

CHAPTER 26**HOSPITAL CARE PAYMENT COMMISSION
AND NEW JERSEY HOSPITAL CARE
PAYMENT FUND****Authority**

N.J.S.A. 17:1-8.1 and 15e and 17B:30-45.

Source and Effective Date

R.2004 d.189, effective April 16, 2004.
See: 35 N.J.R. 5439(a), 36 N.J.R. 2483(a).

Chapter Expiration Date

Chapter 26, Hospital Care Payment Commission and New Jersey Hospital Care Payment Fund, expires on April 16, 2009.

Chapter Historical Note

Chapter 26, Hospital Care Payment Commission and New Jersey Hospital Care Payment Fund, was adopted as Special New Rules by R.2003 d.471, effective November 5, 2003 (to expire May 5, 2004). See: 35 N.J.R. 5439(a).

Chapter 26, Hospital Care Payment Commission and New Jersey Hospital Care Payment Fund, was adopted as Concurrent New Rules by R.2004 d.189, effective April 16, 2004. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**11:26-1.1 Purpose**

This chapter implements P.L. 2003, c.112, which established within the Department of Banking and Insurance a Hospital Care Payment Commission for the purpose of

creating a procedure for the collection of certain hospital bad debts.

11:26-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Act” means P.L. 2003, c.112 (N.J.S.A. 17B:30-41 et seq.).

“Certificate of debt” means the certificate referred to in P.L. 2003, c.112 filed by the Commission with the Clerk of the Superior Court for the purpose of docketing a judgment against a debtor identified on the certificate in an amount stated on the certificate.

“Coinsurance” means the percentage of a covered charge that must be paid by a person covered by a health plan. Coinsurance does not include deductibles, copayments or charges not covered by a health plan.

“Collection agency” means the Department of the Treasury and any company, agency or law firm selected by the Department of the Treasury for the purpose of collecting debt under the Act.

“Copayment” means a specified dollar amount a person covered by a health plan pays for certain services that are otherwise covered by the plan.

“Covered charge” means a charge incurred by a person that is covered, in full or in part, by a health plan.

“Debt” or “bad debt” means any monetary obligation, including late payment penalties and interest, owed by a hospital patient to a hospital that has assigned the obligation to the Commission. The term also includes the monetary obligations to a hospital that are owed by a person such as a parent or spouse or guardian who is legally responsible for payment of a hospital bill for services provided to another person, where the hospital has assigned the obligation to the Commission. The term does not include monies owed to a hospital by a health plan for services provided by the hospital to a person with coverage under that plan. Nor does the term include amounts subject to dispute between a health plan and a hospital.

“Debtor” means an individual owing money to or having a delinquent account with a hospital, which obligation has not been adjudicated, satisfied by court order, set aside by court order or discharged in bankruptcy.

“Deductible” means the amount of covered charges that a person covered by a health plan must pay before the health plan pays any benefits for such charges.

“Fairness formula” means the formula for determining the amount of a debt to be collected from a debtor. The formula shall be based upon ratios calculated on Net Patient Service Revenue and Gross Charges, as reported in the Department of Health and Senior Services’ (DHSS) “Net Patient Revenue to Charge Ratio” report and derived from the most recent DHSS aggregate current cost data base in accordance with N.J.A.C. 8:31B-3.16. The report may be obtained from DHSS through an Open Public Records Act (OPRA) request, which should reference DHSS, Health Care Quality and Oversight, Hospital Financial Reporting and Support. No reduction in debt shall be made for coinsurance, copayments and deductibles due under a health plan.

“Health plan” means an individual or group health benefits plan that provides or pays the cost of hospital and medical expenses, dental care, vision care or prescription drugs and is provided by or through an insurer, health maintenance organization, Medicare, Medicaid, a Medicare + Choice provider or Medicare supplement insurer, an employer-sponsored group health benefits plan, government or church-sponsored health benefits plan or a multi-employer welfare arrangement.

“Hospital” means any entity that meets the definition set forth in N.J.A.C. 8:43G-1.2.

“Hospital Bad Debt Collection Program” or “Program” means the program authorized by P.L. 2003, c.112 whereby hospitals may assign certain unpaid patient accounts to the Hospital Care Payment Commission for collection.

“Hospital Care Payment Commission” or “Commission” means the commission established by P.L. 2003, c.112 within the Department of Banking and Insurance.

“Insurer” means an insurer licensed to sell health insurance pursuant to Title 17B of the New Jersey Statutes, a health, hospital or medical service corporation, or a fraternal benefit association.

“Medicaid” means the program established pursuant to P.L. 1968, c.413 (N.J.S.A. 30:4D-1 et seq.).

“Medicare” means the program established by the Health Insurance for the Aged Act, Title XVIII of the “Social Security Act” (Pub. L. 89-97, 42 U.S.C. §§ 1395 et seq.), as amended, or its successor plan or plans.

“Patient” means a person who receives any service from a hospital, whether on an in-patient basis or an out-patient basis.

“SOIL” means and refers to the Setoff of Individual Liability program established pursuant to P.L. 1981, c.239 (N.J.S.A. 54A:9-8.1 et seq.), as may be amended from time to time.

11:26-1.3 Commission structure and meetings

(a) The Commission was created pursuant to Section 3 of P.L. 2003, c.112 and consists of the Commissioners of Banking and Insurance, Health and Senior Services, Human Services, and the State Treasurer, all of whom shall serve ex officio, and a representative of the hospital community appointed by the Governor for a term of three years. The Commissioner of Banking and Insurance shall serve as chair of the Commission.

(b) The Commission may elect a Vice-chair from among its members, as well as other officers, as it deems appropriate. The election of officers shall be held annually, or more frequently if needed to fill vacancies. Subject to the provisions of P.L. 2003, c.112 and as authorized by the Commission, such officers are authorized to serve as signatories on behalf of the Commission and perform other ministerial functions necessary and proper to effectuate the actions of the Commission.

(c) The Commission shall have full power and responsibility for the establishment and operation of the hospital bad debt collection program created pursuant to P.L. 2003, c.112.

(d) The votes of the Commission shall be on a one person, one vote basis.

(e) Each member of the Commission shall notify the Chair in writing of the name of his or her primary representative. The Commissioners of Banking and Insurance, Health and Senior Services, Human Services, and the State Treasurer may designate an alternate employed by the same State agency, and shall notify the Chair in writing of the name of the alternate.

(f) A majority of the members of the Commission shall constitute a quorum for the transaction of business. The acts of the majority of the members at a meeting at which a quorum is present shall be the acts of the Commission, except as otherwise provided herein.

(g) An annual meeting of the Commission shall be held no later than the first Tuesday in April each year in accordance with the State’s Open Public Meetings Act, N.J.S.A. 10:4-1 et seq.

(h) The Commission shall establish a schedule of regular meetings which, at a minimum, shall provide for one meeting each month; however, any such regular meeting may be cancelled upon a determination by the Chair that there is insufficient business to bring before the Commission to justify such meeting.

(i) Special meetings of the Commission may be called by the Chair or at the request of any one Commission member. Not less than five days written notice shall be given to each Commission member of the time, place and purpose of any special meeting, provided that a special emergency meeting may be called upon not less than 24 hours oral or written notice designed to afford each member of the Commission reasonable opportunity to attend such meeting. At any special meeting, the Commission may consider and decide any matter(s) it may deem appropriate.

(j) Notice of meetings and their purpose shall be provided to the general public in accordance with the Open Public Meetings Act.

(k) Commission meetings may be held in person or by telephone.

(l) The Commission shall keep minutes of all its meetings, which shall include the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law. The original of the public record shall be retained by the Commission or its agent and shall be promptly made available to the public to the extent that making such matters public shall not be inconsistent with Section 7 of the Open Public Meetings Act (N.J.S.A. 10:4-12).

(m) Members shall not be compensated by the Commission for their services, but may be reimbursed for reasonable unreimbursed travel expenses incurred in attending Commission meetings pursuant to the State Travel Guidelines issued by the Department of the Treasury.

(n) The affirmative vote of at least two-thirds of the members present at a meeting shall be required to authorize the expenditure of Commission funds.

11:26-1.4 Administrator or Executive Director selection and duties

(a) The Commission shall contract with the Department of Banking and Insurance for the services of an Administrator or Executive Director to oversee the administrative functions of the Commission.

(b) The Administrator or Executive Director shall perform the administrative functions required under the Act. The Administrator or Executive Director is responsible, along with the Commission, for the fair, equitable and reasonable administration of the Commission's hospital bad debt collection program.

(c) The Administrator or Executive Director shall perform all administrative functions of the Commission, including, but not limited to, the following:

1. Preparing and submitting an annual report no later than March 31 to the Governor and the Legislature,

beginning in 2004 for the year ending December 31, 2003, which shall include:

- i. The number of hospitals participating in the program;
 - ii. The number and value of the debts processed;
 - iii. The number of challenges received by the Commission;
 - iv. The number of debts returned to hospitals for incomplete information or a finding of lack of validity of the debt;
 - v. The total amount of funds recovered; and
 - vi. The total funds paid to hospitals.
2. Preparing and submitting reports at least quarterly to each hospital participating in the program on the collection results regarding debts assigned by that hospital;
 3. Performing fact finding on the validity of hospital debt appeals, including requesting that hospitals respond to the Commission within 30 days to factual challenges raised by the appeals filed with the Commission;
 4. Providing the Commission with the information necessary to make determinations regarding the validity of hospital debt appeals;
 5. Returning to hospitals any debt that fails to meet this chapter's definition of that term;
 6. Executing agreements on behalf of the Commission with hospitals and collection agencies;
 7. Ensuring that all collection and other activities pursued as authorized by the Act and this subchapter comply with the standards and requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. §§ 1301 et seq., and regulations promulgated thereunder by the United States Department of Health and Human Services, and other applicable laws and regulations; and
 8. Performing other functions as the Commission shall determine are necessary to carry out the Program.

11:26-1.5 Financial Administrator

(a) The Director of the Division of Budget and Accounting in the Department of the Treasury (Director) shall provide all accounting services to the Commission, which shall include, but not be limited to, the following:

1. Maintenance of all books, records and accounts of the Commission;
2. Establishing time frames for records retention subject to approval by the New Jersey Department of State's Division of Records Management (NJDARM); and
3. Performing other functions as agreed between the Commission and the Director.

11:26-1.6 Committees

The Commission may appoint from among the members appropriate committees as necessary to provide technical and other assistance in the operation of the Commission.

11:26-1.7 Employees

(a) The Commission may contract with other State agencies for employees to perform such functions as are necessary for the Commission's performance of its duties.

(b) Such contracts and other costs of the Commission shall be funded by the New Jersey Hospital Care Payment Fund.

11:26-1.8 Records

(a) The Commission shall provide for the maintenance and retention of its official records in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 through 32, and all other applicable laws.

(b) The Commission's records shall include the following:

1. Minutes of all Commission meetings;
2. Regulations or actions proposed or adopted by the Commission, including all comments received; and
3. Such other specific records as the Commission may, from time to time, direct, or as may be required by law.

(c) The records referred to in (b) above shall be subject to public inspection and copying pursuant to the "Right-to-Know" Law, N.J.S.A. 47:1A-1 et seq., except that information determined by the Commission by regulation to be confidential and proprietary shall not be subject to public inspection and copying, and except that written communications of the Commission, its staff, or committees, including, but not limited to, reports, opinions, and recommendations, where such communications contain discussion of litigation strategy, attorney-client advice or other privileged information, shall not be available for public inspection and copying.

(d) Commission records shall comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. §§ 1301 et seq., and regulations promulgated thereunder by the United States Department of Health and Human Services, and other similar laws, as set forth in the individual Addendum Agreements between the Commission and the hospitals relating to HIPAA-protected health information requirements.

**SUBCHAPTER 2. HOSPITAL BAD DEBT
ASSIGNMENT/COLLECTION PROGRAM**

11:26-2.1 New Jersey Hospital Care Payment Fund

(a) The New Jersey Hospital Care Payment Fund shall be established in the Department of the Treasury pursuant to P.L. 2003, c.112, and administered by the Department of Treasury's Director of the Division of Budget and Accounting.

(b) The Fund shall be comprised of monies collected from debtors, and any other monies appropriated to it to carry out the purposes of the Act.

(c) For each hospital participating in the Program, monies in the Fund shall be disbursed in the following order:

1. Administrative costs of the Commission;
2. Administrative fees to collection agencies;
3. From the remainder, 50 percent of the monies collected from the debtor shall be paid to the hospital from which the debt originated. Such payments shall be made bimonthly; and
4. The remainder, following payment pursuant to (c)1, 2 and 3 above, shall be deposited into the General Fund.

11:26-2.2 Debt eligibility

(a) All debts meeting the following standards shall be eligible for participation in the Commission's Hospital Bad Debt Collection Program:

1. The debt shall be for an amount of \$100.00 or more;
2. Individual debts shall not be aggregated to reach the minimum debt amount of \$100.00;
3. The debt shall be no more than two years old on the date of assignment to the Commission as determined by the date of discharge for inpatient services and date of service for outpatient services; and
4. For patients covered by a health plan on the date of service giving rise to the debt, the type of charge comprising the debt shall be identified as a deductible, copayment, coinsurance or a noncovered charge. A debt that is not a deductible, copayment or coinsurance shall be reduced, prior to assignment to the Commission, by the fairness formula.

11:26-2.3 Commission/Hospital Debt Assignment Program requirements

(a) Prior to the Commission's acceptance of any assignment, the hospital shall file with the Commission a notice, in a form approved by the State Treasurer, stating the hospital's intent to participate in the Program. The notice shall include a certification that states the following:

1. The hospital is voluntarily participating in this Program;
2. The hospital provided at least two bills and collection notices pertaining to the debt to be assigned to the debtor prior to submission of the debt to this Program;
3. There are no outstanding complaints or disputes between the debtor, the health plan, if applicable, and the hospital as to the amount of the receivable or the service received by the patient;

4. The hospital has not initiated collection procedures while a claim was pending adjudication with a health plan;

5. Based upon information made available to the hospital, the debtor is not eligible for charity care;

6. The hospital notified the debtor, in a form approved by the Commission, of its intent to submit the debtor's account to the Commission for collection pursuant to this subchapter;

7. Transmission of data on a claim constitutes assignment of the debt to the Commission;

8. The hospital agrees that the State will carry out its best efforts to collect the debt, and that there are no guarantees that any monies will be recovered; and

9. The hospital agrees that all direct expenses incurred by the State in collecting any debts, including a five percent SOIL administration fee, will be deducted from the amount collected before applying the sharing percentage.

(b) Upon the Commission's receipt of a hospital's notice stating its intent to participate in the Program, the Department of Treasury shall provide, on behalf of the Commission, written notice, in a form approved by the Commission, to the debtor of its receipt of the assignment of the debt, and of the debtor's ability to challenge the validity of the debt.

(c) A debtor may challenge the validity of a debt pursuant to the standards and procedures set forth in this subchapter at N.J.A.C. 11:26-2.4.

(d) Unless a debtor provides documentation that he or she has paid a debt in full, or appeals a debt pursuant to N.J.A.C. 11:26-2.4 following receipt of the notice described in (b) above, the Commission shall file a certificate of debt with the New Jersey Superior Court pursuant to the standards and procedures set forth in this subchapter at N.J.A.C. 11:26-2.5. The Commission may pursue collection of the debt by utilizing the following methods in accordance with the standards and procedures set forth in this subchapter:

1. Setoff of Individual Liability (SOIL) program established pursuant to N.J.S.A. 54A:9-8.1 et seq.; and/or
2. Contracting with a collection agency.

(e) All collection attempts pursued by the Commission pursuant to this subchapter shall comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. §§ 1301 et seq., and regulations promulgated thereunder by the United States Department of Health and Human Services, and other similar laws, as set forth in the individual Addendum Agreements between the Commission and the hospitals relating to HIPAA-protected health information requirements.

(f) The Commission may return to a hospital any debt that fails to comply with any of the requirements set forth in this chapter.

(g) The Commission may terminate a hospital's participation based on the hospital's failure to comply with any of the requirements set forth in this chapter.

(h) Following acceptance of a debt from a hospital, the Commission shall become the owner of the debt.

11:26-2.4 Hospital debt validity appeals

(a) A debtor may appeal the validity of a debt of which he or she has received notice pursuant to N.J.A.C. 11:26-2.3 on grounds such as the following:

1. He or she is not legally responsible for payment of the debt;
2. The debt has been paid or otherwise satisfied; or
3. The debt is the subject of dispute between a health plan and the hospital.

(b) A debtor intending to appeal the validity of a hospital debt, of which he or she has received notice pursuant to N.J.A.C. 11:26-2.3, shall file with the Commission a notice of appeal, which shall comply with the following requirements:

1. The notice shall be filed with the Commission within 30 days of the date of the Department of Treasury/Commission notice to the debtor described at N.J.A.C. 11:26-2.3.

2. The notice shall be sent to the Commission by regular mail to the following address:

Hospital Care Payment Commission
PO Box 468
20 West State Street
Trenton, NJ 08625-0468

3. The notice shall state the reason why the debtor believes that he or she is not responsible for the debt, and shall include evidence supporting such belief.

(c) Following receipt of a notice of appeal that complies with (b) above, the Commission shall:

1. Within 25 days of its receipt of the appeal, provide the debtor with a written acknowledgement of receipt of the appeal;

2. Suspend all efforts to collect a debt pending the appeal;

3. Upon a review of the documentation submitted by the debtor, conduct such fact finding as is necessary to review the appeal, including communication with the hospital forwarding the debt. The Commission staff may make recommendations to the Commission regarding

debtor appeals, which the Commission shall approve or reject;

4. The Commission shall provide written notice to the debtor and the hospital of its decision to grant or deny the appeal, which shall set forth the reasons for issuing a denial and that the decision may be appealed in the Appellate Division of the Superior Court;

5. Notify the Department of Treasury, Division of Revenue of its decision on the appeal; and

6. Return to the hospital for resolution between the hospital and the debtor any debt for which the Commission granted an appeal.

(d) All hospitals shall respond to the Commission within 30 days of the Commission's request for additional information on any appeal.

(e) The Commission's decision on a debt appeal constitutes final agency action, review of which shall be sought in the Appellate Division of the Superior Court.

11:26-2.5 Certificate of debt requirements

(a) If a debtor fails to respond to the Department of Treasury/Commission notice described in N.J.A.C. 11:26-2.3 above, the Commission shall file a certificate of debt with the Clerk of the New Jersey Superior Court, and request that the Clerk enter the certificate of debt on the record of docketed judgments.

(b) Upon filing the certificate of debt with the Clerk, the Clerk shall enter as a docketed judgment the following information:

1. The name of the debtor;
2. The State as creditor;
3. The address of the debtor if stated in the certificate;
4. The amount of the debt(s) certified by the Commission;
5. A reference to P.L. 2003, c.112, under which the debt was assessed; and
6. The date such entry on the record of docketed judgments was made.

(c) In accordance with P.L. 2003, c.112 (codified as N.J.S.A. 17B:30-41 et seq.), the docketed certificate of debt shall have the same force and effect as a civil judgment docketed in the Superior Court of New Jersey.

11:26-2.6 SOIL Program requirements

(a) If a debtor fails to respond to the Department of Treasury/Commission notice described in N.J.A.C. 11:26-2.3, the Commission may pursue collection of the debt pursuant to the Setoff of Individual Liability (SOIL) program established pursuant to N.J.S.A. 54A:9-8.1 et seq. and the rules promulgated thereunder at N.J.A.C. 18:35-10.

(b) The Commission shall provide 30 days written notice, in a form approved by the Department of Treasury, Division of Revenue, to a debtor prior to pursuing collection of the debt pursuant to the SOIL program.

(c) Priority of debts for which the Commission seeks to attempt collection by using the SOIL program shall be established as follows:

1. If one debtor has more than one debt at more than one hospital, the hospital that first submits the debt in accordance with N.J.A.C. 11:26-2.3 shall have priority; and
2. If one debtor has more than one debt at any one hospital, the debt with the earliest date of service shall have priority.

11:26-2.7 Commission/collection agency contract standards and procedures

(a) If a debtor fails to respond to the Department of Treasury/Commission notice described in N.J.A.C. 11:26-2.3 above, the Commission may pursue collection of the debt by utilizing the services of a collection agency as that term is defined in this subchapter.

(b) The terms and conditions of the collection of the debt shall be set forth in a written agreement between the Commission and the collection agency.

(c) Any agreement entered into between the Commission and a collection agency shall be subject to the confidentiality provisions of the State Uniform Tax Procedure Law at N.J.S.A. 54:48-1 et seq. and all applicable Federal and State laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. §§ 1301 et seq., and regulations promulgated thereunder by the United States Department of Health and Human Services, or any other similar law.