Suing patients: Medical, ethical, and legal considerations

Making sure medical debt collection policies reflect your hospital's mission

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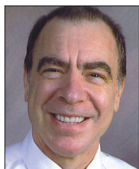
Although it is common to read about patients suing their hospitals, there has been increasing public and political attention given to hospitals suing their patients to collect unpaid hospital bills. KH's story began with an emergency appendectomy. She did not have health insurance to cover the $14,000 hospital bill. The family was unable to pay the bill, and the nonprofit hospital sued them for that bill, plus some additional expenses (totaling about $17,000), plus interest was accumulating at 9% per year. The hospital won a judgment, and it garnished the husband's pay (10% of after-taxes pay, in this case) and placed a lien on the family's home. Years later—because of interest and additional hospital bills—the family had paid $20,000, but still owed $26,000.[1]



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The extent of the problem

This is neither a hypothetical case nor a rare event. Studies and press reports have noted dozens of examples of hospital collection excesses. One study found that unpaid medical bill lawsuits increased by 37% in Wisconsin between 2001 and 2018, with 5% of hospitals accounting for 25% of the lawsuits.[2] Another report found almost "31,000 civil cases filed by 139 hospitals in 26 New York counties from 2015 to 2019."[3] Similar to the Wisconsin report, a small number of health care providers accounted for the majority of lawsuits. In another example, one Missouri nonprofit hospital, Heartland (rebranded "Mosaic"), created its own for-profit debt collection agency (Northwest Financial Services), which filed 11,000 lawsuits from 2009 to 2013, resulting in 6,000 wage garnishments.[1] The *Wall Street Journal,* among others, has reported for years on the difficulties created by lawsuits against patients.[4] Axios and Johns Hopkins reported that "medical debt comprises 58% of all debt collections in the United States." And although some collection actions declined early in the pandemic, it did not appear to last.[5,6]

Inconsistent collection policies. Collection policies vary greatly from hospital to hospital, with an increasing number of hospitals demanding up-front payments (before services). Many of these health care institutions persuade patients to put medical debt on their credit cards, sometimes as part of an up-front (before service) process.[7] If using a standard credit card, this comes with a very high

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interest rate. There are some special health-related credit cards, such as CareCredit, that generally have better interest rates. These cards offer no-interest short-term loans, with significant interest for longer-term loans. Thus, failure to repay the full amount when due means that the "deferred interest" (about 27%) must be paid.[8] Also any of the problems patients have repaying a credit card (or other loan), of course, are no longer directly related to the hospital. These "indirect collections" still burden patients with medical debt.

Where you go matters. Because there is no common collection policy or practice among hospitals, choosing the wrong hospital may result in a lawsuit. A careful study of lawsuits for medical debt or garnishments related to that debt in 2017 in Virginia showed how being treated at certain hospitals dramatically changed the odds of wage garnishment for unpaid bills.[9] It revealed that 29,286 hospital lawsuits were filed to collect medical debt—9,232 of which were wage garnishments (the most aggressive form of debt collection). Five hospitals alone accounted for the majority of garnishments in the state. Notably, nonprofit hospitals accounted for 71% of the garnishment cases. On the other hand, about 50% of the hospitals in the study did not file any lawsuits to garnish wages for medical debt.[9]

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Nearly half of adults are enrolled in high deductible health plans, and many families do not have the resources to pay high deductibles

Why is there so much hospital debt?

One would think the Affordable Care Act (ACA) and other reforms would mean fewer people do not have health insurance—and the problems experienced by the patient in the case above. Indeed, the number of insured has increased in the United States, including through the expansion of Medicaid. Nonetheless, in 2020, the Census Bureau reported that 28 million people did not have health insurance for *any* part of the year; that figure would be higher if those who had insurance for only *part* of the year were included.[10]

One reason for medical debt is the very high level of "under" insurance—that is, even with health insurance, copays for significant medical bills exceed what the patient can pay. Nearly half of adults (excluding the elderly) were enrolled in high-deductible health plans (in 2017).[11] Among most employment-based plans, deductibles and co-pays have been going up for a decade.[12] Overall, 20% of employer-provided plans had deductibles in excess of $3,000 ($5,000 for families).[13] Of course, many families do not have anywhere near the resources to pay high deductibles, and that represents likely medical debt. The more modest copays of Medicare (often 20%) can be enough to push some elderly individuals beyond their capacity to pay.

"Out-of-network" care also may result in large hospital charges—and debt. Emergency care, for example, may be sought from the closest provider, even though out of network, and the insurance company may refuse to pay the charges. Another surprise form of billing is when a health care insurance company tentatively approves coverage and then after the patient receives care, determines it was unnecessary. In that case, even in-network charges may be denied, with the patient left to pay all the charges.

How medical debt affects patients

For patients, medical debt places pressure on their financial circumstances. Bankruptcy has a profound financial impact, and approximately two-thirds of bankruptcies are related to medical care costs and debt, including "indirect collection."[14] Even when the financial effect is not so devastating, it is often substantial, as the above case demonstrated. In a 2018 survey, almost 30% of those *with* health insurance had medical debts in some form of collection action, and 25% of those individuals said they did not know they owed the money.[15] The same survey found that 20% of respondents had medical debt that adversely affected their credit scores and access to credit.[15]

At work, although employers are not supposed to treat employees adversely because of garnishment, some employers may not adhere to that rule. Furthermore, employees may believe or be concerned that the very existence of garnishment may penalize them

at their current job or make it difficult to move to a better one.[16]

Lastly, patients with medical debt may be reluctant to seek needed medical care. They may be concerned about adding more medical debt or embarrassed or afraid that they would not be welcome at the hospital where they owe money.[7]

Public perception of hospitals

Lawsuits against patients also have a negative effect on hospitals—and it is not limited to the relatively few institutions that file many of these lawsuits each year. Press reports about lawsuits against patients garner great public interest and anger, and this tarnishes the image of heath care facilities in general because many people often do not distinguish the actions of a few institutions.

The sensitivity of health care organizations to bad publicity from debt collection practices was seen in a follow-up study of the previously discussed Virginia data. In the year following this report, there was a 59% decrease in the number of lawsuits filed, including a 66% decrease in garnishments.[17] Eleven hospitals in the state that had been filing debt lawsuits stopped doing so.[17]

Medical debt: The obligation of nonprofit hospitals

The response seen in the Virginia follow-up study may also reflect well-founded concern from board members about political consequences and even taxation problems. The majority of hospitals, including those in these studies, are nonprofit institutions with an Internal Revenue Service (IRS) 501(c)(3) "tax-exempt" status. (Note, "nonprofit" does not mean that the organization does not make a profit, but that the profit does not accrue to individuals.) The "nonprofit" status is usually granted by states, but the federal tax-exempt status is granted by the IRS. This status exempts the institutions from paying most federal taxes, and (perhaps most importantly) qualifies donors to receive tax deductions (and similar benefits) for donations made to these hospitals. This important tax treatment is granted based on the theory that their services are so valuable to the public that advancing their work through the tax exemption ultimately benefits the public more than the tax revenue would.

In return for these benefits, the organization has obligations to work in the public interest. For years, hospitals have been criticized for not providing sufficient public benefits (compared, for example, with for-profit hospitals) to justify the tax exemption. That criticism caused the IRS to begin requiring a special Form 990, Schedule H, which is attached to the usual 501(c)(3) informational tax return, "to provide information on the activities and policies of, and community benefit provided by, its hospital facilities and other non-hospital health care facilities."[18] Part III of Schedule H asks, in part, about bad debt and collection practices.

Then the ACA Section 501(r) enhanced the obligation of nonprofit health facilities to provide charitable care in two ways. First, they must have, and make available, policies to provide free and discounted care; and second, they cannot sue for payment until they make an individualized determination as to whether the patient should have received discounted care or financial assistance.[19]

Thus aggressive collection practices (which should include "indirect collection") invite special scrutiny by local officials and the IRS. In the longer-term, concern that tax-exempt hospitals are not truly operating in the public interest is undoubtedly amplified by these aggressive debt collection practices. How can a hospital claim it is truly operating in the public interest when it sues dozens of modest-income individuals each year?

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Lawsuits against patients, which are filed by relatively few institutions each year, have a negative effect on hospitals

Regulating medical debt and its collection

The No Surprises Act

In December 2020, Congress adopted the No Surprises Act to address some of the problems of patient debt.[20] Among other things, the act protects patients "from receiving surprise medical bills when they receive most emergency services," or when they are in an

in-network hospital but receive services from out-of-network providers (such as anesthesia and radiology).[21] Several states also have similar legislation, so the federal law specifically states that where state laws are more protective of patients, the state's higher protections apply, and vice versa. The act took effect on January 1, 2022, though there is an "interim final" regulation that will be subject to change, and there is already litigation over those regulations.[22] The real complexity of the rules will arise through the regulations, which are likely to change several times over the next few years. To help with this, the American Medical Association has an extensive toolkit for health care providers.[23]

Additional regulations

Both the federal government and most states are likely to take additional action to reduce hospital debt lawsuits. Some proposals sound simple enough but would have significant complications. For example, governments could prohibit all lawsuits that collect hospital debt.[7] Such a regulation would mean that paying hospital debts would essentially become optional. Imagine the millionaire who does not want to pay a $25,000 hospital charge; or patients with other debts who would pay those off before the hospital debt. The regulation might have income or asset limits on debt collection lawsuits and the like, but it quickly becomes complicated. Furthermore, to protect themselves, hospitals would undoubtedly become much more aggressive about requiring up-front payments—which would force the debt or prepayment onto credit cards or similar debt obligations that are not subject to the no collection lawsuit rule.

Public reporting. The follow-up study in Virginia[17] suggests that requiring public reporting of the number of cases filed by or on behalf of (directly or indirectly) each hospital may help. Hospitals would, of course, have incentives to make their figures look better, perhaps by selling the debt to an agency that would be able to file suit in its name rather than the hospital's name. These might be little more than indirect collections. For reporting purposes, any form of transferring debt might be considered filing a lawsuit. The problem, noted earlier, about requiring prepayment or credit cards would also exist.

Get the board involved. A different approach would be to ensure that a hospital's board of trustees is involved in setting and overseeing debt collection policies. For example, the law might require boards to annually consider and adopt specific debt collection practices—including indirect collection efforts. Boards should already be doing something similar to this, but regulation might be an inexpensive way to ensure it is done—and in a manner consistent with the organization's values. Another suggestion is to require the board to approve any legal action against specific patients.[7] By making sure this is not just another item on the consent agenda, the oversight would probably reduce automatic debt collection processes.

Expand IRS reporting requirements for nonprofits. Indeed, for nonprofit hospitals with 501(c)(3) obligations, the Form 990, Schedule H already provides some information about collection actions and uncompensated care, and this is enhanced by the ACA Section 501(r). These could be expanded and perhaps include "indirect" collections. The IRS could "flag" hospitals with high total litigation and similar collection actions, and ask the hospital to provide a detailed explanation for each action and how it was consistent with the obligation to serve the public (thereby justifying the exempt taxation status, an idea proposed by the US Government Accountability Office in 2020).[24]

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The AMA provides a toolkit for providers on the No Surprises Act, which protects patients from surprise medical bills for emergency or many in-network procedures

Ensure the hospital's actions reflect their mission and values

Hospitals are created to provide medical care for people and to improve the human condition. Those who lead them should, and generally do, share that purpose. The apparent collection policies that have garnered negative public attention suggest that some of these institutions have lost focus of their ultimate mission and values. The boards and executives of these health care institutions, as well as the medical professionals and

attorneys who serve them, should be continuously guided by those values.

Important decisions—including collection and prepayment processes—reflect the values of the institution. Failure to ensure these procedures are in line with the organization's mission is an embarrassment to all health care facilities, including the majority of hospitals that do not engage in these aggressive collection practices. Not addressing these issues will likely result in political and legal action—blunt and inefficient instruments—to limit what the public sees as wrongdoing. ●

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A hospital's failure to ensure collection and prepayment processes are in line with the organization's mission is an embarrassment to all health care facilities, including the majority of hospitals that do not engage in these aggressive collection practices

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