

House Bill 2701

Sponsored by Representative NOSSE (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits "surprise billing" by out-of-network health care providers for services provided at in-network health care facilities. Specifies exceptions. Makes violation unlawful collection practice. Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to charges billed for services provided by an out-of-network health care provider in an in-
3 network health care facility; creating new provisions; amending ORS 646.639; and declaring an
4 emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. (1) As used in this section:**

7 (a) "Enrollee" means:

8 (A) An individual who is enrolled in a health benefit plan or a covered dependent or
9 beneficiary of the individual; or

10 (B) A subscriber to a health care service contract or a covered dependent or beneficiary
11 of the subscriber.

12 (b) "Health benefit plan" has the meaning given that term in ORS 743B.005.

13 (c) "Health care facility" has the meaning given that term in ORS 442.015, excluding long
14 term care facilities.

15 (d) "Health care service contract" means a contract with a health care service contrac-
16 tor as defined in ORS 750.005.

17 (e) "In-network" has the meaning given that term in ORS 743B.280.

18 (f) "Out-of-network" has the meaning given that term in ORS 743B.280.

19 (g) "Provider" means a health professional licensed or certified in this state to provide
20 health care items and services.

21 (2) A provider who is an out-of-network provider for a health benefit plan or health care
22 service contract may not collect or attempt to collect charges billed for emergency services
23 or other inpatient or outpatient services provided to an enrollee in the health benefit plan
24 or health care service contract if the services were provided at an in-network health care
25 facility.

26 (3) Subsection (2) of this section does not apply:

27 (a) To applicable coinsurance, copayments or deductible amounts that apply to services
28 provided by an in-network provider; or

29 (b) To services, other than emergency services, provided to an enrollee who chooses to
30 receive services from an out-of-network provider if the provider informs the enrollee that
31 the enrollee will be financially responsible for coinsurance, copayments or other out-of-

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **pocket expenses attributable to choosing an out-of-network provider.**

2 **(4) Violation of this section is an unlawful collection practice under ORS 646.639.**

3 **SECTION 2.** ORS 646.639, as amended by section 1, chapter 79, Oregon Laws 2018, is amended
4 to read:

5 646.639. (1) As used in this section and ORS 646A.670:

6 (a) "Charged-off debt" means a debt that a creditor treats as a loss or expense and not as an
7 asset.

8 (b) "Consumer" means a natural person who purchases or acquires property, services or credit
9 for personal, family or household purposes.

10 (c) "Consumer transaction" means a transaction between a consumer and a person that sells,
11 leases or provides property, services or credit to consumers.

12 (d) "Credit" means a right that a creditor grants to a consumer to defer payment of a debt, to
13 incur a debt and defer payment of the debt, or to purchase or acquire property or services and defer
14 payment for the property or services.

15 (e) "Creditor" means a person that, in the ordinary course of the person's business, engages in
16 consumer transactions that result in a consumer owing a debt to the person.

17 (f) "Debt" means an obligation or alleged obligation that arises out of a consumer transaction.

18 (g)(A) "Debt buyer" means a person that regularly engages in the business of purchasing
19 charged-off debt for the purpose of collecting the charged-off debt or hiring another person to collect
20 or bring legal action to collect the charged-off debt.

21 (B) "Debt buyer" does not include a person that acquires charged-off debt as an incidental part
22 of acquiring a portfolio of debt that is predominantly not charged-off debt.

23 (h) "Debt collector" means a person that by direct or indirect action, conduct or practice col-
24 lects or attempts to collect a debt owed, or alleged to be owed, to a creditor or debt buyer.

25 (i) "Debtor" means a consumer who owes or allegedly owes a debt, including a consumer who
26 owes an amount that differs from the amount that a debt collector attempts to collect or that a debt
27 buyer purchased or attempts to collect.

28 (j) "Legal action" means a lawsuit, mediation, arbitration or any other proceeding in any court,
29 including a small claims court.

30 (k) "Original creditor" means the last entity that extended credit to a consumer to purchase
31 goods or services, to lease goods or as a loan of moneys.

32 (L) "Person" means an individual, corporation, trust, partnership, incorporated or
33 unincorporated association or any other legal entity.

34 (2) A debt collector engages in an unlawful collection practice if the debt collector, while col-
35 lecting or attempting to collect a debt, does any of the following:

36 (a) Uses or threatens to use force or violence to cause physical harm to a debtor or to the
37 debtor's family or property.

38 (b) Threatens arrest or criminal prosecution.

39 (c) Threatens to seize, attach or sell a debtor's property if doing so requires a court order and
40 the debt collector does not disclose that seizing, attaching or selling the debtor's property requires
41 prior court proceedings.

42 (d) Uses profane, obscene or abusive language in communicating with a debtor or the debtor's
43 family.

44 (e) Communicates with a debtor or any member of the debtor's family repeatedly or continuously
45 or at times known to be inconvenient to the debtor or any member of the debtor's family and with

1 intent to harass or annoy the debtor or any member of the debtor's family.

2 (f) Communicates or threatens to communicate with a debtor's employer concerning the nature
3 or existence of the debt.

4 (g) Communicates without a debtor's permission or threatens to communicate with the debtor
5 at the debtor's place of employment if the place of employment is other than the debtor's residence,
6 except that the debt collector may:

7 (A) Write to the debtor at the debtor's place of employment if a home address is not reasonably
8 available and if the envelope does not reveal that the communication is from a debt collector other
9 than the person that provided the goods, services or credit from which the debt arose.

10 (B) Telephone a debtor's place of employment without informing any other person of the nature
11 of the call or identifying the caller as a debt collector but only if the debt collector in good faith
12 has made an unsuccessful attempt to telephone the debtor at the debtor's residence during the day
13 or during the evening between the hours of 6 p.m. and 9 p.m. The debt collector may not contact
14 the debtor at the debtor's place of employment more frequently than once each business week and
15 may not telephone the debtor at the debtor's place of employment if the debtor notifies the debt
16 collector not to telephone at the debtor's place of employment or if the debt collector knows or has
17 reason to know that the debtor's employer prohibits the debtor from receiving such communication.
18 For the purposes of this subparagraph, any language in any agreement, contract or instrument that
19 creates or is evidence of the debt and that purports to authorize telephone calls at the debtor's place
20 of employment does not give permission to the debt collector to call the debtor at the debtor's place
21 of employment.

22 (h) Communicates with a debtor in writing without clearly identifying the name of the debt
23 collector, the name of the person, if any, for whom the debt collector is attempting to collect the
24 debt and the debt collector's business address, on all initial communications. In subsequent commu-
25 nications involving multiple accounts, the debt collector may eliminate the name of the person, if
26 any, for whom the debt collector is attempting to collect the debt and substitute the term
27 "various" in place of the person's name.

28 (i) Communicates with a debtor orally without disclosing to the debtor, within 30 seconds after
29 beginning the communication, the name of the individual who is initiating the communication and
30 the true purpose of the communication.

31 (j) Conceals the true purpose of the communication so as to cause any expense to a debtor in
32 the form of long distance telephone calls, telegram fees, additional charges for wireless communi-
33 cation or other charges the debtor might incur by using a medium of communication.

34 (k) Attempts or threatens to enforce a right or remedy while knowing or having reason to know
35 that the right or remedy does not exist, or threatens to take any action that the debt collector in
36 the regular course of business does not take.

37 (L) Uses any form of communication that simulates legal or judicial process or that appears to
38 be authorized, issued or approved by a governmental agency, governmental official or an attorney
39 at law if the corresponding governmental agency, governmental official or attorney at law has not
40 in fact authorized or approved the communication.

41 (m) Represents that an existing debt may be increased by the addition of attorney fees, investi-
42 gation fees or any other fees or charges if the fees or charges may not legally be added to the ex-
43 isting debt.

44 (n) Collects or attempts to collect interest or other charges or fees that exceed the actual debt
45 unless the agreement, contract or instrument that creates the debt expressly authorizes, or a law

1 expressly allows, the interest or other charges or fees.

2 (o) Threatens to assign or sell a debtor's account and misrepresents or implies that the debtor
 3 would lose any defense to the debt or would be subjected to harsh, vindictive or abusive collection
 4 tactics.

5 (p) Uses the seal or letterhead of a public official or a public agency, as those terms are defined
 6 in ORS 171.725.

7 (q) Collects or attempts to collect any debt that the debt collector knows, or after exercising
 8 reasonable diligence would know, arises from medical expenses that qualify for reimbursement under
 9 the Oregon Health Plan or under Medicaid, except that:

10 (A) The debt collector does not engage in an unlawful collection practice if the debt collector
 11 can produce an affidavit or certificate from the original creditor that shows that the original cred-
 12 itor complied with Oregon Health Authority rules barring payments for services that Medicaid fee-
 13 for-service plans or contracted health care plans cover; and

14 (B) For purposes of this paragraph, a prepaid managed care health services organization, a co-
 15 ordinated care organization or a public body, as defined in ORS 174.109, or an agent or assignee of
 16 the organization or public body, is not a debt collector if the organization or public body seeks to
 17 collect a debt that arises under ORS 416.540.

18 (r) Files a legal action to collect or files a legal action to attempt to collect a debt if the debt
 19 collector knows, or after exercising reasonable diligence would know, that an applicable statute of
 20 limitations bars the collection or the collection attempt.

21 (s) Knowingly collects any amount, including any interest fee, charge or expense incidental to
 22 the principal obligation, unless the amount is expressly authorized by the agreement creating the
 23 debt or permitted by law.

24 (t) Collects or attempts to collect a debt if the debt collector is a debt buyer, or is acting on a
 25 debt buyer's behalf, and collects or attempts to collect purchased debt before providing to a debtor,
 26 within 30 days after the date of the debtor's request, all of the documents listed in subsection (4)(b)
 27 of this section.

28 **(u) Collects or attempts to collect a debt in violation of section 1 of this 2019 Act.**

29 (3) A debt collector engages in an unlawful collection practice if the debt collector, by use of
 30 any direct or indirect action, conduct or practice, enforces or attempts to enforce an obligation
 31 made void and unenforceable by the provisions of ORS 759.720 (3) to (5).

32 (4) A debt buyer or debt collector acting on behalf of a debt buyer engages in an unlawful col-
 33 lection practice if the debt buyer or debt collector:

34 (a) Files legal action against a debtor or files legal action to attempt to collect a debt if the debt
 35 buyer or debt collector knows or after exercising reasonable diligence would know that an applica-
 36 ble statute of limitations bars the legal action to collect or the legal action to attempt to collect the
 37 debt;

38 (b) Brings a legal action against a debtor or otherwise brings a legal action to attempt to collect
 39 a debt without possessing business records that satisfy the requirements of ORS 40.460 (6), or of
 40 ORS 24.115, if the record is a foreign judgment, that establish the nature and the amount of the debt
 41 and that include:

42 (A) The original creditor's name, written as the original creditor used the name in dealings with
 43 the debtor;

44 (B) The name and address of the debtor;

45 (C) The name, address and telephone number of the person that owns the debt and a statement

1 as to whether the person is a debt buyer;

2 (D) The last four digits of the original creditor's account number for the debt, if the original
3 creditor's account number for the debt had four or more digits;

4 (E) A detailed and itemized statement of:

5 (i) The amount the debtor last paid on the debt, if the debtor made a payment, and the date of
6 the payment;

7 (ii) The amount and date of the debtor's last payment on the debt before the debtor defaulted
8 or before the debt became charged-off debt;

9 (iii) The balance due on the debt on the date on which the debt became charged-off debt;

10 (iv) The amount and rate of interest, any fees and any charges that the original creditor im-
11 posed, if the debt buyer or debt collector knows the amount, rate, fee or charge;

12 (v) The amount and rate of interest, any fees and any charges that the debt buyer or any pre-
13 vious owner of the debt imposed, if the debt buyer or debt collector knows the amount, rate, fee or
14 charge;

15 (vi) The attorney fees the debt buyer or debt collector seeks, if the debt buyer or debt collector
16 expects to recover attorney fees; and

17 (vii) Any other fee, cost or charge the debt buyer seeks to recover;

18 (F) Evidence that the debt buyer and only the debt buyer owns the debt;

19 (G) The date on which the debt buyer purchased the debt; and

20 (H) A copy of the agreement between the original creditor and the debtor that is either:

21 (i) The contract or other writing the debtor signed that created and is evidence of the original
22 debt; or

23 (ii) A copy of the most recent monthly statement that shows a purchase transaction or balance
24 transfer or the debtor's last payment, if the debtor made a payment, if the debt is a credit card debt
25 or other debt for which a contract or other writing that is evidence of the debt does not exist;

26 (c) Fails to provide to a debtor, after the debt buyer or debt collector receives payment in cash
27 or the debtor requests the receipt, a receipt that:

28 (A) Shows the name of the creditor or creditors for whom the debt buyer or debt collector re-
29 ceived the payment and, if the creditor is not the original creditor, the account number that the
30 original creditor assigned; and

31 (B) States clearly whether the debt buyer or debt collector accepts the payment as payment in
32 full or as a full and final compromise of the debt and, if not, the balance remaining on the debt after
33 the payment;

34 (d) Collects or attempts to collect a debt before providing, in response to a debtor's request, the
35 documents required under paragraph (b) of this subsection. A debt buyer or a debt collector that
36 acts on the debt buyer's behalf does not engage in an unlawful collection practice under this para-
37 graph if the debt buyer or debt collector collects or attempts to collect a debt after providing the
38 required documents to the debtor; or

39 (e) Uses any direct or indirect action, conduct or practice to violate a provision of this section
40 or ORS 646A.670.

41 (5) A debt collector is not acting on a debt buyer's behalf, and is not subject to the duties to
42 which a debt buyer is subject under this section and ORS 646A.670, if the debt collector collects or
43 attempts to collect a debt on behalf of an owner that retains a direct interest in the debt or if the
44 debt is not a debt that a debt buyer purchased.

45 **SECTION 3. Section 1 of this 2019 Act and the amendments to ORS 646.639 by section 2**

1 of this 2019 Act apply to actions taken to collect or attempt to collect billed charges on or
2 after the effective date of this 2019 Act.

3 SECTION 4. This 2019 Act being necessary for the immediate preservation of the public
4 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect
5 on its passage.
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