

# Now & Next

Healthcare Alert

October 1, 2024

## Navigating New York's patient consent-to-payment laws

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Healthcare providers must comply with recent changes to laws governing how payments are collected from patients.



### What's the impact?

- Healthcare providers must obtain consent for treatment separate from consent for payment.
- Healthcare providers should assess their current procedures for obtaining consent for payment to determine how they may need to change to comply with the new law.
- Keeping a patient's credit card on file or requiring preauthorization of payment prior to delivery of services is prohibited when providing emergency or necessary medical services.
- New notices to patients are required regarding the risks of using credit cards for medical payments.

On October 20, 2024, a package of amendments to New York State law will take effect that will change how healthcare providers collect payment from patients. This package of new laws is part of the State's Fiscal Year 2024–2025 Budget legislation, which lawmakers declared is aimed at enhancing consumer protections.

## **Obtaining patient consent to pay**

One significant change is the addition of Section 18-c of the Public Health Law. This new statute requires healthcare providers to obtain separate consents from patients for treatment and for payment. Many providers currently use a combined consent for both treatment and payment, and therefore will be required to separate these consents.

Moreover, Section 18-c requires that "consent to pay for any health care services by a patient" cannot be given until after "discussing treatment costs" with the patient **and after the patient "receives such services."** Providers will need to evaluate their processes and procedures to ensure compliance. However, providers across the healthcare industry are expressing concern that requiring the patient's consent to pay for healthcare services **after** treatment is unworkable and potentially in conflict with state and federal laws requiring fees to be disclosed to the patient prior to treatment.

## **Credit card use for medical services**

Additionally, Section 519-a of the General Business Law prohibits healthcare providers from requiring credit card preauthorization or that a patient have a credit card "on file" as a condition of delivering emergency or medically necessary services. Healthcare providers must also inform patients about the risks of using credit cards for medical payments, including the loss of state and federal protections regarding medical debt. The New York State Department of Health has been granted authority to establish the "contents" of the notices, but it has yet to do so as of the date of this writing.

Finally, new Section 349-g of the General Business Law prohibits healthcare providers from assisting patients in completing applications for medical credit cards and third-party medical installment loans, or otherwise arranging for or establishing an application that is not completely filled out by the patient.

## **Prepare now for upcoming patient consent changes**

There are ambiguities and uncertainties throughout the package of new laws, including when a healthcare provider may or must obtain a patient's consent to pay for healthcare services. As providers prepare for these changes, the lack of guidance from the Department of Health poses a challenge, and many industry representatives and advocacy groups are actively seeking

clarification on these requirements and how they will be enforced. Providers are encouraged to prepare for the upcoming changes while staying abreast of any guidance that may come from state officials.

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