

1 S.240

2 Introduced by Senators Hooker, Pollina and Ram Hinsdale

3 Referred to Committee on

4 Date:

5 Subject: Health; health care providers; health care facilities; patients; financial
6 assistance policies; medical debt

7 Statement of purpose of bill as introduced: This bill proposes to set minimum
8 requirements for specified health care facilities' patient financial assistance
9 policies. It would also provide patients with certain protections against
10 medical debt.

11 An act relating to patient financial assistance policies and medical debt
12 protection

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 18 V.S.A. chapter 221, subchapter 10 is added to read:

15 Subchapter 10. Patient Financial Assistance

16 § 9481. DEFINITIONS

17 As used in this subchapter:

18 (1) “Amount generally billed” means the amount a large health care
19 facility generally bills to individuals for emergency or other medically

1 necessary health care services, determined using the “look-back method” set
2 forth in 26 C.F.R. § 1.501(r)-5(b)(3).

3 (2) “Credit reporting agency” means a person who, for fees, dues, or on
4 a cooperative basis, regularly engages in whole or in part in the practice of
5 assembling or evaluating information concerning a consumer’s credit or other
6 information for the purpose of furnishing a credit report to another person.

7 (3) “Health care provider” means a person, partnership, corporation,
8 facility, or institution licensed, certified, or otherwise authorized by law to
9 provide professional health care services in this State to an individual during
10 that individual’s medical care, treatment, or confinement.

11 (4) “Health care services” means services for the diagnosis, prevention,
12 treatment, cure, or relief of a physical, dental, behavioral, or mental health
13 condition or substance use disorder, including procedures, products, devices,
14 and medications.

15 (5) “Household income” means income calculated in accordance with
16 the financial methodologies for determining financial eligibility for Medicaid
17 under 42 C.F.R. § 435.603, including the method used to calculate household
18 size.

19 (6) “Large health care facility” means each of the following health care
20 providers:

21 (A) a hospital licensed pursuant to chapter 43 of this title;

1 (B) an outpatient clinic or facility affiliated with or operating under
2 the license of a hospital licensed pursuant to chapter 43 of this title; and

3 (C) an ambulatory surgical center licensed pursuant to chapter 49 of
4 this title.

5 (7) “Large health care facility contractor” means a health care provider
6 or other entity located in or outside this State that is not employed by but
7 contracts with a large health care facility located in this State to provide health
8 care or health care-related services directly or indirectly to or for the benefit of
9 the large health care facility’s patients, such as imaging services, ambulance
10 services, or laboratory services, occurring in the large health care facility or
11 pursuant to orders from health care professionals employed by the facility.

12 The term includes an independent health care provider who is not employed by
13 a large health care facility but who delivers any health care or health care-
14 related service in that facility.

15 (8) “Medical creditor” means a large health care facility to which a
16 consumer owes money for health care services.

17 (9) “Medical debt” means a debt arising from the receipt of health care
18 services.

19 (10) “Medical debt collector” means an individual or entity that
20 regularly collects or attempts to collect, directly or indirectly, medical debts

1 originally owed or due, or asserted to be owed or due, to another individual or
2 entity.

3 (11) “Medically necessary health care services” means health care
4 services, including diagnostic testing, preventive services, and after care, that
5 are appropriate to the patient’s diagnosis or condition in terms of type, amount,
6 frequency, level, setting, and duration.

7 (12) “Patient” means the individual who receives or received health care
8 services and shall include a parent if the patient is a minor or a legal guardian
9 if the patient is a minor or adult under guardianship.

10 (13) “Vermont resident” means an individual, regardless of citizenship
11 and including undocumented immigrants, who resides, is employed, or attends
12 school in Vermont, or a combination of these.

13 § 9482. FINANCIAL ASSISTANCE POLICIES FOR LARGE HEALTH

14 CARE FACILITIES

15 (a) Each large health care facility in this State shall develop a written
16 financial assistance policy that, at a minimum, complies with the provisions of
17 this subchapter and any applicable federal requirements.

18 (b) The financial assistance policy shall:

19 (1) apply, at a minimum, to all emergency and other medically
20 necessary health care services that the large health care facility offers;

1 (2) provide free or discounted care to Vermont residents and to
2 individuals who live in Vermont at the time the services are delivered but who
3 lack stable housing, as follows:

4 (A) for an uninsured patient with household income at or below
5 300 percent of the federal poverty level (FPL), a 100 percent discount from the
6 amount generally billed for the services received, resulting in free care;

7 (B) for an uninsured patient with household income between 300 and
8 500 percent FPL, a minimum of a 30 percent discount from the amount
9 generally billed for the services received;

10 (C) for a patient with health insurance or other coverage for the
11 services delivered and with household income at or below 300 percent FPL, a
12 waiver of all out-of-pocket costs that would otherwise be due from the patient;

13 (D) for a patient with health insurance or other coverage for the
14 services delivered and with household income between 300 and 500 percent
15 FPL, a minimum of a 30 percent discount on the patient's out-of-pocket costs;

16 (E) for all patients with household incomes below 500 percent FPL, a
17 limit on the total amount due from the patient during any 12-month period of
18 an amount equal to not more than 100 percent FPL for the applicable
19 household size; and

20 (F) for all patients, regardless of household income, catastrophic
21 assistance in the event that the large health care facility's medical bills for a

1 patient's care exceed 20 percent of the patient's household income, in which
2 case the facility shall reduce the amount due from the patient to 20 percent of
3 the patient's household income; and

4 (3) include all of the following:

5 (A) the eligibility criteria for financial assistance;

6 (B) the basis for calculating amounts charged to patients;

7 (C) the method and process for applying for financial assistance,
8 including the information and documentation that the facility may require a
9 patient to provide as part of the application;

10 (D) the reasonable steps that the facility will take to determine
11 whether a patient is eligible for financial assistance;

12 (E) the facility's billing and collections policy, including the actions
13 the facility may take in the event of nonpayment, such as collections action and
14 reporting to credit reporting agencies;

15 (F) an appeals process for patients who are denied financial
16 assistance or who believe the amount of financial assistance granted is
17 inconsistent with the policy or the provisions of this subchapter; and

18 (G) a plain language summary of the policy, not to exceed two pages
19 in length, with a Flesch reading ease score of at least 40, less than 20 percent
20 passive sentences, and a Flesch-Kincaid grade level not greater than 10.5.

1 (c) The owners or governing body of the large health care facility shall
2 approve the facility's financial assistance policy and shall review and approve
3 the policy at least once every three years.

4 (d) A large health care facility may require a patient to be a Vermont
5 resident as a condition of eligibility for financial assistance but shall not
6 impose any requirements regarding the duration of a patient's status as a
7 Vermont resident; provided, however, that the facility shall also extend its
8 financial assistance policy to individuals who live in Vermont at the time they
9 receive health care services from the facility but who lack stable housing.

10 (e)(1) A large health care facility shall include in each of its contracts with
11 a large health care facility contractor provisions that require the large health
12 care facility contractor to:

13 (A) adhere to the provisions of the facility's financial assistance
14 policy for all health care and health care-related services delivered to a patient
15 of the facility in connection with a given episode of care;

16 (B) inform patients of the facility to whom the contractor delivers
17 health care and health care-related services about the facility's financial
18 assistance policy as set forth in subsection 9484(b) of this subchapter to the
19 extent applicable to the contractor's role in the patient's care; and

20 (C) accept the same or a copy of the same financial assistance
21 application that the patient submitted to the facility without imposing a

1 separate application requirement, rely on the facility's determination of the
2 patient's eligibility for financial assistance, and apply discounts for financially
3 eligible patients in accordance with subsection 9483(b) of this subchapter.

4 (2) A large health care facility may include a provision in a contract
5 with a large health care facility contractor that exempts the contractor from the
6 requirements of subdivisions (1)(A)–(C) of this subsection for services that
7 meet the following conditions:

8 (A) the patient's initial contact with the contractor regarding the
9 services occurred in a setting other than the large health care facility; and

10 (B) the contractor provided the patient with written notice that the
11 services would not be eligible for assistance under the large health care
12 facility's patient assistance policy before the patient committed to the services
13 and, at a minimum, 96 hours before the services were delivered.

14 § 9483. IMPLEMENTATION OF FINANCIAL ASSISTANCE POLICY

15 (a) In addition to any other actions required by applicable State or federal
16 law, a large health care facility shall take the following steps before seeking
17 payment for any emergency or medically necessary health care services:

18 (1) determine whether the patient has health insurance or other coverage
19 for the services delivered, including whether the health care services may be
20 covered in whole or in part by an automobile insurance, workers'
21 compensation, or other type of policy;

1 (2) if the patient is uninsured, offer to provide the patient with
2 information on how to apply for, and offer to connect the patient with help in
3 applying for, public programs that may assist with health care costs; provided,
4 however, that an undocumented immigrant’s refusal to apply for public
5 programs shall not be grounds for denying financial assistance under the
6 facility’s financial assistance policy;

7 (3) offer to provide the patient with information on how to apply for,
8 and offer to connect the patient with help in applying for, health insurance and
9 private programs that may assist with health care costs; provided, however,
10 that a patient’s refusal to apply for private health insurance shall not be
11 grounds for denying financial assistance under the facility’s financial
12 assistance policy;

13 (4) if available, use information in the facility’s possession to determine
14 the patient’s eligibility for free or discounted care based on the criteria set forth
15 in subdivision 9482(b)(2) of this subchapter; and

16 (5) offer to the patient, at no charge, a financial assistance policy
17 application and assistance in completing the application.

18 (b) A large health care facility shall determine a patient’s eligibility for
19 financial assistance as follows:

20 (1)(A) The facility shall determine a patient’s household income using
21 the patient’s most recent federal or state income tax return.

1 (B)(i) The facility shall give each patient the option to submit pay
2 stubs, documentation of public assistance, or other documentation of
3 household income that the Department of Vermont Health Access identifies as
4 valid documentation for purposes of this subchapter in lieu of or in addition to
5 an income tax return.

6 (ii) A patient who is an undocumented immigrant shall also be
7 given the option to submit a profit and loss statement in lieu of an income tax
8 return.

9 (C) The facility shall not require any additional information to verify
10 income beyond the sources of information set forth in subdivisions (A) and (B)
11 of this subdivision (1).

12 (2) The facility may grant financial assistance to a patient
13 notwithstanding the patient's failure to provide one of the required forms of
14 household income documentation and may rely on, but not require, other
15 evidence of eligibility.

16 (3) The facility may grant financial assistance based on a determination
17 of presumptive eligibility relying on information in the facility's possession
18 but shall not presumptively deny an application based on that information.

19 (4)(A) The facility may, but is not required to, include an asset test in its
20 financial assistance eligibility criteria. If the facility chooses to include an
21 asset test in its financial assistance eligibility criteria, the asset test shall only

1 apply to liquid assets. For purposes of determining financial assistance
2 eligibility, liquid assets shall not include the household's primary residence,
3 any 401(k) or individual retirement accounts, or any pension plans.

4 (B) Any limit on liquid assets for purposes of financial assistance
5 eligibility shall be set at a dollar amount not less than 400 percent of the
6 federal poverty level for the relevant household size for the year in which the
7 health care services were delivered.

8 (c)(1) Within 30 calendar days following receipt of an application for
9 financial assistance, the large health care facility shall notify the patient in
10 writing as to whether the application is approved or disapproved or, if the
11 application is incomplete, what information is needed to complete the
12 application.

13 (2) If the facility approves the application for financial assistance, the
14 facility shall provide the patient with a calculation of the financial assistance
15 granted and a revised bill.

16 (3) If the facility denies the application for financial assistance, the
17 facility shall allow the patient to submit an appeal within 60 days following
18 receipt of the facility's decision. The facility shall notify the patient of its
19 approval or denial of the patient's appeal within 30 days following receipt of
20 the appeal.

1 (d)(1) A large health care facility or medical debt collector shall, at a
2 minimum, offer to any patient who qualifies for financial assistance a payment
3 plan of not less than 24 months and shall not require the patient to make
4 monthly payments that exceed five percent of the patient's gross monthly
5 household income.

6 (2) A large health care facility or medical debt collector shall not impose
7 any prepayment or early payment penalty or fee on any patient and shall not
8 charge interest on any medical debt owed by a patient who qualifies for the
9 facility's patient assistance program.

10 (e) A large health care facility shall not discriminate on the basis of race,
11 color, sex, sexual orientation, gender identity, marital status, religion, ancestry,
12 national origin, citizenship, immigration status, primary language, disability,
13 medical condition, or genetic information in its provision of financial
14 assistance or in the implementation of its financial assistance policy.

15 § 9484. PUBLIC EDUCATION AND INFORMATION

16 (a) Each large health care facility shall publicize its financial assistance
17 policy widely by:

18 (1) making the financial assistance policy and application form easily
19 accessible online through the facility's website and through any patient portal
20 or other online communication portal used by the facility's patients;

1 (2) providing paper copies of the financial assistance policy and
2 application form upon request at no charge, both by mail and at the facility's
3 office; for hospitals, copies shall also be available in at least one location in
4 each department and in the hospital's admissions area;

5 (3) providing oral and written translations of the financial assistance
6 policy upon request;

7 (4) notifying and informing members of the community served by the
8 facility about the financial assistance policy in a manner reasonably calculated
9 to reach the members of the community who are mostly likely to need financial
10 assistance, including members who are nonnative English speakers, provided
11 that these efforts shall be commensurate with the facility's size and income;
12 and

13 (5) conspicuously displaying notices of and information regarding the
14 financial assistance policy in the facility's offices; for hospitals, the notices and
15 information shall be posted in at least one location in each department and in
16 the hospital's admissions area.

17 (b) Each large health care facility shall directly notify individuals who
18 receive care from the facility about the facility's financial assistance policy by,
19 at a minimum:

1 (1) offering a paper copy of the financial assistance policy to each
2 patient as part of the patient's first visit or, in the case of a hospital, during the
3 intake and discharge processes; and

4 (2) including a conspicuous written notice on billing statements,
5 whether sent by the facility or by a medical debt collector, stating that financial
6 assistance is available to some patients based on income and including:

7 (A) a telephone number that the patient can call to request a financial
8 assistance application and to receive information about the financial assistance
9 policy and the application process; and

10 (B) the specific website address at which copies of the policy and
11 application are available.

12 (c) All written or oral attempts by a medical creditor or medical debt
13 collector to collect a medical debt arising from health care services delivered
14 by a large health care facility, including services delivered through a large
15 health care facility contractor, shall include information for the patient about
16 the relevant financial assistance policy or policies.

17 § 9485. DEBT FORGIVENESS IS NOT BREACH OF CONTRACT

18 A medical creditor's forgiveness of any portion of an insured patient's co-
19 payment, coinsurance, deductible, facility fees, out-of-network charges, or
20 other cost-sharing shall not be deemed to be a breach of contract or other

1 violation of any agreement between the medical creditor and an insurer or
2 other payor or contractor.

3 § 9486. PROHIBITION ON SALE OF MEDICAL DEBT

4 No large health care facility shall sell its medical debt.

5 § 9487. REMEDIES

6 (a)(1) Collection activity against an individual whom the medical creditor
7 or medical debt collector knew or should have known was or should have been
8 eligible for financial assistance under this subchapter is an unfair and deceptive
9 act in trade and commerce in violation of 9 V.S.A. § 2453.

10 (2) A person who violates any provision of this subchapter commits an
11 unfair and deceptive act in trade and commerce in violation of 9 V.S.A.
12 § 2453.

13 (b) Any individual may sue for injunctive or other appropriate equitable
14 relief to enforce the provisions of this subchapter. A court shall award costs
15 and reasonable attorney's fees to an individual who prevails in an action
16 brought under this section.

17 (c) The remedies provided in this section are not intended to be the
18 exclusive remedies available to an individual, nor must an individual exhaust
19 any administrative remedies provided under this subchapter or any other
20 applicable law.

1 (d)(1) No financial assistance policy or agreement between a patient and a
2 large health care facility, large health care facility contractor, or medical debt
3 collector shall contain a provision that, prior to a dispute arising, waives or has
4 the practical effect of waiving the patient's legal rights to resolve a dispute,
5 including by obtaining one or more of the following:

6 (A) injunctive, declaratory, or other equitable relief;

7 (B) damages in any form or amount, including the damages specified
8 in 9 V.S.A. § 2461;

9 (C) attorney's fees and costs; or

10 (D) a hearing at which the patient may present evidence in person.

11 (2) Any provision in a financial assistance policy or written agreement
12 violating this subsection shall be void and unenforceable. A court may refuse
13 to enforce other provisions of the financial assistance policy or written
14 agreement as equity may require.

15 § 9488. PROHIBITION OF WAIVER OF RIGHTS

16 Any waiver by a patient or other individual of any protection provided by or
17 any right of the patient or other individual under this subchapter is void and
18 shall not be enforced by any court or any other person.

19 § 9489. ENFORCEMENT

20 The Office of the Attorney General has the same authority to make rules,
21 conduct civil investigations, enter into assurances of discontinuance, and bring

1 civil actions for violations of this subchapter as is provided under 9 V.S.A.

2 chapter 63, subchapter 1.

3 Sec. 2. EFFECTIVE DATE

4 This act shall take effect on July 1, 2022.