

Medical Debt Strategies for Older Consumers

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Jenifer Bosco, National Consumer Law Center

National Consumer Law Center

The National Consumer Law Center uses its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults and people of color. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

Introduction

This summary addresses medical debt arising from hospitals, doctors' offices and other settings where physical and mental health treatment is provided. Debt from nursing homes and long-term care facilities is not addressed here but has been covered elsewhere.¹

Medical debt affects tens of millions of consumers. It is one of the most prevalent types of consumer debt, with one in five Americans being contacted by a debt collector over an unpaid healthcare bill. Of older adults and non-older consumers, 20% have at least one medical debt collection item in their credit reports. Older adults may struggle to pay Medicare premiums and copayments, and are more likely than younger consumers to file for bankruptcy due to medical expenses.² Racial disparities have been documented as well. Among older adults, African Americans had a 2.6 higher chance of having medical debt than did whites, and were more likely to be contacted by a collection agency.³

Steps to Help Clients Before They Seek Medical Care

Older adults, like all other health care consumers, can take steps to avoid medical debt by remaining informed. Lawyers and counselors can help them learn about their insurance plans and confirm coverage rules with the insurance company or public payer. The insurer may be the best source of information to determine which health care providers are in the insurer's network, and how much coverage is likely to be provided for particular procedures. While older adults often ask providers these questions, insurers are often the source of the most accurate and current information.

Those assisting older adults should know about protections available in non-profit hospitals. Part of the Affordable Care Act (ACA) directs non-profit hospitals to develop and publicize financial assistance policies, and also prohibits some debt collections practices, but these rules do not apply to for profit hospitals.⁴ Older adults may ask the hospital for a copy of its financial assistance policy, to review the policy before seeking care (if the hospital does not have a policy, it may be a for profit entity). Lawyers and counselors can help older adults find out if a hospital is non-profit by asking the hospital, checking with the charities or non-profits division of the state's office of the attorney general, or by searching online at hospitalinspections.org or other websites.

Older adults should be wary of paying for any medical expenses with credit cards. Credit card debt is a

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- 1 National Consumer Law Center and National Elder Rights Training Project, "Nursing Home Debt: What to Watch Out for and Strategies for Defending Collection Lawsuits" (Sept. 12, 2017), at nclc.org.
 - 2 John A. E. Pottow, The Rise in Elder Bankruptcy Filings and the Failure of U.S. Bankruptcy Law, 19 Elder L.J. 119 (2011).
 - 3 Jeroan J. Allison, Keith Elder, Catarina Keife, & Jacqueline C. Wiltshire, Medical Debt and Related Financial Consequences Among Older African American and White Adults, Am. J. of Public Health (Apr. 2016).
 - 4 26 CFR 1.501(r)-4.

leading reason for bankruptcy filings among older consumers.⁵ Once a medical debt becomes a credit card debt, the individual loses the opportunity to negotiate with the health care provider, and any enhanced consumer protections for medical debts may be lost as well.

Steps to take to avoid medical debt

1. Understand coverage rules in insurance plans;
2. Check to see if the hospital is a non-profit or for profit hospital and ask about the hospital's financial assistance policy; and
3. Be careful about paying for medical expenses with credit cards.

Helping Clients Obtain Insurance Assistance and Other Protections

Before seeking medical care, and even after obtaining care, it is essential to find all possible insurance and payment resources. Low-income individuals with Medicare coverage should confirm whether they are eligible for Medicaid coverage as well (these individuals are often referred to as “dual eligibles”). Depending on the state, Medicaid may cover health care expenses already incurred for up to three months prior to the date when the Medicaid application was made.⁶

Lawyers and counselors can help clients learn about and apply for Savings Programs or “Extra Help” programs for income-eligible Medicare recipients. Applicants who may be eligible can apply through their state's Medicaid office. The National Council on Aging's BenefitsCheckUp is a helpful starting place for exploring Low Income Subsidies, Medicare Savings Programs, and other extra help programs.⁷

Some states may have additional programs. For instance, Massachusetts offers financial assistance for large medical bills through its Medical Hardship⁸ program for eligible patients.

As noted above, the ACA requires that non-profit hospitals have in place financial assistance policies.⁹ Under these policies, the hospitals are to provide financial assistance to low-income individuals (which may include free or discounted care), to calculate bills based on the amounts generally billed for insured patients (rather than the higher rates that hospitals often charge to the uninsured, referred to as chargemaster rates), and limit “extraordinary collections actions” which include some of the most aggressive bill collection practices.¹⁰ Note that the ACA does not require any particular eligibility guidelines or amount of assistance. Also, this law applies only to non-profit hospitals, and not the for-profit healthcare providers which are prevalent in some states.¹¹

5 John A. E. Pottow, The Rise in Elder Bankruptcy Filings and the Failure of U.S. Bankruptcy Law, 19 Elder L.J. 119 (2011).

6 42 U.S.C. § 1396a(a)(34); 42 C.F.R. § 435.914.

7 BenefitsCheckUp is available at benefitscheckup.org.

8 101 Code Mass. Regs. 613.05.

9 26 CFR 1.501(r)-4.

10 26 CFR 1.501(r)-6. Extraordinary collection actions include: (i) selling the patient's debt to another party; (ii) reporting adverse information to consumer credit reporting agencies or credit bureaus; (iii) deferring or denying, or requiring a payment before providing, medically necessary care because of any individual's nonpayment of one or more bills for previously provided care covered under the hospital's financial assistance policy; (iv) actions that require a legal or judicial process including liens, foreclosure, attaching bank accounts or other personal property, civil action against an individual, causing an individual's arrest or writ of body attachment, or garnishing wages.

11 For further discussion of this issue, see National Consumer Law Center, Model Medical Debt Protection Act (Aug. 2017), at nclc.org; and Kaiser Family Foundation, State Health Facts, Hospitals by Ownership Type (2014), available at kff.org.

Helping clients with insurance assistance and other protection

1. Clients may be eligible for Medicaid coverage, Medicare Savings Programs, and Extra Help, check out the BenefitsCheckUp to learn more.
2. Clients at non-profit hospitals may benefit from ACA protections, including: financial assistance, billing protections, and limits on extraordinary collections actions.
3. Be careful about paying for medical expenses with credit cards.

Clients May Need to Dispute Denied Insurance Claims

Medicare, Medicaid, employer-sponsored health insurance, and insurance purchased in the individual market all must provide the insured with appeal rights. These differ depending on the type of insurance plan.

Appeal rights may be available for denials of insurance coverage when an insurer believes that the patient's treatment is not medically necessary. Usually, there will be at least two levels of appeals available:

1. Internal appeal to the insurance company; and
2. External appeal to an independent medical reviewer.

Before initiating an appeal, older adults can seek assistance. Some states offer a managed care ombudsman, and all states have State Health Insurance Assistance Program (SHIPs) and Older Americans Act Title IIIB legal services programs that assist older adults.¹² Medicaid and Medicare may have multiple levels of appeal, depending on the issue, and assistance at all levels can be helpful. In a medical necessity appeal, it is often helpful to enlist the assistance of the healthcare provider, who may be able to provide additional supporting information to the insurer.

If the dispute does not involve medical necessity, but instead stems from a problem with the claim or missing paperwork, these issues may often be resolved by contacting the healthcare provider, insurer, and any other parties to obtain missing documents, fix inaccuracies on medical bills or resolve other issues. Regardless of the nature of the appeal, deadlines will apply.

If a client receives a bill during the dispute, then certain protections may apply. In at least two states, patients have some protection from collection during insurance disputes.¹³ Also, under a settlement between a number of states' Attorneys General and the three major credit bureaus, medical bills less than 180 days in arrears cannot be included on a consumer's credit report.¹⁴

Protections When All Other Insurance and Payment Options Have Been Exhausted

If a low-income older adult still carries medical debt after exhausting all options for insurance and other financial assistance, the next step is to determine whether the client is judgment proof. If the client has protected sources of income, which may include Social Security, Supplemental Security Income (SSI), veteran's benefits or pensions, then the client may be best served by sending a letter to the creditor to explain that the client is judgment proof and requesting that the debt be forgiven. If the client is a homeowner, a homestead exemption may provide protection if the creditor seeks to place a lien on the property.

12 For information on State Health Insurance Assistance Programs (SHIPs): [medicare.gov/contacts/#resources/ships](https://www.medicare.gov/contacts/#resources/ships), and information on legal services for older adults: acl.gov/node/832.

13 Cal. Health & Safety Code § 127426 (West); Mass. Gen. Laws ch. 176O, § 14(f).

14 Office of the Attorney General of Ohio, "Attorney General DeWine Announces Major National Settlement with Credit Reporting Agencies" (May 20, 2015), available at ohioattorneygeneral.gov (with link to multistate Assurance of Compliance document).

If the client is not judgement proof, all payment options have been exhausted and the medical bills are accurate, then the client may next need to contact the creditor to negotiate a discount or payment plan. If the provider has not already discounted the bill, the client can ask to pay the Medicaid or Medicare reimbursement rate for services, rather than higher chargemaster rates. The client may also request a payment plan.

In some states, it may be possible for a creditor to hold a spouse responsible for the medical debt of the other spouse. Some states continue to follow the “doctrine of necessities,” which originally held a husband responsible for certain necessary expenses incurred by his wife. Some states have abolished the doctrine of necessities, or have found it unconstitutional on Equal Protection grounds. However, other states have updated the law to make it gender-neutral and applicable to either spouse.¹⁵ Imposition of liability upon a spouse even under a gender-neutral statute may violate the Equal Credit Opportunity Act, which prohibits creditors from requiring that both spouses obligate themselves for one spouse’s transaction.¹⁶

As noted above, the ACA places limits on certain collection activities by non-profit hospitals, and prohibits extraordinary collection activities until 120 days after first bill. These limits apply when the debtor is eligible for financial assistance, but if the client has not yet applied for financial assistance then he or she may be able to do so after receiving the bill.

The federal Fair Debt Collection Practices Act (FDCPA)¹⁷ protects debtors by prohibiting certain collection activities such as certain debt collection calls, harassment and deception. FDCPA protections apply to a collection agency, debt collection attorney, and sometimes to a hospital’s in house debt collection office. Other federal laws such as the Fair Credit Reporting Act (FCRA)¹⁸ and the Truth in Lending Act (TILA),¹⁹ as well as state laws, may further protect older adults with medical debt. If a medical debt collection action proceeds to litigation, these federal and state laws may provide defenses for the debtor.

Conclusion

Despite our greater access to health insurance, medical debt continues to affect tens of millions of consumers and is one of the most common types of consumer debt. Even patients with insurance report cutting back on food, clothing, medical care, basic household expenses and retirement savings to pay medical bills and medical debts.²⁰ Older consumers and their advocates can take many steps to reduce or eliminate medical debt, including accessing financial assistance, appealing denials of insurance coverage and asserting protections from aggressive debt collection practices.

Additional Resources

- Federal Government Resources
 - » Internal Revenue Service, “New Requirements for Charitable 501(c)(3) Hospitals Under the Affordable Care Act, at irs.gov/charities-non-profits/charitable-organizations/new-requirements-for-501c3-hospitals-under-the-affordable-care-act
 - » Medicare, see [medicare.gov](https://www.medicare.gov) and “Get Help Paying Costs” at [medicare.gov/your-medicare-costs/help-paying-costs/get-help-paying-costs.html](https://www.medicare.gov/your-medicare-costs/help-paying-costs/get-help-paying-costs.html)
 - » Medicaid: Information on Medicaid including coverage for older adults at [medicaid.gov](https://www.medicaid.gov)
 - » Veterans Administration: Health benefit information at [ebenefits.va.gov](https://www.ebenefits.va.gov)

15 E.g., Conn. Gen. Stat. § 46b-37 (both spouses jointly liable for family expenses, including reasonable and necessary medical care).

16 15 U.S.C. § 1691(a)(1); 12 CFR §§ 1002.7(d)(1), 1002.11(b)(1)(ii).

17 15 U.S.C. §§ 1692-1692p.

18 15 U.S.C. § 1681 et seq.

19 15 U.S.C. § 1601-1667f.

20 Kaiser Family Foundation, The Burden of Medical Debt (Jan. 2016), at [kaiserfamilyfoundation.files.wordpress.com/2016/01/8806-the-burden-of-medical-debt-results-from-the-kaiser-family-foundation-new-york-times-medical-bills-survey.pdf](https://www.kaiserfamilyfoundation.files.wordpress.com/2016/01/8806-the-burden-of-medical-debt-results-from-the-kaiser-family-foundation-new-york-times-medical-bills-survey.pdf).

- » [Healthcare.gov](https://www.healthcare.gov/): applying for individual and family coverage
- Advocacy and Health Care Organizations
 - » Community Catalyst Hospital Accountability Project: List of free care programs by state, communitycatalyst.org/initiatives-and-issues/initiatives/hospital-accountability-project/free-care
 - » ConsumersUnion: List of state resources for disputing insurance company decisions, consumersunion.org/insurance-complaint-tool
 - » National Association of Insurance Commissioners: List of state insurance regulators at naic.org/state_web_map.htm
 - » RIP Medical Debt: For information and to apply for assistance with medical debts, ripmedicaldebt.org
 - » National Consumer Law Center, nclc.org
 - » National Council on Aging: ncoa.org
- Legal Assistance
 - » National Association of Consumer Advocates: consumeradvocates.org
 - » Legal services/legal aid: lsc.gov/what-legal-aid/find-legal-aid
 - » Volunteer lawyers: americanbar.org/groups/legal_services/flh-home/flh-free-legal-help.html
- Publications
 - » National Consumer Law Center, Collection Actions (3rd ed. 2014)
 - » National Consumer Law Center, Fair Debt Collection (8th ed. 2014)
 - » National Consumer Law Center, Guide to Surviving Debt (10th ed. 2016)
 - » National Consumer Law Center, Model Medical Debt Protection Act (Aug. 2017), at nclc.org/images/pdf/medical-debt/model-medical-debt-protection-act-082017.pdf

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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