

**PROPOSED REGULATION OF THE
COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB File No. R055-21

February 3, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-9, NRS 649.053.

A REGULATION relating to financial institutions; requiring a collection agency to send a medical debtor notification of certain information relating to a medical debt; requiring a collection agency to satisfy certain requirements relating to an action to collect a medical debt; requiring a collection agency to maintain written verification of its compliance with certain laws governing the collection of medical debts; revising provisions governing the use of machine-derived form letters by a collection agency; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

In 2021, the Nevada Legislature passed Senate Bill No. 248, which requires a collection agency to send to a medical debtor, not less than 60 days before taking any action to collect a medical debt, written notification which sets forth certain information about the debt. (Senate Bill No. 248, chapter 291, Statutes of Nevada 2021, at page 1668)

Section 2 of this regulation defines the term “60-day notification.”

Section 3 of this regulation sets forth the activities which the Commissioner of Financial Institutions interprets as being included within the term “action to collect a medical debt.”

Section 4 of this regulation: (1) requires a collection agency to send a 60-day notification to a medical debtor when a medical debt is assigned to the collection agency for collection; and (2) sets forth the contents which must be included in the notification.

Section 5 of this regulation requires a collection agency which is collecting a medical debt on behalf of a hospital to send the medical debtor, not later than 5 days after the expiration of the 60-day notification period, a written notice of the legal impact of a payment or agreement to pay the debt.

Section 6 of this regulation: (1) prohibits a collection agency from taking any action to collect a medical debt less than 60 days after mailing a 60-day notification; and (2) requires the collection agency to comply with certain state and federal laws and regulations.

Section 7 of this regulation requires a collection agency to maintain written verification of its compliance with provisions of existing law governing the collection of medical debts.

Section 8 of this regulation makes a conforming change to indicate the placement of **section 1** in the Nevada Administrative Code.

Existing regulations require a collection agency to seek and obtain prior written approval from the Commissioner of Financial Institutions before using any machine-derived form letter. (NAC 649.280) **Section 9** of this regulation revises these provisions to: (1) require all machine-derived form letters relating to debt that is past due to be submitted to the Commissioner during an examination or investigation or upon request by the Commissioner or the Commissioner's designee; (2) prohibit the use of a machine-derived form letter that was found to be deficient or in violation of state or federal law until the deficiency or violation has been corrected and the machine-derived form letter has been approved by the Commissioner; (3) provide that all machine-derived form letters and associated documents relating to their mailing are considered records for the purposes of provisions of existing law which require a collection agency to retain its records and authorize the Commissioner to examine those records; and (4) provide that the Commissioner deems a 60-day notification to be a machine-derived form letter for the purposes of these provisions.

Section 1. Chapter 649 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *“Sixty-day notification” or “60-day notification” means the written notification which a collection agency is required to send to a medical debtor not less than 60 days before taking any action to collect a medical debt pursuant to section 7 of Senate Bill No. 248, chapter 291, Statutes of Nevada 2021, at page 1669 (NRS 649.366).*

Sec. 3. 1. *For the purposes of sections 7 and 7.5 of Senate Bill No. 248, chapter 291, Statutes of Nevada 2021, at page 1669 (NRS 649.366 and 649.367), the Commissioner interprets the term “action to collect a medical debt” to mean any attempt by a collection agency or its manager, agents or employees to collect a medical debt from a medical debtor, including, without limitation:*

- (a) Placing telephone calls to the medical debtor.*
- (b) Sending letters and notices, other than a 60-day notification, to the medical debtor.*
- (c) Contacting the medical debtor by any electronic means.*
- (d) Reporting the medical debt to any credit reporting agency.*
- (e) Demanding payment of the medical debt.*

(f) Commencing any civil action against the medical debtor.

2. The Commissioner does not interpret the term to include:

(a) Any action initiated by a medical debtor;

(b) The provision to a medical debtor of clarification relating to the content of a 60-day notification by a collection agency or its manager, agents or employees if the contact is initiated by the medical debtor;

(c) Sending verification of a medical debt to the medical debtor if requested by the medical debtor; or

(d) Sending a receipt to a medical debtor for a voluntary payment.

Sec. 4. 1. A collection agency must send a 60-day notification to a medical debtor when the medical debt is assigned to the collection agency unless the notification was previously sent by a prior collection agency.

2. In addition to the information required by section 7 of Senate Bill No. 248, chapter 291, Statutes of Nevada 2021, at page 1669 (NRS 649.366), a collection agency shall include, on the front of the 60-day notification:

(a) Within the body of the notification, in all capital letters and in at least a 12-point bold type or font:

THIS IS NOT A DEMAND FOR PAYMENT.

(b) Within the body of the notification, in at least a 12-point bold type or font:

This notice is to inform you that your medical debt described herein was [assigned to OR obtained by] us, [insert name of collection agency]. As provided in sections 2 to 8.5, inclusive, of Senate Bill No. 248, chapter 291, Statutes of Nevada 2021, at pages 1668-70 (NRS 649.036 to 649.369, inclusive), we will not take any action to collect this debt within 60 days after the date of this letter. Any payments made toward the debt during this timeframe are considered voluntary and will not void the 60-day notification period described above.

This medical debt will not be reported to any credit reporting agency during the 60-day notification period.

Any voluntary payment you make toward this medical debt during the 60-day notification period will not extend the applicable statute of limitations, is not an admission of liability and shall not be construed as a waiver of any defense to the collection of the medical debt.

This notification is not intended to constitute a communication under the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq.

3. A 60-day notification sent pursuant to this section and section 7 of Senate Bill No. 248, chapter 291, Statutes of Nevada 2021, at page 1669 (NRS 649.366), is not intended to constitute a communication under the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq.

4. The Commissioner deems a 60-day notification to be a machine-derived form letter for the purposes of NAC 649.280.

Sec. 5. If applicable, a collection agency must provide to a medical debtor the written notice required by subsection 2 of NRS 649.332 not later than 5 days after the expiration of the 60-day notification period.

Sec. 6. A collection agency shall not take any action to collect a medical debt less than 60 days after the date of mailing of the 60-day notification related to that debt. After the 60-day period has elapsed, the collection agency may proceed to attempt to collect the medical debt in compliance with the provisions of:

- 1. This chapter;*
- 2. Chapter 649 of NRS;*
- 3. The federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq.;*
- 4. The federal Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq.; and*
- 5. Any other state law relating to medical debt.*

Sec. 7. A collection agency shall keep written verification of its compliance with sections 2 to 8.5, inclusive, of Senate Bill No. 248, chapter 291, Statutes of Nevada 2021, at pages 1668-70 (NRS 649.036 to 649.369, inclusive), as part of its records for an account even if a different collection agency provided the required 60-day notification for that account.

Sec. 8. NAC 649.010 is hereby amended to read as follows:

649.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 649.013 to 649.040, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 9. NAC 649.280 is hereby amended to read as follows:

649.280 1. All machine-derived form letters *relating to debt that is past due* must be submitted to the Commissioner of Financial Institutions for review ~~and approval before their actual use by the collection agency.~~ *during an examination or investigation or upon request by the Commissioner or a designee of the Commissioner.*

2. ~~No~~ A collection agency ~~may~~ *shall not* use any machine-derived form letter ~~unless it has received prior~~ *that was found to be deficient or in violation of state or federal law during an examination or investigation until the deficiency or violation has been corrected. The corrected machine-derived form letter must be submitted to the Commissioner for review and written approval* ~~from the Commissioner.~~ *before use by the collection agency.*

3. *All machine-derived form letters, including any letter that has been returned as undeliverable along with the returned envelope, proof of mailing or proof of delivery are considered to be records for the purposes of NRS 649.335.*

4. *The Commissioner deems a 60-day notification to be a machine-derived form letter for the purposes of this section.*