

FY 2025 Executive Budget Contains Surprising Consumer Protection Laws Aimed at Medical Practices

Buried in the FY 2025 Executive Budget, which Governor Hochul signed on April 20, 2024, were several provisions that could have a marked impact on the day-to-day operations of medical practices. There was little fanfare about these new provisions, and there is even less guidance on their implementation. Nevertheless, medical practices need to be aware of and plan for how the new laws will impact their operations. All of the sections outlined below are scheduled to take effect on October 20, 2024.¹

Separate Patient Consent for Payment

The budget bill added a new Section 18-C to the Public Health Law, which reads as follows:

Informed consent from a patient to provide any treatment, procedure, examination, or other direct health care services shall be obtained separately from such patient's consent to pay for the services. Consent to pay for any health care services by a patient shall not be given prior to the patient receiving such services and discussing treatment costs. For purposes of this section, "consent" means an action which:

- (a) clearly and conspicuously communicates the individual's authorization of an act or practice;
- (b) is made in the absence of any mechanism in the user interface that has the purpose or substantial effect of obscuring, subverting, or impairing decision-making or choice to obtain consent; and
- (c) cannot be inferred from inaction.

This new section of the Public Health Law imposes a broad mandate on health care professionals to have a specific discussion regarding payment for services. Patient consent for payment must be obtained separate and apart from consent to treatment. Practices that employ a simple, universal consent for "treatment, payment, and health care operations" will likely need to revise their intake forms to comply with the new law. Simply giving notice of payment policies and terms will not satisfy the requirement of patient consent unless you can show that the patient understood and agreed to the payment terms. As a best practice, you should obtain patient (or representative) signatures and acknowledgments on a separate form outlining your billing and payment policies.

It is unclear how a practice should comply with the requirement that "consent shall not be given prior to the patient receiving services and discussing treatment costs." At a minimum, it is recommended that consent should be obtained at the time the patient is in the office to receive services. The patient should be given a full opportunity to ask questions and explore payment alternatives. Again, it is unclear whether the patient must "re-consent" every time a service is

¹ New York Laws 2024, Ch. 57, Sec. O-4, effective October 20, 2024.

offered; a more practical reading would be that consent is required for any new or different services that are not covered or contemplated by the original consent.

Prohibitions Regarding Credit Cards

A new Section 349-g of the General Business Law was added to prohibit deceptive acts and practices in credit card applications. This new law prohibits medical providers from assisting consumers in applying for medical credit cards. Since many practices offer products such as Care Credit, it is important to take note of the new provisions:

Section 349-g. Restrictions on applications for and use of credit cards and medical financial products.

1. For purposes of this section, the following terms shall have the following meanings:

- (a) “Medical financial products” shall mean medical credit cards and third-party medical installment loans.
- (b) “Health care provider” shall mean a health care professional licensed, registered, or certified pursuant to title eight of the education law.²
- (c) “Medical credit card” shall mean a credit card issued under an open-end or closed-end plan offered specifically for the payment of health care services, products, or devices provided to a person.

2. It shall be prohibited for any hospital or health care provider, or employee or agent of a hospital or health care provider, to complete any portion of an application for medical financial products for the patient or otherwise arrange for or establish an application that is not completely filled out by the patient.

This law requires patients to complete their own applications for financial assistance. Health care professionals are barred from helping the patient complete the application. The meaning of the phrase “otherwise arrange for” is not clear. Merely having a credit card brochure available to patients is likely permitted, but practices should stay away from offering guidance, interpretation, or assistance to patients, even if this might prove a hardship to patients who are less sophisticated regarding financial matters. Nevertheless, it is recommended that staff should not assist patients with any details regarding a credit card application. The safest course would be to simply refer the patient to the customer service number offered by the financial agency. Practices should note that a violation of this section can be punished under Section 350-d of the General Business Law by a civil penalty of up to \$5,000 for each violation, enforced in a civil action brought by the New York State Attorney General.

Finally, the budget bill enacted a new Section 519-a of the General Business Law for unlawful use of credit and debit cards. This new section prohibits a provider from requiring credit card

² The list includes all of the health professions and may be found [here](#).

pre-authorization or having a credit card on file prior to providing emergency or medically necessary medical services to patients:

2. No hospital or health care provider shall require credit card pre-authorization nor require the patient to have a credit card on file prior to providing emergency or medically necessary medical services to such patient.

3. Hospitals and health care providers shall notify all patients about the risks of paying for medical services with a credit card. Such notification shall highlight the fact that by using a credit card to pay for medical services, the patient is forgoing state and federal protections that regard medical debt. The commissioner of health shall have the authority and sole discretion to set requirements for the contents of such notices.

Note that this section does not prohibit payment by credit cards, even pre-approved installment payments. If a patient has agreed to make installment payments and has signed an authorization, that would be an acceptable practice. What this law does prohibit is a provider requiring pre-authorization before providing services or and maintaining a credit card number on file to be charged for health care services without specific patient agreement.

Note that this prohibition covers emergency and “medically necessary” services; the phrase “medically necessary” would seem to encompass any service that is reimbursable by insurance. It would seem that purely elective cosmetic procedures are exempt. In addition, there is a new notification requirement placed upon providers. Your office must notify patients that when they pay for services with a traditional credit card, they are foregoing all of the protections afforded to patients by both federal and state medical debt laws.³ To date, the Department of Health has not issued any guidance on the contents of the required notice, but hopefully that will be forthcoming before this new law takes effect in October. Finally, providers should be aware that violations of this section are also enforced by the New York State Attorney General in an action to restrain the unlawful practice.⁴

As of this writing, there is very little to offer medical practices by way of official guidance on the meaning of these new laws. It is hoped that additional information will be published as the implementation date draws near.

³ See, for example, amendments to Sections 5201(b) and 5231(b) of the New York Civil Practice Law and Rules in November 2022, which prohibit placing a lien on a primary residence or issuing wage garnishments for medical debt, and Article 49-A of the Public Health Law enacted December 13, 2023, which prohibits reporting medical debt to credit agencies. None of these laws exempt amounts owed on traditional credit cards.

⁴ See General Business Law Section 513.

AUTHOR'S BIOGRAPHY



[Fran Ciardullo](#)

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.

A former Town of Schroepfel town justice, Fran is also trained in alternative dispute resolution and has mediated and arbitrated a variety of civil actions and disputes. She routinely publishes industry articles and presents educational programs on legal matters to hospitals, medical and dental practices, and trade associations.