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Consumer Protection Section
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M E M O R A N D U M

TO: Collection Agency Licensees and Interested Parties

FROM: Nicholas Brechun, Compliance Supervisor
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**RE: Health-care Billing Requirements for Indigent Patients,
HB 21-1198**

In 2021, the Colorado legislature passed House Bill 21-1198 Health-care Billing Requirements for Indigent Patients. The Governor signed House Bill 22-1403 on May 20, 2022, which extended the original June 1, 2022 effective date to September 1, 2022 for several provisions of HB21-1198. The Colorado Department of Health Care Policy and Financing webpage that discusses HB21-1198 implementation is: <https://hcpf.colorado.gov/hospital-discounted-care>.

HB21-1198 creates requirements for notice and certain limitations on collections of medical debt in §§ 6-20-201, 202, and 203, C.R.S., that are discussed in further detail below. It also amended the Colorado Fair Debt Collection Practices Act (“CFDCPA”) to add an additional unfair practice, an attempt to collect a debt that violates certain of the new HB21-1198 requirements, 6-20-203 (1), (2), (3)(b), (4)(a), (4)(b)(I), (4)(d), (4)(e), or (5)(a) to (5)(c), C.R.S. See § 5-16-108(l), C.R.S.

I. Notice.

HB21-1198 amends § 6-20-202, C.R.S. to require a notice at least thirty (30) days before any collection activity on certain kinds of medical debt. Specifically, § 6-20-202(1)(a), C.R.S. provides that

“[w]hen a person has health benefit coverage to provide payment for care or treatment rendered by a health-care provider and the person has notified the health-care provider of coverage within thirty days after the date the care or treatment was rendered, and if the health coverage plan, as defined in section 10-16-102(34), C.R.S., pays only a portion of the debt, prior to the assignment of the debt to a licensed collection agency, the health-care provider shall mail written notice to the last-known address of the person responsible for payment of the debt at least thirty days before any collection activity on any amount due and owing the health-care provider.”

The provision requires that the notice include “the amount due and owing; the name, address, and telephone number of the health-care provider; where payment may be made; the date of service; and the last date or number of days after the date of the notice the health-care provider will accept payment prior to the debt being submitted to a collection agency or reporting adverse information to a consumer reporting agency for the debt for which notice was provided.” § 6-20-202(1)(b), C.R.S.

If the health-care provider fails to provide the notice, “the health-care provider shall not pursue any rights to collect such outstanding amount either through a collection agency or by any further efforts of the health-care provider to collect the debt.” § 6-20-202(2)(a), C.R.S. In addition, the health-care provider “may not report adverse information to a consumer reporting agency for the debt for which notice was provided without providing the required notice”. *Id.* The health-care provider “shall assist the person in correcting any adverse credit information because of the health-care provider's failure to provide,” the required notice. *Id.*

A health-care provider may remedy a failure to give notice “by providing a written report to the collection agency to withhold any collection activity and withholding any of the health-care provider's own collection efforts until the provider complies with the notice and time requirements.” § 6-20-202(2)(b), C.R.S. The statute provides it shall not be construed to require “additional attempts to notify a person of the person's portion of the debt other than mailing the notice ... to the person's last-known address and maintaining a record of such mailing.” § 6-20-202(c), C.R.S. The provision provides that the failure of “a health-care provider or its agent to provide the notice required ... section shall not create a cause of action or remedy against a collection agency under the ‘Colorado Fair Debt Collection Practices Act.’” § 6-20-202(d), C.R.S.

II. Limitations on Collections Actions.

HB21-1198 also provides limitations on collections actions by “medical creditors.” “Medical creditor” is defined as “an entity that attempts to collect on a medical debt, including: (a) A health-care provider or health-care provider's billing office; (b) A collection agency, as defined in section 5-16-103(3); (c) A debt buyer, as defined in section 5-16-103(8.5); and (d) A debt collector, as defined in 15 U.S.C. sec. 1692a (6).” § 6-20-202(1), C.R.S.

A. Impermissible extraordinary collections actions may not be used by any medical creditor to collect debts owed for hospital services.

The statute limits certain collections actions. First, “[b]eginning June 1, 2022, impermissible extraordinary collection actions may not be used by any medical creditor to collect debts owed for hospital services.” § 6-20-203(1), C.R.S. “Impermissible extraordinary collection action” means “initiating foreclosure on an individual's primary residence or homestead, including a mobile home, as defined in section 38-12-201.5(5).” § 6-20-201(5), C.R.S.

B. No medical creditor collecting on a debt for hospital services shall engage in any permissible extraordinary collections actions until one hundred eighty-two days after the date the patient receives hospital services.

Second, “[b]eginning June 1, 2022, no medical creditor collecting on a debt for hospital services shall engage in any permissible extraordinary collection actions until one hundred eighty-two days after the date the patient receives hospital services.” “Permissible extraordinary collection action” is defined as “an action other than an impermissible extraordinary collection action that requires a legal or judicial process, including but not limited to placing a lien on an individual’s real property, attaching or seizing an individual’s bank account or any other personal property, or garnishing an individual’s wages.” § 6-20-201(7), C.R.S. A permissible extraordinary collection action “does not include the assertion of a hospital lien pursuant to section 38-27-101.” *Id.*

C. At least thirty days before taking any permissible extraordinary action, collecting on a debt for hospital services, health-care provider or health-care provider’s billing office shall notify the patient of potential collection actions.

Third, “beginning September 1, 2022, at least thirty days before taking any permissible extraordinary collection action, [a health-care provider or health-care provider’s billing office] collecting on a debt for hospital services shall notify the patient of potential collection actions and shall include with the notice a statement developed by the department of health care policy and financing that explains the availability of discounted care for qualified individuals and how to apply for such care.” § 6-20-203(3)(a), C.R.S.

In addition, a collection agency, as defined in section 5-16-103(3), a debt buyer, as defined in section 5-16-103(8.5), and a debt collector, as defined in 15 U.S.C. sec. 1692a (6) “collecting on a debt for hospital services shall include the following statement in the notices the medical creditor provides to the patient pursuant to section 5-16-109(1) and 15 U.S.C. sec. 1692g (a): ‘Pursuant to Colorado law, discounts for hospital services are available for qualified individuals.’” § 6-20-203(3)(b)(I), C.R.S. The statement “must include a link to the written explanation of the patient’s rights that is posted to the department of health-care policy and financing’s website pursuant to section 25.5-3-505-(5)(a).” *Id.* A collection agency, a debt buyer, and a debt collector, “shall not take any permissible extraordinary collection actions until the later of thirty days from the date of sending the notice required pursuant to subsection (3)(b)(I) of this section or the completion of the validation requirements described in section 5-16-109(2) and 15 U.S.C. sec. 1692g (b).” § 6-20-203(3)(b)(II), C.R.S.

- D. If a medical creditor collecting on a debt for hospital services bills or initiates collection activities and it is later determined that the patient should have been screened, the medical creditor shall take required action.

Fourth, “beginning September 1, 2022, if a medical creditor collecting on a debt for hospital services bills or initiates collection activities and it is later determined that the patient should have been screened pursuant to section 25.5-3-503 and is determined to be a qualified patient, as defined in section 25.5-3-501(5), or it is determined that the patient's bill is eligible for reimbursement through a public health-care coverage program or the Colorado indigent care program, the medical creditor shall” take required action, including but not limited to, deleting negative credit reporting, requesting to vacate a judgment, paying refunds of amounts paid if not already remitted to the health-care provider, and remedying any other permissible extraordinary collection action.

- E. A medical creditor collecting on a debt for hospital services shall not sell a medical debt to another party unless, prior to sale, the medical debt seller has entered into a legally binding written agreement with the medical debt buyer of the debt.

Fifth, “[b]eginning September 1, 2022, a medical creditor collecting on a debt for hospital services shall not sell a medical debt to another party unless, prior to the sale, the medical debt seller has entered into a legally binding written agreement with the medical debt buyer of the debt pursuant to which:

- (a) The medical debt buyer agrees not to pursue impermissible extraordinary collection actions to obtain payment for the care;
- (b) The debt is returnable to or recallable by the medical debt seller upon a determination that the patient should have been screened pursuant to section

25.5-3-502 and is eligible for discounted care pursuant to section 25.5-3-503 or that the bill underlying the medical debt is eligible for reimbursement through a public health-care coverage program or the Colorado indigent care program; and

(c) If it is determined that the patient should have been screened pursuant to section 25.5-3-502 and is eligible for discounted care pursuant to section 25.5-3-503 or that the bill underlying the medical debt is eligible for reimbursement through a public health-care coverage program or the Colorado indigent care program and the debt is not returned to or recalled by the medical debt seller, the medical debt buyer shall adhere to procedures that must be specified in the agreement that ensures the patient will not pay, and has no obligation to pay, the medical debt buyer and the medical creditor together more than the patient is personally responsible for paying.

(d) The medical debt seller shall indemnify the medical debt buyer for any amount paid for a debt that is returned to or recalled by the medical debt seller.

III. Conclusion.

We encourage you to examine current practices, update policies and procedures, and institute training where necessary to remain compliant with the CFDCPA.