

Now & Next

Healthcare Alert

May 14, 2024

Select highlights from New York State Health and Mental Hygiene Bill

By Justin D. Pfeiffer and Marissa Espinoza Icochea

Hospitals and other healthcare providers will have to comply with several new requirements governing payment for services.



What's the impact?

- NYSDOH is required to contract with a Statewide Fiscal Intermediary for the CDPAP program by January 1, 2025.
- All healthcare providers should review new rules concerning use of medical credit cards and other types of credit.
- Healthcare providers should review several new procedural requirements regarding consent for payment, financial assistance, and treatment of medical debt.

As part of a suite of budget bills for fiscal year 2024–2025, the annual Health and Mental Hygiene (HMH) bill ([A.8807/S.8307](#)) includes several significant changes to healthcare laws. In particular, the bill includes a sweeping overhaul of the Consumer Directed Personal Assistance Program (CDPAP) program; imposes new requirements to hospitals' financial assistance programs and treatment of medical debt collections; changes requirements around patient consent forms; and

includes new requirements for all healthcare providers concerning the use of credit cards and other types of credit to pay for services.

CDPAP program fiscal intermediary reforms

Part HH of the HMM bill substantially overhauls the manner in which the New York State Department of Health (NYSDOH) will authorize CDPAP fiscal intermediaries (FIs) to continue to facilitate the provision of personal care services. Readers may recall the long process through which, following statutory changes in 2019, the State sought to require existing FIs to bid for contracts with the State through a process that did not specify a maximum number of contracts to be awarded.

The statute provides that effective April 1, 2025, NYSDOH will contract with a single, Statewide FI (the Statewide FI). The Statewide FI will be selected based on NYSDOH's determination of the bidder that would provide the "best value" with respect to FI services. All managed care plans and other programs offering CDPAP services will be required to contract with the Statewide FI.

The Statewide FI will, in turn, subcontract with other entities to ensure that FI services are available across the state. Before engaging in subcontracts, the Statewide FI will be required to consider each subcontractor's demonstrated compliance with law, including marketing and labor practices, cost reporting, and electronic visit verification requirements. When entering into subcontracts, the Statewide FI will be required to subcontract with at least one entity in each rate setting region that has experience providing services to persons with disabilities and the senior population.

Further, each subcontractor is required to register with NYSDOH within 30 days of having been selected as a subcontractor by the Statewide FI. The statutory amendments authorize NYSDOH to revoke or suspend a subcontractor's registration—thereby preventing the subcontractor from continuing to provide FI services—on 30 days' notice, if the subcontractor fails to comply with governing statutes or regulations. The amendments also authorize the NYSDOH Commissioner to "issue orders and take other actions as necessary and appropriate to prohibit and prevent" the provision of FI services by the subcontractor.

Restrictions on the use of credit cards to pay for healthcare services

Part O of the HMM bill adds new Sections 349-g and 519-a to the New York State General Business Law, imposing new notice requirements and restrictions on healthcare providers regarding patients' use of credit cards and third-party medical installment loans to pay for healthcare services.

The law prohibits hospitals and healthcare providers, including employees and agents of hospitals and healthcare providers, from completing any portion of an application for “medical financial products” for the patient, or from arranging for or establishing an application that is not completely filled out by the patient. Medical financial products include medical credit cards—credit cards specifically for the payment of healthcare services, products, or devices—and third-party medical installment loans.

Further, the law prohibits hospitals and healthcare providers from requiring credit card pre-authorization, and it prohibits providers from requiring that patients have a credit card on file before providing emergency or other medically necessary medical services.

The law also requires hospitals and healthcare providers to notify all patients about the risk of paying for medical services with a credit card. The notice must highlight that patients who use a credit card to pay for medical services are forgoing state and federal protections for medical debt. The law authorizes the NYSDOH Commissioner to establish additional requirements for the contents of such notices.

The new law takes effect October 20, 2024.

Separate consents required for treatment and for payment of healthcare services

Part O adds a new Section 18-c to New York Public Health Law and requires that healthcare providers obtain separate consents from patients for (1) healthcare services and (2) payment of healthcare services. The healthcare provider must obtain the consent for payment *after* both discussing treatment with the patient *and* providing the services.

The patient’s consent must clearly and conspicuously communicate the patient’s authorization and must not involve any mechanism that obscures, subverts, or impairs the patient’s decision-making or choice to consent. The provider cannot infer patient consent from inaction.

The new law takes effect October 20, 2024.

Medical debt

Part O of the HMM bill amends several sections of the Public Health Law to expand access for hospital patients to financial assistance, and also limits medical debt collection practices against low-income New Yorkers.

EXPANDING FINANCIAL ASSISTANCE

Part O amends Public Health Law § 2807-k to define “underinsured” to mean an individual with out-of-pocket medical costs accumulated in the past 12 months that amounts to more than 10% of the individual’s gross annual income, and requires hospitals to expand existing financial aid policies to such underinsured individuals. Further, Section 2807-k prohibits the use of immigration status in determining eligibility for financial assistance.

Additionally, while hospitals with 24-hour emergency departments are already required to provide written notification about financial assistance to patients during the intake process, hospitals will now be required to also provide written notification during the discharge process. Further, the law amends the existing requirements governing installment plans for outstanding balances to require that payments not exceed 5% of a patient’s gross monthly income—down from 10%—and to cap interest rates on unpaid balances at 2%.

MEDICAL DEBT COLLECTION

Part O further amends Section 2807-k to prohibit hospitals from commencing a legal action against patients with incomes below 400% of the federal poverty level. Where a hospital uses legal action to seek recovery of a medical debt, the law requires that the complaint be accompanied by an affidavit by the hospital’s chief financial officer stating that, based on the hospital’s reasonable effort to determine the patient’s income, the patient does not have an income below 400% of the federal poverty level.

Further, hospitals and their collection agents will be prohibited from commencing an action against a patient until 180 days after the first post-service bill is issued and after the hospital has made reasonable efforts to determine whether the patient qualifies for financial assistance.

The amendments also prohibit the sale of medical debt to a third party, unless the third party explicitly purchases the medical debt to relieve the debt of the patient. The amendments also prohibit denial of admission or treatment of services that are reasonably anticipated to be medically necessary due to a patient’s unpaid medical bill. Lastly, patients will be able to apply for financial assistance at any time during the collection process, rather than during a limited time after discharge.

The amendments above take effect October 20, 2024.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

[Justin D. Pfeiffer](#)

518.427.2742

jpfeiffer@nixonpeabody.com

[Marissa Espinoza Icochea](#)

516.832.7536

mespinozaicochea@nixonpeabody.com

