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National Council of Insurance Legislators (NCOIL)

Charity Medical Care and Medical Debt Reform Model Act

**Sponsored by Rep. Tom Oliverson (TX).*

**Co-sponsored by Sen. Paul Utke (MN) and Rep. Brenda Carter (MI).*

**Draft as of ~~June 16, 2026~~ ~~October 14, 2025~~. To be discussed and considered during the meeting of the NCOIL Health Insurance & Long Term Care Issues Committee on July 17, 2026.*

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Section 1. Title

This Act shall be known as the [State] Charity Medical Care and Medical Debt Reform Act.

Section 2. Purpose

The purpose of this Act is to ensure certain hospitals ~~implement~~ adhere to appropriate charity care screening procedures, and to prohibit creditors and debt collectors from reporting to any consumer reporting agency medical debt obtained from lifesaving and emergency care services rendered at certain medical facilities.

Section 3. Definitions

As used in this Act, the following terms shall have the following meaning:

(A) "Charity program" means a hospital's or hospital system's financial assistance and charity care program.

(B) "Commission" means the Health and Human Services Commission.

Drafting Note: States may wish to replace Health and Human Services Commission with a different regulatory entity.

(C) "Consumer" means an individual who is a resident of this state.

(D) "Consumer report" has the meaning ascribed to it in 15 U.S.C., Section 1681a(d).

(E) "Consumer reporting agency" means any consumer reporting agency, credit bureau, or similar agency which furnishes a credit report or rating as well as any agency within the meaning ascribed to it in 15 U.S.C., Section 1681a(f).

(F) "Creditor" means one in whose favor an obligation exists, by reason of which he or she is, or may become, entitled to the payment of money.

(G) "Debt collector" means any person who regularly collects, or attempts to collect, consumer debts for another person or institution or uses some name other than its own when collecting its own medical debts.

(H) "Executive commissioner" means the executive commissioner of the commission.

Drafting Note: States may wish to replace "Executive commissioner" with the head of the relevant regulatory entity charged with implementing this Act.

(I) "Hospital" means a nonprofit hospital.

(~~KJ~~) "Medical debt" means a debt owed by a consumer to a person whose primary business is providing medical services, products, or devices, or to that person's agent or assignee, for the provision of medical services, products, or devices. Medical debt includes, but is not limited to, debt owed to a(n) [State] medical facility.

(~~LK~~) "Lifesaving and emergency care services" means the necessary medical or surgical care services rendered to treat a potentially life-threatening condition or symptom.

(~~ML~~) "[State] medical facility" includes, but is not limited to, any hospital or related institution licensed pursuant to [*insert citation to relevant state licensing statute*], nursing facilities licensed pursuant to [*insert citation to relevant state licensing statute*], and medical offices operated by or employing physicians, physical therapists, physician assistants, pharmacists, nurses, and home health care providers within this state.

(~~NM~~) "Presumptive screening process" means the process by which a hospital uses publicly available data and information to estimate a patient's percentage of the federal poverty level for use in applying for charity or financial assistance benefits.

(O) “Reasonable efforts” has the meaning assigned in 26 CFR § 1.501(r)(6).

Section 4. Charity Care Screening

(A) Using the process prescribed by the commission under this section, a ~~non-disproportionate share~~ hospital shall screen all patients for eligibility of the hospital's financial assistance program and charity care policy. A hospital cannot pursue debt collections of any patient account until the hospital verifies the patient is not eligible for the hospital's financial assistance program and charity care policy.

Drafting Note: States may wish to consider having the screening process requirements apply only to uninsured or self-pay patients.

(B) Nothing in this section shall require or obligate a hospital to:

(1) perform a presumptive screening process when billing for cosmetic procedures;

(2) provide non-emergent care to a patient who resides outside the hospital’s defined community as specified in the hospital’s financial assistance policy as required by Internal Revenue Service Code 501(r).

(CB) The executive commissioner of the Health and Human Services Commission shall adopt by rule the process for screening a patient for eligibility for charity care under Subsection (A). The rule established by the commission shall:

(1) clearly define what constitutes a violation of the process by a hospital;

(2) establish clear timeframes for:

(a) notice of the violation by the commission to the hospital; and

(b) review and approval of the corrective action plan by the commission.

(3) identify any applicable state resources and data sources to which the commission will facilitate hospital queries to expedite and automate the eligibility screening process to the extent possible.

(DC) The rules and process adopted under Subsection (B) must require a hospital:

(1) before sending a bill to the patient, to conduct ~~the~~ a presumptive screening process and apply any charity care discounts up to 100% of the patient responsibility ~~or full cost coverage~~ for which the patient qualifies on the basis of that screening ~~for~~; and

(2) include on each billing statement notice of:

(a) the availability of financial assistance;

(b) the contact information for the office or department of the hospital that can provide information about obtaining financial assistance; and

(c) the direct Internet address for the financial assistance policy.

~~(ED)~~ A patient may apply or re-apply for charity care if the patient was screened for eligibility and ~~was found~~ determined not to be eligible, to demonstrate a change in their financial circumstances during the application period, or to demonstrate that a prior determination was made in error or the patient disagrees with the amount of the charity care discount.

~~(FE)~~ The inability to establish a patient's eligibility for financial assistance or charity care discounts based on insufficient or inaccurate information supplied by the patient and/or queried from external sources after reasonable efforts to obtain and verify such information shall not constitute a violation of any rule or process adopted under Subsection (C).

~~(GF)~~ If a hospital makes an incorrect determination under Subsection (A) based on the information provided by the patient at the time of the determination, the hospital shall:

~~(1)~~ refund any payment made by the patient in the amount of charity care for which the patient qualified; ~~and~~

~~(2)~~ reimburse any other associated reasonable costs, such as legal expenses and fees, incurred by the patient in securing charity care.

~~(HG)~~ If the hospital sold debt based on an incorrect determination to a collection agency or authorized a collection agency to collect the debt on behalf of the hospital, the hospital shall notify the collection agency that the debt is invalid.

~~(IH)~~ If the commission determines that a hospital fails to comply with this section:

(1) upon the first violation, the commission shall ~~institute~~ require the hospital to design and institute a corrective action plan for the hospital ~~and post it on the commission's website that:~~

(a) establishes a reasonable time period for the hospital to amend its procedures and train staff on changes where applicable to avoid future violations;

(b) is submitted to the commission for review and approval within xx business days of notice of the first violation; and

(c) is posted on the commission's internet website upon approval.

(2) upon ~~the second~~ any violation after the corrective action plan has been instituted by the hospital:

(a) the commission shall apply an administrative penalty of not less than \$xx; and

(b) apply a probationary period of not more than xx days, after which the commission shall confirm that the hospital is in compliance with this section; and

(3) upon ~~the third~~ any violation after completion of the probationary period, the commission shall inform the attorney general of the nature of the non-compliance, who ~~may shall~~ bring an action in the name of this state to revoke the hospital's state tax exemptions.

Drafting Note: States may also wish to consider requiring hospitals that are subject to the provisions of this Act to submit annual reports to the appropriate state agency containing information such as the amount of charity care provided and the amount of net patient revenue.

Section 5. Calculation of Net Patient Revenue

(A) When calculating net patient revenue under [*insert citation to applicable charity care financial statutes*], a hospital or hospital system shall include all facilities and practices offering medical services located in this state under the common governance of a single corporate parent, regardless of their radius from that corporate parent.

(B) All facilities described by Subsection (A) must comply with charity care screening requirements found in Section 4.

Section 6. Credit Reporting and Debt Collection for Debt Related to Lifesaving and Emergency Care

(A) Creditors and debt collectors are prohibited from reporting to any consumer reporting agency medical debt obtained from lifesaving and emergency care services rendered at an [State] medical facility.

(B) Consumer reporting agencies are prohibited from including consumer debt obtained from lifesaving and emergency care services rendered at a(n) [State] medical facility on a consumer report.

Section 7. Rules

The [*insert appropriate state agency*] shall adopt rules to effectuate the provisions of this Act.

Section 8. Effective Date

This Act shall take effect xxxxxx