



Debt Collection

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The most important mission of any medical practice is to provide the highest quality medical services to its patients and other medical consumers. Unfortunately, as the demand for high-quality medical services continues to increase, so does the difficulty of getting fairly compensated for those services. Most practices are already awash in a sea of paperwork, resulting from increased regulatory and administrative scrutiny mandated by third-party payers. Reduced contribution from third-party payers in recent years has exacerbated the problem. No medical practice can survive indefinitely, absent timely compensation for services provided. To increase the likelihood of payment for ser-

vices rendered, the practice must obtain and maintain accurate information with regard to its direct-pay patients so that, if necessary, it can initiate debt-collection procedures.

First, it is critical that the practice establish the existence of an agreement between the provider and the consumer for the providing of, and compensation for, medical services. The practice should have the signature of every patient of majority age on a document evidencing this agreement. For minor patients, the practice should have a document signed by the patient's legal guardian. The document need not be titled "Contract for Medical Services," but should clearly state who the provider is, who the patient is, the

services to be provided and the patient or guardian's acknowledgment of his or her obligation to pay. It is critical at this intake phase to establish the contractual relationship and to obtain accurate patient information, verified by drivers' licenses or other suitable methods. The acknowledgment of liability for payment should be clear and unequivocal. It should also be clear from the agreement whether the patient is liable in the first instance, which is preferable, or only in the event a third-party payer declines coverage. If the patient's direct liability under the agreement is unclear, the practice may have to exhaust its recourses against third-party payers before seeking payment from the pa-



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tient or legal guardian.

Assuming that there is an unpaid balance for services and that the patient's direct liability is clear from the agreement, what should be done? The first step is a simple demand-for-payment letter advising the patient that the bill must be paid. Typically, this type of letter follows other, more gentle requests that have been ignored. The demand letter should be clear and direct so that it is not mistaken for "just another late notice," which is likely to be ignored again. If the patient cannot make a single lump-sum payment, it may be beneficial to offer an installment plan to facilitate payment. Although it may not be cost-efficient to hire an attorney to prepare and send out demand letters, the practice may wish to engage counsel to prepare a standard letter that the practice can tailor to individual accounts. Even though most breach-of-contract lawsuits have a generous statute of limitations, it is advisable to keep delinquent accounts on a short leash, since the older a past-due account gets, the less likely any meaningful recovery becomes.

Most practices are not administratively equipped to pursue debt collection beyond this preliminary stage. Where the size of the balance and/or the patient's ability to pay warrants it, the practice would be well advised to hire a debt-collection professional. For that reason, it is also wise to include in the medical services agreement a provision authorizing the practice to obtain a patient's credit report, adding the cost of the report to the balance owed. Practices should also be aware that, in many circumstances, corporations are only allowed to appear in court through legal counsel, which often precludes a practice from pursuing a collection lawsuit on its own behalf.

A ready, willing and able group of debt collection agencies and counsel are available, many of which specialize in collecting medical obligations. Pains should be taken to engage a reputable professional, not just the cheapest. There are potentially serious and expensive pitfalls for the unwary debt collector, and in some cases, the parties who retain them, if

attempts are made to collect a debt through unauthorized or unapproved methods. Both the Federal Fair Debt Collection Practices Act and provisions of the United States Bankruptcy Code authorize the imposition of monetary sanctions, including attorney's fees, in appropriate circumstances. In some cases, the conduct leading to sanctions for improper debt collection need not be all that egregious or willful. For example, an agency that inadvertently continued to send collection notices after a patient filed for bankruptcy was found to have violated the automatic stay provisions of the Bankruptcy Code.

In some instances, the collection agency may pursue a debt in the name of the practice, with no reference to the agency itself. In that case, even though the practice may have had no material participation in any alleged improper collection methods, it could be held liable under certain circumstances. To avoid these situations, an agreement with a debt collection professional should address who will bear the cost, the agency or the practice, if a fine or penalty is imposed for improper collection activity. The agreement should also require the agency to defend and indemnify the practice if a claim is asserted against it as a result of the conduct of the third-party

debt collector.

An alternative to debt collection is the "factoring" of receivables. In a classic factoring scenario, accounts are sold to a third-party "factor" at a discount, based on the perceived collectability of the pool of accounts. The practice receives cash for the accounts, and the factor assumes the risks of collecting them. The practice's ability to factor some or all of its accounts depends on whether those accounts are subject to liens held by other parties, such as lenders which provide working capital for the practice.

Debt collection is a necessary function for any viable business enterprise. By its very nature, it is a difficult undertaking. Unless it is done efficiently, it will not add significantly to the practice's bottom line. Unless it is done properly, it can actually subtract from it.

Mr. R. John Clark, a partner with Hancock & Estabrook, LLP, concentrates his practice on advising clients in all areas of business and commercial law, including formation of business entities, business acquisitions and sales, other commercial transactions and commercial litigation. He is the leader of the Firm's Bankruptcy and Creditors' Rights practice group. Mr. Clark is admitted to practice in New York and can be reached at (315) 471-3151. ■

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