Net Patient Revenue to Charge Ratio," for the most recent year available. For debt processed by the commission during the fiscal year starting on July 1, 2004 and thereafter, the fairness formula shall be based upon the most recent available "Net Patient Revenue to Charge Ratio" report, or such other measure as the commission determines would most fairly reimburse hospitals for treatment.

g. Offset liability for the hospital debts against the New Jersey Gross Income Tax pursuant to N.J.S.54A:1-1 et seq., including an earned income tax credit provided as a refund pursuant to P.L.2000, c.80 (C.54A:4-6 et al.), or whenever any individual is eligible to receive an NJ SAVER rebate or a homestead rebate pursuant to P.L.1990, c.61 (C.54:4-8.57 et al.) or P.L.1999, c.63 (C.54:4-8.58a et al.), and if the rebate is not required to be paid over to the municipal tax collector under the provisions of section 8 of P.L.1990, c.61 (C.54:4-8.64), and including any other financial resource authorized as a source capable of offset for any reason by section 1 of P.L.1981, c.239 (C.54A:9-8.1 et seq.).

h. Adjudicate the validity of all set-off challenges pursuant to N.J.A.C. 18:35-10.1 et seq.

i. Make such decisions as to compromise and waiver of interest, penalties, post-judgment interest and write-off as it shall deem prudent.

j. Refer assigned debts under section 7 of this act to a collection agency in the event that offsetting is not practical or is not successful in fully resolving the debt.

k. Create standards for settlement of debts through the collection agency process.

l. Determine to cease accepting debt from a hospital until such time as the hospital can demonstrate to the satisfaction of the commission that its accuracy has improved to acceptable levels where the commission determines that data forwarded by a hospital to the commission has an unacceptable level of inaccuracies regarding validity or quality of the debt forwarded to the commission.

m. Contract with other State agencies for services, including administrative services necessary to carry out the duties of the commission.

n. Fund the cost of its operations from the fund created by section 4 of this act.

o. Adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the purposes of this act; except that, notwithstanding any provision of P.L.1968, c.410 to the contrary, the commission may adopt, immediately upon filing with the Office of Administrative Law, such regulations as the commission deems necessary to implement the provisions of this act, which shall be effective for a period not to exceed six months and may thereafter be amended, adopted or readopted by the commission in accordance with the requirements of P.L.1968, c.410.

C.17B:30-46 Decisions of commission constitute final agency action.

6. Decisions of the commission, regarding the fairness formula, the validity of debts, the adequacy of data provided to the commission by hospitals for use in the program, and other such

matters as shall arise concerning the administration of the program, shall constitute final agency action.

C.17B:30-47 Procedures for participating hospitals.

7. a. The following procedures shall apply for those hospitals that wish to participate in the voluntary assignment program created by this act.

b. The hospital shall file with the commission a notice signifying its intent to participate voluntarily and certifying the following:

(1) the hospital has determined that the patient is not eligible for charity care under the New Jersey Hospital Care Payment Assistance Program established by the Department of Health and Senior Services pursuant to section 10 of P.L.1992, c.160 (C.26:2H-18.60);

(2) the hospital has submitted a "clean claim" pursuant to P.L.1999, c.154 (C.17B:30-23 et al.) and P.L.1999, c.155 (C.17B:30-26 et seq.) to the patient, a responsible party, Medicaid, Medicare or a health plan, as applicable, within a reasonable time following the patient's discharge, or in the case of outpatient service, the date of service;

(3) the claims have been fully adjudicated by a health plan, Medicare or Medicaid, where applicable, and a debt remains outstanding;

(4) the hospital has not initiated collection procedures against the patient or responsible party while a claim was pending adjudication with Medicare or a health plan, for which a debt remains outstanding;

(5) the hospital has notified the patient of the hospital's intention, if the account is not paid in full, or alternatively through a payment plan with the hospital, to proceed with legal action, or to turn the bill over to the State Hospital Care Payment Commission for collection.

c. Nothing herein shall be deemed to create any new right to collection of hospital debts by hospitals beyond existing law; nor shall it be deemed to preclude any existing right to collection.

d. The commission may determine the content of the notice required by paragraph (5) of subsection b. of this section to the patient concerning the likelihood that the account will be turned over to the commission for collection.

e. The minimum amount of an unpaid bill that may be assigned to the commission by a hospital is \$100, or such other minimum as the commission shall determine by regulation.

f. Upon receipt of the voluntary assignment, the Department of the Treasury shall send, on behalf of the commission, a notice to the person named as a debtor of the hospital, notifying the person as to receipt of the assignment by the commission, providing the person with 30 days to challenge the validity of the debt, and providing notice that in the absence of such challenge, a Certificate of Debt will be filed with the Superior Court of New Jersey. The notice shall also include a statement on the commission's intention to take action to set off the liability against any refund of taxes pursuant to the "New Jersey Gross Income Tax Act" including an earned income tax credit, a NJ SAVER rebate or a homestead rebate, or other such funds as may be authorized by law.

g. If the person named as a debtor responds within the 30-day period, the person shall be provided with an opportunity to present, either in writing or in person, evidence as to why the person does not believe he is responsible for the debt. The commission shall provide written notice to both the person and the hospital as to its determination regarding the validity of the debt, including the imposition of collection fees and interest, if applicable.

h. If the person fails to respond within 30 days to the commission, the commission may utilize the provisions of the Set off of Individual Liability (SOIL) program established pursuant to P.L.1981, c.239 (C.54A:9-8.1 et seq.), to collect any surcharge levied under this section that is unpaid on or after the effective date of this act.

As additional remedies, the commission may utilize the services of a collection agency to settle the debt and may also issue a certificate to the Clerk of the Superior Court stating that the person identified in the certificate is indebted under this law in such amount as shall be stated in the certificate. The certificate shall reference this act. Thereupon the clerk to whom such certificate shall have been issued shall immediately enter upon the record of docketed judgments: the name of the person as debtor; the State as creditor; the address of the person, if shown in the certificate; the amount of the debt so certified; a reference to this act under which the debt is

assessed; and the date of making the entries. The docketing of the entries shall have the same force and effect as a civil judgment docketed in the Superior Court, and the commission shall have all the remedies and may take all of the proceedings for the collection thereof which may be had or taken upon the recovery of a judgment in an action, but without prejudice to any right of appeal. Upon entry by the clerk of the certificate in the record of docketed judgments in accordance with this provision, interest in the amount specified by the court rules for post-judgment interest shall accrue from the date of the docketing of the certificate; however, payment of the interest may be waived by the commission.

i. Any collection efforts undertaken pursuant to this act shall be undertaken in accordance with the "Health Insurance Portability and Accountability Act of 1996," Pub.L. 104-191 and 45 C.F.R. 160.101 to 164.534, or any other similar law. The commission and any other entity performing collection activities pursuant to this act is authorized to enter into any agreements required to comply with such laws, including, but not limited to, entering into agreements with the hospitals and collection agencies to provide for appropriate safeguarding of information.

8. This act shall take effect on the 30th day after enactment.

Approved July 1, 2003.