

Medical Debt Strategies for Older Adults

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About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems with getting on to the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Slides and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used 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, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

Today's Presentation

- Housekeeping and introductions
- The problem of medical debt
- Strategies before seeking care
- Strategies after obtaining treatment
- Additional resources

The Problem of Medical Debt

Overview of medical debt and older consumers.

The Problem of Medical Debt

- This webinar will address medical debt from hospitals, doctor's offices, and other health care providers.
- 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.

The Problem of Medical Debt

- Older adults file for bankruptcy due to medical bills at a higher rate than do non-older consumers.
- Among older adults, African Americans had 2.6 higher chance of having medical debt than did whites, and were more likely to be contacted by a collection agency.
- Medicare may not cover all expenses, cost sharing may be expensive.
- There are several steps that consumers can take before and after obtaining care, which may differ somewhat by state.

Strategies Before Seeking Care

Steps that older adults can take to reduce out-of-pocket spending on health care.

Strategies Before Seeking Care: Insurance Coverage and Payment Issues

- Help clients understand insurance coverage
 - Seek care with in-network providers where possible
 - May need to ask insurance company about coverage of procedures and in-network providers, since providers may not be able to answer these questions as well as insurance company.
- If there is a choice, consider seeking care at a nonprofit hospital, for reasons to be explained below
- Avoid putting medical debt on credit card

Strategies Before Seeking Care: Insurance and Other Payment Resources

- Obtain all possible coverage:
 - If client has Medicare coverage, but not Medicaid, determine if client qualifies for Medicaid (dual eligible), “Extra Help,” (Medicare Savings Programs or Low-Income Subsidies) or other supplemental coverage.
- In one study of bankruptcy filers, 40% of older adult filers reported that they had difficulty paying their Medicare premiums and copays.

Strategies Before Seeking Care: Insurance and Other Payment Resources

- Medicaid may cover care retroactively.
 - States differ but federal law allows retroactive coverage for up to three months. 42 U.S.C. § 1396a(a)(34); 42 C.F.R. § 435.914.
- State programs may also exist (e.g., Medical Hardship Program in Massachusetts).

Strategies Before Seeking Care: FAPs

- Financial Assistance Policies or charity care: ACA mandates nonprofit hospital policies –
 - Not always publicized.
 - Check with hospital to see if financial assistance is available.

Strategies Before Seeking Care: FAPs

- Client can 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
- ACA does not require any particular eligibility guidelines or amount of assistance.

Strategies After Obtaining Treatment

Helping clients eliminate or resolve medical debt.

Strategies After Obtaining Treatment: Disputing Denied Insurance Claims

- Medicaid, Medicare and private insurance all have appeal rights – help clients use them
- Clients can seek assistance from SHIPs, legal services, and ombudsman (in some states)
- Help clients initiate appeal with insurance company, quickly since deadlines apply

Strategies After Obtaining Treatment: Disputing Denied Insurance Claims

- Appeal processes may be different depending on insurance type, but usually multiple levels of appeal (internal and external review)
 - If it is a paperwork problem, ask provider for help
 - If it is a medical necessity denial, ask provider for letter supporting need for care
- If billed during an appeal, notify the billing entity of the dispute. State laws to halt billing during appeal may apply (e.g., MA, CA).

Strategies After Obtaining Treatment: Billing Issues

- Is bill accurate?
- Review “explanation of benefits” (EOB)
- Review bills
- Request validation of accuracy of the debt in writing, if that is in question
- Dispute with healthcare provider and notify insurer
- Look out for balance billing, usually not permitted

Medicare: Improper Billing

IMPORTANT: For Medicare beneficiaries, Improper Billing is Illegal under Federal Law.

- New Changes: Beginning October 2017, CMS is changing their computer systems and notices to better inform Medicare providers and beneficiaries who are Qualified Medicare Beneficiaries (QMB) about their QMB status. This should help prevent improper billing.

Please contact Georgia Burke and Denny Chan (GBurke@justiceinaging.org and DChan@justiceinaging.org) for more information and to report improper billing of Medicare beneficiaries.

Strategies After Obtaining Treatment: Credit and Collections

- Medical bills less than 180 days in arrears cannot appear on a credit report
- If ultimately paid by insurance, then the debt cannot be listed as a debt that the consumer was responsible for
- Clients can check their credit report, free from annualcreditreport.com
- If there is a problem, help clients contact credit bureau and ask them to fix

Strategies After Obtaining Treatment: Negotiation

- Contact creditor, ask to be billed at Medicaid or Medicare rate rather than chargemaster rate
 - Establish an affordable payment plan
- If client is eligible for nonprofit hospital's FAP, then hospital cannot use chargemaster rate
 - Must instead calculate "amount generally billed"
- Ask: Is client judgment proof?
 - Protected income (e.g., Social Security, pensions)
 - If so, write judgement proof letter
 - Client may be protected by homestead exemption

Strategies After Obtaining Treatment: Debts of a Spouse

- “Doctrine of necessities” allows creditor to hold husband responsible for wife’s medical bills.
- This has been abolished in many states, however in others it has been applied to both spouses regardless of gender.
- If the doctrine is being applied to hold spouse liable, a legal challenge to the doctrine may be an option.
 - The Equal Credit Opportunity Act prohibits creditors from requiring that both spouses obligate themselves for one spouse’s transaction.

Strategies After Obtaining Treatment: Affordable Care Act

- The ACA places limits on certain collection activities by non-profit hospitals, and prohibits extraordinary collection activities until 120 days after first bill if the patient should be eligible for financial assistance.
 - Extraordinary collection actions include lawsuits, liens.

Strategies After Obtaining Treatment: Federal Debt Collection Act

- FDCPA prohibits certain collection activities:
 - Deception, harassment, contacting debtor after the debtor has sent a no-contact letter to the debt collector.
- Protections apply to:
 - 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) and the Truth in Lending Act (TILA), as well as state laws, may further protect older adults with medical debt.

Key Lessons

- Apply for all possible coverage and explore other sources of financial assistance.
- Challenge denials of coverage or billing errors.
- Don't use a credit card.
- Negotiate large bills or notify creditor that the patient is judgement proof.

Additional Resources

Information for advocates and clients.

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 elders at [Medicaid.gov](https://www.Medicaid.gov)
- Veterans Administration: Health benefit information at [ebenefits.va.gov](https://www.ebenefits.va.gov)
- [Healthcare.gov](https://www.healthcare.gov): Applying for individual and family coverage

Additional Resources

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 and BenefitsCheckUp: benefitscheckup.org

Additional Resources

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

Additional Resources

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

Case Consultations

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