

New Laws Strongly Curtail Collection Efforts by Health Care Providers

On November 28, 2022, New York State Governor Kathy Hochul signed legislation placing significant prohibitions on health care providers with respect to collecting on medical debt judgments. Senate Bill S6522A/A7363A amended Section 5201 of the New York Civil Practice Law and Rules (CPLR), prohibiting health care providers from placing liens on an individual's primary residence or garnishing wages to collect medical debt.

The law applies to "health care professionals," which are broadly defined to include all the licensed professions under Title 8 of the Education Law, such as physicians, dentists, chiropractors, physical therapists, pharmacists, midwives, podiatrists, psychologists, optometrists, and social workers as well as a host of other allied health care professionals. It also applies to facilities such as hospitals, public health centers, diagnostic and treatment centers, dental clinics and dispensaries, nursing homes, certain rehabilitation centers, and laboratories.¹

Prior to this amendment, health care providers were allowed to impose and enforce liens on a patient's primary residence and to garnish wages to satisfy a judgment in a medical debt lawsuit. A lien is a legal claim filed against property in the records of the county clerk's office that can be used as collateral to repay a debt. Wage garnishment, another collection method, occurs when an individual's earnings are required by court order to be withheld by an employer for the payment of a judgment, including medical debt. Both of these collection methods can lead to financial challenges for patients.

The issue of medical debt is a focus area for lawmakers. The governor noted that more than 50,000 New Yorkers have been sued for medical debt over the past five years. Assembly member Richard Gottfried, a supporter of the law, said, "New Yorkers struggle with health care costs even when they have insurance. People seeking care end up with bills to cover ever-increasing out-of-pocket costs, including high deductibles, copays, and the various fees insurance doesn't cover."

Recent laws have made even harder for health care providers to collect legitimate amounts that are past due. In April 2020, an amendment to the New York CPLR § 213-d shortened the statute of limitations for a lawsuit on medical debt from six years to three years. At least one court has applied the shortened statute retroactively to bar a lawsuit to recover for medical services.² Although the goal of these laws may have the laudatory purpose of protecting patients against abusive collection practices, they also have the effect of preventing providers from legitimately pursuing payment for past-due amounts. In order to minimize the impact of these new laws, providers should review their collection practices, including their methods for identifying past-due accounts, and should identify problems early. Early intervention is critical to avoid larger problems down the road, either by way of past-due balances or running afoul of legal prohibitions on collection. Current and accurate patient contact information is critically important so that the provider can communicate effectively with patients who are past due on

¹ The law does not apply to facilities providing services to mentally disabled patients, which operate under the auspices of the NYS Department of Mental Hygiene.

² *NYS v. Mason*, 2023 NYLJ Lexis 162 (Sup. Ct. Suffolk Co. January 26, 2023).

their accounts. Every effort should be made to arrive at an agreed upon payment plan and to assist patients in following through on that plan to avoid futile collection efforts or collection prohibitions.

If you have any questions regarding the content of this article, please contact Fran Ciardullo, special counsel, at fciardullo@barclaydamon.com, or another member of Barclay Damon's Health & Human Services Providers Team.

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As special counsel at Barclay Damon LLP, Fran concentrates her legal practice on health care and risk-management issues. She counsels physicians, physician groups, dentists, hospitals and health systems, nursing homes, and other health care providers on matters involving professional misconduct, professional liability, medical-staff issues, scope of practice, mandated reporting, peer review, and regulatory compliance. Fran also handles consent for treatment and surrogate decision making, patient care, EMTALA, and health-information privacy issues.

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