**BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE**

| | | |
|---|---|---|
| **IN THE MATTER OF EMERGENCY RULES FOR THE PATIENTS' DEBT COLLECTION PROTECTION ACT, 13.10.29 NMAC, TO TAKE EFFECT JULY 1, 2021** | ) ) ) ) ) ) | **Docket No. 21-00036** |

**ORDER ADOPTING EMERGENCY RULES FOR THE PATIENTS' DEBT COLLECTION PROTECTION ACT**

**THIS MATTER** comes before the New Mexico Superintendent of Insurance ("Superintendent") pursuant to newly enacted Sections of Chapter 57 NMSA 1978, cited as the Patients' Debt Collection Protection Act ("the Act") and the rulemaking requirements contained therein. The Superintendent, having reviewed the Act and the emergency rules attached as Exhibit A, and being otherwise fully informed,

**FINDS AND CONCLUDES:**

1. The Superintendent has jurisdiction over this matter pursuant to the Act and the New Mexico Insurance Code, NMSA 1978, Sections 59A-1-1 et seq.

2. Pursuant to the New Mexico Administrative Procedures Act, Sections 12-8-1 et seq. NMSA 1978 ("APA"), particularly Section 12-8-4(B), if an agency finds that the immediate adoption of a rule is necessary for the preservation of the public peace, health, safety or general welfare, or if the agency for good cause finds that observance of the requirements of notice and public hearing would be contrary to the public interest, the agency may dispense with such requirements and adopt the rule as an emergency.

3. Pursuant to the New Mexico State Rules Act, Sections 14-4-1 et seq. NMSA 1978 ("SRA"), particularly Section 14-4-5.6, an agency shall comply with the rulemaking procedures of the SRA unless the agency finds that the time required to complete the procedures would cause

an imminent peril to the public health, safety or welfare; cause the unanticipated loss of funding for an agency program; or place the agency in violation of federal law.

4. "Public welfare" is commonly defined to include the public's well-being in economic matters. *See, e.g., McGonagle v. Home Depot U.S.A., Inc.*, 15 Mass.L.Rptr. 487, *2 (Super. Ct. 2002) (Massachusetts Department of Revenue regulation, which reduced sales tax consumers were required to pay, was intended for the public's economic benefit, thus for the public welfare); *Melton v. Rowe*, 619 A.2d 483, 486 (Conn. Super. Ct. 1992) (emergency regulations were appropriate because "public welfare" brings within its purview regulations for promotion of economic welfare and public convenience); Black's Law Dictionary 1284 (10th ed. 2014) ("public welfare" defined as: "A society's well-being in matters of health, safety, order, morality, economics, and politics").

5. The state of New Mexico recognizes that protecting the welfare of its indigent population is an important matter of public welfare and is in the public interest, (*See, generally,* Chapter 27, NMSA 1978, "Public Assistance" Ref. *e.g.*, § 27-1-12), especially with regard to the provision and coverage of medical care (*See, generally*, Chapter 27, Article 2, NMSA 1978, "Public Assistance Act").

6. Collection actions through which charges for health care services and medical debt are pursued create economic hardship and uncertainty for indigent New Mexicans, and the threat thereof may cause indigent persons to avoid seeking preventive or otherwise necessary health care altogether.

7. Persons who forego preventive care or otherwise necessary health care often seek health care under emergency circumstances and/or at more advanced stages of disease which causes increased costs of health care, and increased premiums for those who have insurance.

8. The immediate adoption of rules implementing the Act is necessary for the preservation of the public general welfare and is in the public interest because the rules provide the structure necessary to protect New Mexico's indigent patients from collection actions through which charges for health care services and medical debt are pursued.

9. The Superintendent finds that observance of the requirements of notice and public hearing before the emergency adoption of rules would be contrary to the public interest.

10. For these reasons, the Superintendent is filing this date emergency rules to implement the provisions of the Act for which OSI is responsible, and the rules shall be effective July 1, 2021.

11. These emergency rules will remain in effect for longer than sixty days, and the Superintendent is filing today a Notice of Proposed Rulemaking for the permanent adoption of rules to implement the provisions of the Act for which OSI is responsible. Said promulgation shall be pursuant to the notice, comment, and hearing procedures of the APA, the SRA, and 13.10.29 NMAC.

**IT IS THEREFORE ORDERED** that emergency rules to implement the provisions of the Act for which OSI is responsible are adopted and filed this date and are effective July 1, 2021.

**IT IS FURTHER ORDERED** that permanent rules to replace these emergency rules shall be promulgated pursuant to the notice, comment, and hearing procedures of the APA, the SRA, and 13.1.4 NMAC.

**DONE AND ORDER**ED this 10th day of June, 2021.

HON. RUSSELL TOAL
Superintendent of Insurance

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that, on this 10th day of June 2021, I filed the foregoing *Order Adopting Emergency Rules for the Patients' Debt Collection Protection Act* through the OSI's e-filing system, which caused the individuals, indicated below to be served by electronic means.

Bryan E. Brock, General Counsel
Office of Superintendent of Insurance
P.O. Box 1689, Santa Fe, NM 87504-1689
bryan.brock@state.nm.us

Cholla Khoury Assistant Attorney General
Office of the Attorney General
P.O. Box 1508, Santa Fe, NM 87504-1508
ckhoury@nmag.gov

Melissa Y. Gutierrez

**MELISSA Y. GUTIERREZ, Law Clerk**
**Office of Legal Counsel**
**Office of Superintendent of Insurance**

EXHIBIT A

**TITLE 13 INSURANCE**
**CHAPTER 10 HEALTH INSURANCE**
**PART 29 PATIENTS' DEBT COLLECTION PROTECTIONS**

**13.10.29.1 ISSUING AGENCY:** Office of Superintendent of Insurance ("OSI").
[13.10.29.1 NMAC - N/E, 07/01/2021]

**13.10.29.2 SCOPE:** This rule requires screening of all uninsured patients receiving health care services in covered facilities to determine eligibility for health insurance programs, and to determine indigency for the purpose of prohibiting medical debt collection for indigent patients.
[13.10.29.2 NMAC - N/E, 07/01/2021]

**13.10.29.3 STATUTORY AUTHORITY:** Sections 59A-2-9 NMSA 1978 and New Mexico Senate Bill 71 from the 2021 Regular Session the Patients' Debt Collection Protections Act NMSA Chapter 57.
[13.10.29.3 NMAC - N/E, 07/01/2021]

**13.10.29.4 DURATION:** Emergency rule expires 180 days from effective date unless a permanent rule is adopted before that time.
[13.10.29.4 NMAC - N/E, 07/01/2021]

**13.10.29.5 EFFECTIVE DATE:** July 1, 2021 unless a later date is cited at the end of a section.
[13.10.29.5 NMAC - N/E, 07/01/2021]

**13.10.29.6 OBJECTIVE:** To ensure that health care facilities and covered third-party health care providers screen and identify patients who are indigent, eligible for Medicaid or other health insurance, and ensure that medical debt incurred by indigent patients will not be pursued through collection actions.
[13.10.29.6 NMAC - N/E, 07/01/2021]

**13.10.29.7 DEFINITIONS:** For definitions of terms contained in this rule, refer the Patients' Debt Collection Protection Act or in Chapter 59A NMSA 1978, unless otherwise noted below.

**A.** **"Culturally and linguistically appropriate**" means communication that meets the following requirements:

**(1)** the provisions of oral and hearing-impaired language services (such as the telephone customer assistance hotline) that includes answering questions in any applicable non-English language, including ASL, and providing assistance with filing claims and reviews in any applicable non-English language;

**(2)** the provisions of, upon request, a notice in any applicable non-English language;

**(3)** the inclusion of, in the English version of all notices, a statement prominently displayed in any applicable non English language clearly indicating how to access the language services provided by the health care insurer; and

**(4)** for purposes of this definition, with respect to an address in any New Mexico county to which a notice is sent, a non-English language is an applicable non-English language if ten percent or more of the population residing in the county is literate only in the same non-English language, as determined by the department of health and human services ("HHS") The counties that meet this ten percent standard, as determined by HHS, are found at http://cciio.cms.gov/resources/factsheets/clas-data.html and any necessary changes to this list are posted by HHS annually.

**B.** **"Day or days"** means, unless otherwise specified:

**(1)** one – five days excludes weekends and state holidays; and

**(2)** six days or more includes weekends and holidays.

**C.** **"Debt collection activity"** means collection action as defined in the Act, including sale of the debt to a third-party debt collector or any type of legal action, including liens, property seizure, wage garnishment and law suits against the patient in pursuit of collection of the debt. Debt collection activity does not include the health care facility or third-party health care provider sending a bill or inquiring about payment.

**D.** **"Deliver or delivery** means email and retain an email delivery confirmation; electronic transmission through a dedicated two way communication portal and retain deliver confirmation; fax and retain a fax delivery confirmation; regular mail; or personal delivery.

**E. "Disclose or disclosure"** means the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.

**F. "Health care service or service"** means services for the diagnosis, prevention, treatment, care, or relief of a physical, dental, behavior or mental health condition, substance use disorder, illness, injury or disease, which services include procedures, products, devices or medications.

**E. "Household"** means the countable members of the patient's household as defined by MAGI.

**G. "Household income"** means the sum of the current MAGI-based income of the patient's household and includes permanent and temporary income calculated in a MAGI-based income calculation.

**H. "Federal poverty guidelines"** means the poverty guidelines issued annually by the U.S department of health and human services at aspe.hhs.gov/poverty-guidelines/.

**I. "Medicaid"** means the federal health program administered by the New Mexico human services department and established by the federal department of health and human services under Title XIX of the Social Security Act and by state statute, Section 27-1-12 NMSA 1978 et. seq., and regulations, including 8.291.430 NMAC.

**J. "Medicaid adjusted gross income or MAGI"** means household size and income calculated to determine eligibility for a Medicaid program as set forth by the New Mexico human services department.

**K.** "**Patient**" means the person who receives health care services, or the parent or legal guardian of a minor or an adult under guardianship who receives health care services.

**L. "Patients' Debt Collection Protection Act" ("the Act")** means New Mexico Senate Bill 71 from the 2021 regular session to be codified at NMSA Chapter 57 and 61.

**M. "Uninsured"** means that the patient does not have major medical insurance compliant with the provisions of the Affordable Care Act.

[13.10.29.7 NMAC - N/E, 07/01/2021]

**13.10.29.8 SCREENING FOR INSURANCE AND PROGRAM ELEGIBILITY:** A health care facility shall screen and offer to assist patients in obtaining Medicaid, public and other insurance, accessing public programs that assist with health care costs other financial assistance offered by the facility, before seeking payment for emergency or medically necessary care. All screening shall utilize culturally linguistically appropriate mechanisms for communication including ASL.

**A.** Health care facilities shall screen patients when the patient is registered or within the following time periods:

**(a)** a patient who is admitted for emergency care shall be screened when the patient's condition has been stabilized through treatment and prior to discharge;

**(b)** a patient who is admitted for inpatient care shall be screened at the time that the inpatient care is scheduled or within 24 hours of admission;

**(c)** a patient who receives outpatient care shall be screened at the time that the outpatient care is scheduled and prior to discharge; or

**(d)** upon request of a patient who is scheduled to receive or has received health care services from the health care facility.

**B.** Screening must be offered to every patient and if requested, the health care facility shall:

**(a)** verify whether a patient is uninsured;

**(b)** if the patient is uninsured, offer information about, offer to screen for and screen the patient for:

**(i)** all available public insurance including Medicaid, Medicare, New Mexico's children's health insurance program and Tricare;

**(ii)** public programs that may assist with health care costs including but not limited to the New Mexico health insurance exchange, the New Mexico medical insurance pool, county indigent care programs, COVID-19 claims reimbursement programs, and the Indian health service purchased/referred care program; and

**(iii)** financial assistance offered by the health care facility.

**C.** Offer and if requested, provide assistance with the application process for programs identified in the screening. Providing assistance means having adequate staff, systems, and equipment available to enable the completion of any Medicaid, financial assistance or other health insurance application.

**D.** The health care facility must provide notification regarding the screening to patients who are uninsured as follows.

**(a)** the results of the screening must be delivered to the patient, or the patient's legal guardian or parent, if the patient is a minor or disabled, in writing within five days of the completion of the screening. If the patient is not found indigent, then the notice shall inform the patient of their right to complain to the New Mexico attorney general and shall include the website and telephone number of that office.

**(b)** if the patient chooses not to pursue screening, notification must be delivered to the patient with information about how to apply for health insurance, including Medicaid and the New Mexico health insurance exchange within five days of the patient's discharge.

**(c)** if the patient is deemed indigent, the patient must be notified in writing within 30 days of discharge, that the medical cost for the health care services may not be the subject of debt collection activity, although the facility may bill the patient for the health services as permitted by law.

**(d)** if the patient is found presumptively eligible for Medicaid, or any other health insurance or financial assistance program, written notification must be provided to the patient within 30 days of discharge.

**E.** If the patient's treatment will include a third-party health care provider, as defined by the Act, who will bill the patient, the information gathered in the screening process will be provided by the health care facility to the third-party health care provider within five business days through a secure method of transmission protecting the confidentiality of the patient's information The information transmitted shall include the patient's identifying information, whether the patient participated in the screening, the outcome of the screening and application process, the status of the patient's application for assistance with health care costs, and whether the patient is indigent.

**F.** The third-party health care provider shall not seek payment for emergency or medically necessary care until the health care facility has provided the screening information. When the third-party health care provider has received the screening information, it will notify the patient that it has received the results and, if the patient was found indigent, that it will not pursue collection action for the medical costs related to the health care services.

**G.** A health care facility or third-party health care provider covered by the Act shall not disclose information a patient provides during the screening and application process, to third parties, except as permitted or required in the Act and its implementing regulations and as further provided below:

**(a)** as needed to facilitate the application process for health insurance or financial assistance as described in Paragraph C of this section;

**(b)** upon request, a covered entity shall disclose information obtained during a screening or application assistance conducted pursuant to Section 7 of this rule or during an indigency determination pursuant to Section 8 of this rule, to the patient; or

**(c)** a health care facility or covered third-party health care provider is required to disclose information provided during screening or application assistance, when required by the human services department or the attorney general's office to investigate or determine the covered entity's compliance with the Act; provided, that such information shall not be used or disclosed by the human services department or attorney general's office for the purpose other than the investigation or determination of the facility or provider's compliance with the Act.

[13.10.29.8 NMAC - N/E, 07/01/2021]

**13.10.29.9 INDIGENT PATIENT DETERMINATION** Collection actions based on charges for health care services and medical debt may not be pursued against an indigent patient.

**A.** Medical creditors, medical debt buyers, and medical debt collectors shall include a notice with each bill sent to a patient, informing the patient that a determination of indigency may be conducted, if requested, and that if the patient is indigent, no collection actions will be pursued. The notice shall be culturally and linguistically appropriate, will be on a separate piece of paper, in bold font no smaller than 12 points, and will provide both a telephone number, email contact and website link for the patient to utilize in requesting an indigency determination.

**B**. Medical creditors, medical debt buyers, and medical debt collectors shall make a determination as to whether a patient is indigent using the following methodology:

**(a)** household income will be calculated using the methods used to determine Medicaid eligibility by the New Mexico human services department, Title 8 Chapter 200 NMAC, and by the federal Medicaid program utilizing the MAGI protocols promulgated by the New Mexico human services department;

**(b)** utilizing the most recent federal poverty guidelines, the patient household income and household size, the medical creditor shall determine whether the patient's income is less than or equal to two hundred percent of the federal poverty guidelines; and

**(c)** in determining household income, the medical creditor will consider both permanent and temporary income as defined by MAGI.

**C.** If the medical creditor is a health care facility or third-party provider, it may use the information gathered during the screening process described in the Act and in Section 8 of this rule to determine whether the patient is indigent.

**D.** All medical creditors, medical debt buyers and medical debt collectors will make the determination of indigency based on verbal or written communication with the patient, in which the patient will be asked to prove household income and household size, consistent with the MAGI protocols.

**(a)** The verbal or written communication will inform the patient of the purpose of the communication, i.e., to determine indigency for purpose of whether collection actions may be pursued;

**(b)** if the patient is a minor or incapacitated, the communication should be with the parent(s) or legal guardian(s) of the patient;

**(c)** the verbal or written communication with the patient will be documented, including date, time, identity of persons engaged in the communication, and complete content of the information obtained from the communication; and

**(d)** the patient may respond to the communication by providing a signed attestation as to household income and size, or through provision of documentation such as i.e., pay stubs, at the election of the patient.

**E.** The patient will be provided with notification of the determination of indigency in writing within 10 days.

**(a)** if the patient is determined to be indigent, the notice shall inform the patient that collection actions for the health care services, and medical debt are prohibited by the Act.

**(b)** the notice will provide information to the patient about how to apply for Medicaid, for public insurance, and for insurance through the New Mexico health insurance exchange.

**(c)** the notice shall inform the patient the right to complain to the New Mexico attorney general and shall include the website and telephone number of that office.

[13.10.29.9 NMAC - N/E, 07/01/2021]

**History of 13.10.29 NMAC: [RESERVED]**