SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2297 (Friedman)
Version: June 17, 2024
Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Hospital and Emergency Physician Fair Pricing Policies

DIGEST

This bill prohibits a hospital or an emergency physician, in determining eligibility under their charity care or discount payment policies, from considering the monetary assets of the patient, except for health savings accounts. The bill prohibits hospitals or emergency physicians from imposing time limits for eligibility for charity care or discounted payments. The bill also extends the prohibition on hospitals and emergency physicians from placing liens on primary residences to prohibiting liens on any real property owned by the patient. Lastly, the bill prohibits a collection agency, debt buyer, or assignee that is not a subsidiary or affiliate of the hospital from noticing or conducting a sale of any real property owned, in part or completely, by the patient or placing liens on any real property.

EXECUTIVE SUMMARY

Medical debt can be devastating to families in California and can come without warning. In fact, estimates find that over 40 percent of American adults are saddled with medical bills they are unable to pay. This bill seeks to bolster existing protect for patients and consumers who incur medical debt. This bill was previously analyzed by the Senate Health Committee—where it passed by a vote of 7 to 2—regarding issues relating to the public health implications of the bill's provisions, including the provisions related to limiting assets a hospital can consider to determine eligibility for their charity care or discount programs. This analysis, however, is limited to the issues within this Committee's jurisdiction—namely, the provisions related to medical debt collection. The bill is sponsored by Bet Tzedek and Western Center on Law and Poverty. The bill is supported by numerous consumer, labor, health access, and anti-poverty advocacy organizations, including the Public Law Center and the National Health Law Program. The bill is opposed by the California Hospital Association.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the Hospital and Emergency Physician Fair Pricing Policies (FPP), enforcement of which was transferred from the California Department of Public Health (CDPH) to the Department of Health Care Access and Information (HCAI) for violations occurring on or after January 1, 2024. (Health and Saf. § 127400 et seq.)

2) Requires a hospital's charity care policy to clearly state the eligibility criteria for charity care, and authorizes a hospital to consider income and monetary assets of the patient. (Health and Saf. § 127405(b) & (d).)
   a) For these purposes, prohibits monetary assets from including retirement or deferred compensation plans, and prohibits the first $10,000 of a patient's monetary assets from being counted in determining eligibility, nor 50% of a patient's monetary assets over the first $10,000. (Health and Saf. § 127405(c).)

3) Provides that eligibility for discounted payments or charity care may be determined at any time the hospital is in receipt of information needed to determine eligibility for charity care. (Health and Saf. § 127405(e)(4).)

4) Prohibits a hospital from selling patient debt to a debt buyer unless certain conditions are met, including that the hospital has found the patient ineligible for financial assistance or the patient has not responded to any attempts to bill or offer financial assistance for 180 days, the hospital includes contractual language in which the debt buyer agrees to return any account in which the balance has been determined to be incorrect or the patient is eligible for charity care or financial assistance. (Health and Saf. § 127425.)

5) Prohibits a collection agency, debt buyer, or other assignee that is not a subsidiary or affiliate of the hospital, in dealing with any patient under the hospital's charity care or discount payment policies, from using as a means of collecting unpaid hospital bills either of the following:
   a) A wage garnishment, except by order of the court upon noticed motion, supported by a declaration filed by the movant identifying the basis for which it believes that the patient has the ability to make payments on the judgment under the wage garnishment, which the court shall consider in light of the size of the judgment and additional information provided by the patient prior to, or at, the hearing concerning the patient's ability to pay, including information about probable future medical expenses based on the current condition of the patient and other obligations of the patient.
   b) Notice or conduct a sale of the patient's primary residence during the life of the patient or the patient's spouse, or during the period a child of the patient is a minor, or a child of the patient who has attained the age of majority is

unable to take care of themselves and resides in the dwelling as their primary residence. In the event a person protected by this paragraph owns more than one dwelling, the primary residence shall be the dwelling that is the patient's current homestead, as defined in Section 704.710 of the Code of Civil Procedure, or was the patient's homestead at the time of the death of a person other than the patient who is asserting the protections of this paragraph. (Health and Saf. § 127425(h)(2).)

6) Prohibits a hospital or other assignee that is an affiliate or subsidiary of the hospital, in dealing with patients eligible under the hospital's charity care or discount payment policies, from using wage garnishments or liens on primary residences. (Health and Saf. § 127425(h)(1).)

This bill:

1) Provides that in determining eligibility under its discount payment policy, a hospital shall not consider the monetary assets of the patient, but the hospital may consider a patient's health savings account, the health savings account of the patient's spouse, or, if the patient is a minor or dependent child, the health savings account of the patient's parent. In considering a health savings account for eligibility for discounted care, a hospital may require a patient to contribute up to the total amount in the account at the time of the hospital service and shall consider whether the patient qualifies for discounted care for the remainder of the bill under its policy after payment from the account.

2) Allows a hospital to consider the income of the patient and a patient's health savings account, the health savings account of the patient's spouse, or, if the patient is a minor or dependent child, the health savings account of the patient's parent. In considering a health savings account for eligibility for charity care, a hospital may require a patient to contribute up to the total amount in the account at the time of the hospital service and shall consider whether the patient qualifies for charity care for the remainder of the bill under its policy after payment from the account. In determining eligibility under its charity care policy, a hospital shall not consider the monetary assets of the patient.

3) Deletes the authorization under existing law to require documentation or information on all monetary assets.
    a) Deletes the authority for a hospital to require waivers or releases from the patient, or the patient's family, authorizing the hospital to obtain account information from financial institutions, commercial institutions, or other entities that hold or maintain the monetary assets, to verify their value.

4) Specifies how eligibility for discounted payments or charity care must be determined, and clarifies that the determination of eligibility must be determined at

any time the hospital is in receipt of information indicating that the patient qualifies for discounted payments or charity care.

5) Prohibits a hospital from imposing time limits for eligibility for charity care or discounted payments.

6) Allows a hospital to waive Medi-Cal and Medicare cost-sharing amounts as part of its charity care program or discount payment program.

7) Requires a hospital, in establishing a written policy defining standards and practices for the collection of debt, to obtain a written agreement from any agency that collects hospital receivables, specifying that the hospital shall consider only income, and not assets, of a patient.

8) Prohibits the hospital or other assignee that is an affiliate or subsidiary of the hospital, in dealing with patients eligible under the hospital's charity care or discount payment policies, from using wage garnishments or liens on any real property as a means of collecting unpaid hospital bills.

9) Prohibits any collection agency, debt buyer, or other assignee that is not a subsidiary or affiliate of the hospital from doing either of the following:
   a) noticing or conducting a sale of any real property owned, in part or completely, by the patient; or
   b) placing liens on any real property owned by the patient.

10) Makes the provisions in 1) through 9), above, applicable to an emergency physician.

COMMENTS

1. Stated need for the bill

The author writes:

> Health care debt can have profound consequences that impact not just an individual's financial security, but also their health. In a nationwide survey, 24% of adults stated that they had medical bills that were past due or that they were unable to pay. In nearly 20% of those cases, the burden of the debt has forced individuals to change their living situation, putting them at risk for homelessness. Many also forgo future medical care because of the debt.
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> Closer to home, over one third of Californians report having medical debt. In recent years, we've taken steps to better protect patients and ensure that hospitals are accountable for their charity care and financial assistance practices. However, patients can still fall through the gaps in our safety net. AB 2297 will shield a

qualifying patient's property from liens during the debt collection process, thereby helping to preserve their housing stability, and better clarify eligibility rules so that we can ensure more consistent compliance among hospitals.

2. Background on the FPP

The Senate Health Committee analysis of this bill provides useful background on the FPP:

> After several years of debate between consumer advocates and hospitals, AB 774 (Chan, Chapter 755, Statutes of 2006) established the Hospital Fair Pricing Policies Act. AB 774 did several things: it required hospitals to establish charity care and discount billing policies, and included notices about those policies; it limited the amount that uninsured patients could be charged to no more than the hospital could expect to receive for the same services from Medicare or Medi-Cal or other government sponsored benefits; it insured that patients would additionally be screened for government-subsidized programs for which they may qualify; and, it established practices for collections on bills, including that a hospital or collection agent may not take adverse action against a consumer for at least 150 days after the initial bill. AB 1503 (Lieu, Chapter 445, Statutes of 2010) used the model of AB 774 to apply very similar discount and charity care requirements to emergency physicians who provide emergency medical services in a hospital. In the intervening years, a number of bills have modified what is now called the Hospital and Emergency Physicians Fair Pricing Policies Act. AB 1020 (Friedman, Chapter 473, Statutes of 2021) shifted enforcement of the FPP from CDPH to HCAI, increased the income threshold for eligibility from 350% of [the federal poverty level] FPL to 400% of FPL, and placed limitations on medical debt collection practices.[1]

3. Medical debt

In 2021, it was estimated that there was $88 million of medical debt on consumer credit records, which accounted for 58 percent of all debt collection entries on credits reports.[2] According to the 2024 California Health Care Foundation Survey, medical debt is a significant driver of bankruptcy, poverty, and racial inequities—reporting that over a third (38 percent) of Californians report having medical debt, which disproportionately impacts Black, Latino, and low-income people.[3] Among Californians who report

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[1] Sen. Health Comm. analysis of SB 2297 (2023-24 reg. sess.) at p. 3.
[2] *Paying for It: How Health Care Costs and Medical Debt Are Making Americans Sicker and Poorer*, The Commonwealth Fund, (Oct. 26, 2023), available at https://www.commonwealthfund.org/publications/surveys/2023/oct/paying-for-it-costs-debt-americans-sicker-poorer-2023-affordability-survey#:~:text=In%202021%2C%20there%20was%20an,largest%20single%20source%20of%20debt.
[3] Jen Joynt, et. al., *The 2024 CHCF California Health Policy Survey*, (Jan, 31, 2024), available at https://www.chcf.org/publication/2024-chcf-california-health-policy-survey/.

medical debt, 18 percent owe $5,000 or more, 10 percent owe between $5,000 and $10,000, 4 percent owe between $10,000 and $25,000, and another 4 percent report owing more than $25,000.[4] The Urban Institute reports that over 70 percent of adults who reported having medical debt owed some of that debt to the hospitals, and hospital bills are generally much larger than other types of medical bills. [5] According to the American Bankruptcy Institute, medical debt is the second leading cause of bankruptcy after job loss.[6]

4. <u>Hospitals may sell right to collect medical debt to debt collectors</u>

While medical debt generally is owed to a hospital, they are authorized to sell the right to collect unpaid medical bills to debt collectors under specified conditions. These conditions are as follows:

- The hospital has found the patient ineligible for financial assistance or the patient has not responded to any attempts to collect on the bill or offer financial assistance for 180 days;
- The hospital includes contractual language in the sales agreement in which the debt buyer agrees to return, and the hospital agrees to accept, any account in which the balance has been determined to be incorrect due to the availability of a third-party payer, including a health plan or government health coverage program, or the patient is eligible for charity care or financial assistance;
- The debt buyer agrees to not resell or otherwise transfer the patient debt, except to the originating hospital or a tax-exempt organization, or if the debt buyer is sold or merged with another entity;
- The debt buyer agrees not to charge interest or fees on the patient debt; and,
- The debt buyer is licensed as a debt collector by the Department of Financial Protection and Innovation. (Health and Saf. Code § 127425.)

Existing law prohibits a hospital or its affiliates from collecting their debts by placing liens on a patient's primary residence (Health and Saf. Code § 127425(h)(1)). However, debt collectors are not subject to this same limitation under existing law. Existing law provides that a debt collector cannot notice or conduct a sale of the patient's primary residence during the life of the patient or the patient's spouse, or during the period a child of the patient is a minor, or a child of the patient who has attained the age of majority and is unable to take care of themselves and resides in the dwelling as their primary residence. (Health and Saf. § 127425(h)(2).) This bill would instead prohibit both a hospital and any collection agency or debt collector from placing any liens on

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[4] *Ibid.*

[5] Michael Karpman, *Most Adults with Past-Due Medical Debt Owen Money to Hospitals*, The Urban Institute, (Mar. 2023), https://www.urban.org/sites/default/files/2023-03/Most%20Adults%20with%20Past-Due%20Medical%20Debt%20Owe%20Money%20to%20Hospitals.pdf.

[6] *The 3 Most Common Reasons Why People File Bankruptcy*, American Bankruptcy Institute, available at https://www.abi.org/feed-item/the-3-most-common-reasons-why-people-file-bankruptcy.

any real property. The bill would also specifically prohibit a collection agency or debt collector from noticing or conducting a sale of any real property owned, in part or completely, by the patient. This would essentially leave wage garnishment by order of a court as the exclusive way a collection agency or debt collector would be able to collect on the debt owed.

5. Statements in support

Bet Tzedek and Western Center on Law and Poverty, the sponsors of the bill, write in support stating:

> The Hospital Fair Pricing Act, Health and Safety Code § 127400 et seq., sets minimum guidelines that hospitals, debt collectors, and emergency physicians must follow in offering financial assistance to patients and collecting unpaid accounts. Despite qualifying for financial assistance, patients are still getting large medical bills from hospitals. Some hospitals impose arbitrary deadlines and disqualify eligible patients from financial assistance. The Department of Health Care Access and Information interprets current law to prohibit deadlines for application, and the current statute should clearly reflect the Act's intent. This bill would clarify that hospitals must review financial assistance eligibility at any time and prohibit application deadlines for financial assistance.
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> AB 2297 would also address historic inequities in wealth accumulation. Home ownership is the greatest asset for many Californians, and often the main way that families build generational wealth. Currently, hospitals are prohibited from placing liens on a patient's primary residence, but debt collectors are allowed to place liens on a patient's home to collect unpaid hospital bills. Property liens are regularly used to collect unpaid medical debt. In Los Angeles County, a review of two debt collectors that work exclusively on behalf of healthcare providers found that over 140 property liens were placed in 2023 with similar numbers in previous years. This bill would completely prohibit the use of home liens in the collection of unpaid hospital bills from financially qualified patients. […]
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> Current hospital financial assistance rules on assets are confusing to the average patient. Hospitals may exclude a patient from charity care eligibility in almost any way they want, subject to a few limitations. Certain monetary assets such as pensions and 401(k) retirement plans are excluded but other forms of monetary assets such as stocks, personal savings, and health savings accounts may not be. Hospitals may not count the first $10,000 of a patient's monetary assets and may not count 50% of a patient's monetary assets over the first $10,000.
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> This bill would protect Californians' savings from being depleted when seeking hospital care. While retirement plans are protected from eligibility exclusions in

> charity care determinations, personal savings accounts and other monetary assets are not. Californians need their savings to prevent senior poverty. […]

6. Statements in opposition

The California Hospital Association (CHA) is opposed unless amended to provisions of the bill that are not squarely in the jurisdiction of this Committee. Specifically they state prohibiting assessment of a patient's assets for waivers of Medicare and Medi-Cal cost sharing would require hospitals to be out of compliance with federal laws and guidelines, writing:

> The sponsors and authors of this bill recognize the federal law issues with respect to Medicare patients, but the amendments they have accepted only solve part of the problem. The bill still prohibits hospitals from considering some of the assets of Medicare patients – specifically, their 401K and IRA assets, no matter how large. The federal government does not permit hospitals to overlook a Medicare patient's $500,000 401K or IRA and forgive their bill on the basis of indigency. In addition, the sponsors and authors fail to recognize the federal limits on writing off debts for beneficiaries of other federal health care programs.
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> CHA recommends that this bill include language that allows hospitals to consider all assets for patients covered by Federal health care programs, but only so long as federal law so requires. The stakeholders may wish to request that the Biden administration revise its policy on considering assets.

The Senate Health Committee reviewed these claims that the bill's limitation on what assets can be used to assess a discount payment policy and recommended an amendment to carve out Medicare beneficiaries from the limitation on monetary assets, but only to the extent required to comply with federal law. The Senate Health Committee did not require such a carve-out for Medi-Cal beneficiaries. It should also be noted that existing law already prohibits retirement assets and deferred compensation plans (i.e. 401ks and IRAs) from being used in the determination of monetary assets under the existing charity care provisions. (*see* Health & Saf. Code § 127405(c) & (e)(2).)

The second issue CHA raises is with the prohibition on hospitals from establishing a reasonable deadline for patients to apply for charity care or discounted payment, requesting the bill be amended "to establish a reasonable deadline—approximately four years after payment is made—after which the account would be closed." They state that a deadline incentivizes patients to complete the charity care application. They also note that existing law requires hospitals to refund any amount paid if a patient later completes an application and is found eligible for charity care or discounted payment and that without a timeline they could have to refund a patient many years later.

SUPPORT

Bet Tzedek (sponsor)
Western Center on Law and Poverty (sponsor)
American Federation of State, County and Municipal Employees, AFL-CIO
California Retired Teachers Association
Coalition of California Welfare Rights Organizations
County of Los Angeles Board of Supervisors
Courage California
Disability Rights Education and Defense Fund
Los Angeles County Department of Public Health
National Health Law Program
National Multiple Sclerosis Society
Public Law Center
SEIU California
The Leukemia and Lymphoma Society

OPPOSITION

California Hospital Association

RELATED LEGISLATION

Pending Legislation:

SB 1061 (Limón, 2024), among other things, prohibits: reporting medical debt to credit reporting agencies or an investigative consumer reporting agency; those agencies from including it in their reports; and others from relying on medical debt that appears. SB 1061 is currently pending in the Assembly Health Committee.

Prior Legislation: AB 1020 (Friedman, Ch. 473, Stats. 2021) *see* Comment 2), above.

AB 1503 (Lieu, Ch. 445, Stats. 2010) *see* Comment 2), above.

AB 774 (Chan, Ch. 755, Stats. 2006) *see* Comment 2), above.

PRIOR VOTES

Senate Health Committee (Ayes 7, Noes 2)
Assembly Floor (Ayes 56, Noes 6)
Assembly Appropriations Committee (Ayes 11, Noes 2)
Assembly Judiciary Committee (Ayes 9, Noes 2)
Assembly Health Committee (Ayes 13, Noes 2)
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