

Collections: The Legal Issues

By

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Collecting money from patients who are past due in payment for medical services is a perplexing issue for most physicians. It is not only frustrating to have to allocate more practice resources to obtain what is rightfully owed for services already performed, but also many physicians are not sure what is permissible under the law. The industry average for small physician practices is around 4% of revenue is spent on collections. For larger entities or hospitals, the average can be as high as 12-15%. However, if collections are managed effectively, it can significantly increase revenue. The key is to understand the applicable laws and develop policies accordingly.

Responsibility for Medical Bills

The general rule is an adult patient is responsible for the payment of his or her medical bills, unless the physician has a contract in place that prevents billing the patient directly. Personal situations can often complicate payment matters, but try to use common sense. In the case of a divorce, it is good practice to pursue collections from the spouse who incurred the fees, even if that spouse claims there is a divorce decree that says otherwise. An unconscious patient is responsible for medical bills based on an implied contract for services furnished in good faith.

If a patient declares bankruptcy, often a medical practice is out of luck because it is an unsecured debt. However, if a practice receives a notice to file a claim, do so because that means there are some assets left over for unsecured creditors. Remember that once a practice receives notice of bankruptcy, all collection activities must cease.

States differ in their statutory requirements regarding minors seeking medical treatment. In North Carolina, both the father and mother are responsible for a minor's medical bills. There are a few exceptions to that rule, including if the child is emancipated or the child sought care for which he or she does not need parental consent. Practically speaking, it is best to pursue payment with the spouse who brings the child in for treatment.

Relevant Laws

There are several federal laws that are meant to protect consumers, and physicians must abide by them. Familiarize yourself with these laws before developing your own collection policies.

The Federal Truth-In-Lending Act requires credit grantors to explain to patients up-front how much credit will cost them. This means that according to federal law, physicians may charge interest on medical bills if the patient is made aware prior to or at the time of service. The practice will have to decide whether it is worthwhile to charge interest. It can be quite effective in getting patients to pay in a timely manner, but it can also be difficult and time-consuming to track.

The Fair Credit Reporting Act affects physicians who make available credit to patients. If the practice refused to grant a patient credit based on a credit report, that

patient is entitled to a reason for the denial and the name and address of the credit agency used. Similarly, the Fair Credit Billing Act allows the patient to complain of an error and the practice must respond in a timely manner.

The Fair Debt Collection Practices Act is designed to prevent abusive collection practices. It does not apply to collectors employed by a creditor (such as a practice staff member), but it is good to abide by the policies anyway as they outline appropriate behavior. Some examples of restrictions on collection practices include: only contacting a debtor once a day, not contacting a debtor on Sunday, not calling before eight am or after nine pm, and not calling at work if there is another contact method or if the employer does not permit personal phone calls.

Suggested Policies

To ensure consistency, document the practice's collection policies and have all relevant staff members learn and abide by it. The policies should outline what happens each step of the way from the first date of service to the potential dismissal of a patient for non-payment. Form letters should be drafted and deadlines for each step developed and applied. Your attorney or malpractice carrier should be able to help you with appropriate wording. The important thing is to follow the same procedures with every patient.

A good example of the importance of uniformity involves a patient who claims he is indigent and unable to provide a co-payment. If the practice arbitrarily decides to waive the co-pay and only accept the insurance reimbursement, it has just submitted a false claim and may be subject to enormous fines and penalties. If your practice chooses

to see indigent patients, develop uniform guidelines for determining economic hardship and document the relevant facts.

It is acceptable to pass on the fees for collections, but you have to let the patient know in advance. If you decide to dismiss a patient for nonpayment, you must give that patient time (usually a minimum of thirty days) to find another provider. So, if he is dismissed on Friday and comes back Monday for treatment, he should be seen. Always document the termination with a letter to the patient and keep a copy in his or her medical record. Certified mail is best, although not required, when the termination is not in person. It is also beneficial (but again not required) to warn a patient of an impending termination and give them an opportunity make payment. Write-offs should only occur on correctly coded, billed and covered services after collection efforts have failed.

In conclusion, evaluate your billing and collection policies to ascertain whether there are opportunities to increase revenue. If you do not currently have a collection plan, develop one along with form letters for each step of the process. Use any control systems that are available such as aging summaries and statistics in determining the best use of resources and tracking collection trends. Many practices have added thousands to their bottom lines by collecting smarter and more efficiently.