

MN Debt Fairness Act

Impact on Healthcare Providers





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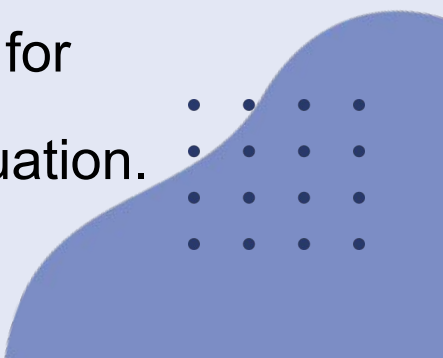
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Disclaimer

The following information serves as an educational resource for business offices. Creditor Advocates is not a law firm and cannot give legal advice. Jessica Klander is an attorney but not your attorney during this webinar. Please seek qualified legal counsel for additional information regarding your unique situation.





Act Overview

- In February 2024, the Minnesota Legislature proposed the "Debt Fairness Act," aiming to significantly impact creditors and debt collectors.
- Extensive lobbying efforts moderated many of the extreme proposals.
- The final law, signed in May, includes changes to garnishment, a ban on reporting medical debt, and increased regulatory burden for healthcare providers.

Today's Overview

- Chapter 62J
 - Minnesota healthcare providers
- Chapter 332C
 - Consumer protections for Minnesota Residents
- Misc
 - Legal remedies



Provisions Directly Affecting Minnesota Healthcare Providers

Healthcare Cost Containment Chapter 62J

- Guidelines for Publishing Collection Policy
 - Make publicly available and upon request
 - Content must include procedures on communication, referral to collections and, when considered uncollectible.
- Cannot Deny Services Due to Medical Debt
 - Can condition reasonable payment plan enrollment
- Procedures for Investigating Billing Errors
 - Conduct a thorough review and report any billing mistakes
 - Must notify patient upon reporting of the billing error and results of the completed review.





Provisions Affecting the Collection of Medical Debt from Minnesota Residents

Domestic Relations Chapter 519

- Spouses are no longer liable for the other spouse's debt.


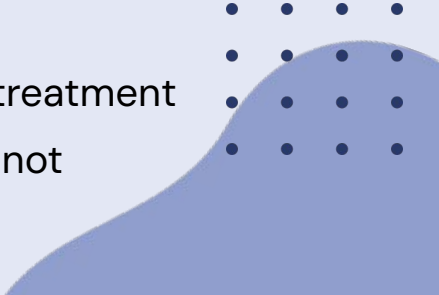




Provisions Affecting the Collection of Medical Debt from Minnesota Residents



Consumer Protection Chapter 332C

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- Prohibition on credit reporting.
 - “Medical Debt” means a “debt incurred primarily for medically necessary health treatment or services” and includes debt charged to [healthcare] “credit cards” but excludes debt charged for dental and veterinary.
 - “Collecting Party” means “a party engaged in collecting medical debt” with specific exceptions.
 - “Medically Necessary” means “safe and effective treatment ... used to diagnose or treat a condition, and does not exceed the patient's medical need.”
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Side Note

- Credit reporting of medical debt may soon become banned nationally. CFPB recently proposed to ban credit reporting of medical debt altogether.
- Healthcare credit cards may be banned sometime in the near to medium term at a national level. CFPB intends to examine how banks market their “medical financing products” to ensure “consumers aren’t pushed into medical payment products.”



Perspective on Collecting Parties

- Collecting Parties is meant to include ANYONE attempting to collect on patient balances, including healthcare providers and their vendors.
- Protections extend to Minnesota residents regardless of the Collecting Party's location
- Outsource vendors with different names from healthcare providers risk being subject to FDCPA and Regulation F and should use caution to avoid being classified as debt collectors.



Collecting Party Prohibited Practices

- Threaten wage garnishment or legal suit without retaining the lawyer.
- Use sheriffs or officers to serve legal papers, except when legally authorized.
- Use or threaten methods violating Minnesota law.
- Furnish or claim to furnish legal advice to debtors.
- Communicate using lawyer's stationery or forms simulating judicial process.
- Publish a list of debtors or threaten to advertise claims for payment.
- Operate under a name implying government affiliation.
- Act as a debt settlement company unless free or court-supervised.
- Violate Regulation F; FDCPA and Regulation F apply to non-healthcare collecting parties.
- Enlist a third party to contact the debtor, except a household member or authorized third party.
- Fail to provide the collecting party's full registered name.
- Fail to return overpayments as per Chapter 345 Unclaimed Funds.
- Accept cash without issuing a receipt.
- Collect interest, fees, or charges not authorized by the debt agreement or law.
- Falsify documents with intent to deceive.
- Include Minnesota Attorney General's phone number and right to hire an attorney in initial mail contact.
- Commence legal action outside the statute of limitations.
- Report the medical debt to credit agencies.
- Challenge debtor's exemption claim in bad faith.
- Use ATDS or prerecorded voice after a cease request.
- Imply healthcare services will be denied due to medical debt.

Perspective on Prohibited Practices

- Disclosure on initial contact by mail to Minnesota residents: Minnesota Attorney General's telephone number and "You have the right to hire your own attorney to represent you in this matter."
- By engaging in the denial of care conditioned upon payment as allowed in MN 62J.807(b), providers are at risk of engaging in the prohibited practices with 332C.02(11) ["Imply that services will be denied due to debt."]
- Out-of-state providers that are not subject to the restrictions in MN 62J.807(a) ["Cannot Deny Services Based On Medical Debt"] and may find themselves engaging in prohibited practices under 332C.02(11) ["Imply that services will be denied due to debt."]



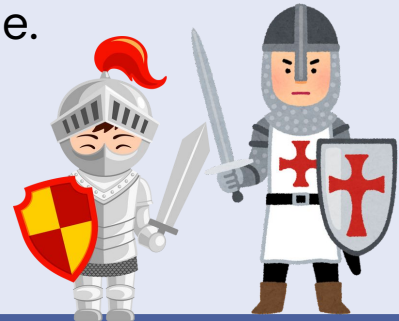
Perspective on Prohibited Practices Cont.

- Failure to return ANY credits, over-payments, to the patient or to the applicable state's Unclaimed Funds process, including pennies, is a prohibited practice.
- Failure to limit the interest, penalty fees, and other incidental expenses to the applicable state usury limits is a prohibited practice.
- Furnishing legal advice to patients or threatening to use collection methods that violate Minnesota law is a prohibited practice.
- Failure to implement systems, policies, and procedures to process cease requests for automated, artificial, and/or prerecorded messages is a prohibited practice.



Unsuccessful Medical Debt Lawsuits

- Debtor awarded costs and reasonable attorney fees for successful defense against medical debt claim.
- The court determines the reasonable attorney fee.
- Mutually agreed resolution between debtor and collecting party does not qualify for attorney fee award.



Penalties for Non-Compliance

A collecting party violating this chapter is strictly liable to the debtor for:

- Actual damages sustained by the debtor.
- Additional damages as allowed by the court, up to \$1,000 per violation.
- Costs of the action and reasonable attorney fees for any successful enforcement action.
- Willful and malicious violations result in liability for three times the sums.

Legal Liability and Enforcement of Violations in Minnesota Debt Collection:

- Minnesota Attorney General or patients and their attorneys may enforce this chapter.
- Bona fide error defense applies if the collecting party proves by a preponderance of evidence that the violation.
 - Was not intentional and notwithstanding the maintenance of procedures.
 - Was the result of inaccurate or incorrect information provided to the collecting party



Provisions Affecting Legal Remedies on All Debts

- Provisions Affecting Legal Remedies on All Debts.
 - 25% for individuals earning substantially above 80 times the federal minimum wage per hour weekly.
 - 15% for those falling within the range of 60 to 80 times.
 - 10% for individuals earning at or below 60 times.
- Examine exempt items and limitations.
 - Explore a comprehensive list of items safeguarded from garnishment.



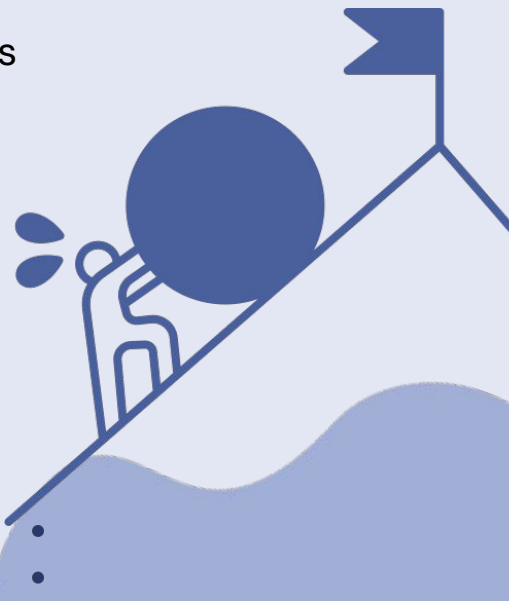
Notable Omissions From Final Bill

- Existing third-party debt collection statute no longer applies to all parties collecting amounts due.
- \$5,000 bank account garnishment exemption removed.
- Statute of limitations not reduced (agreements remain at 6 years, judgments at 10 years).
- No extension of consumer protections to small business debtors.
- Private right of action removed for consumers (applies only to student loan servicers).
- Consumers can't recover costs and attorney's fees for defending against collection suits (applies only to medical debt claims).

Healthcare Provider Challenges

How to prevent repeat offenders on elective procedures?

- Redevelop “credit policy” to include
 - “Ability-to-pay” provision to include both income and insurance coverage
 - Deny those that don’t have the ability to pay for “future” services
- Gather financial information during scheduling to determine “ability-to-pay”
 - Insurance information & coverage
 - Income and sources (employer)
 - Assets and sources (bank)
 - Expenses and liabilities (rent, phone, other non-medical debt)
 - Other financial sources they plan to use to pay for services



Healthcare Provider Next Steps

- **For all Providers:**

- Update Collection policies and procedures for MN patient communications.
- Develop policies for handling overpayments and uncashed refund checks.
- Review patient registration forms for communications and opt-out options.
- Review agreements on interest and fees.

- **For MN Providers:**

- Make collection policies accessible online and upon request.
- Modify appointment scheduling policies for patients with outstanding balances.
- Update policies for disputes on coding/billing errors, investigations, and notifications.



Compliance Resources

- **Creditor Advocates – John Brown**

- <https://portal.creditoradvocates.com/client-resources>
- Additional webinars
- Additional resources available –
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Final Thoughts and Questions





Thank You!

