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CANCER & MEDICAL DEBT: RESOURCES & OPTIONS - INCLUDING BANKRUPTCY

A PUBLICATION OF THE
CANCER ADVOCACY PROJECT
OF THE CITY BAR JUSTICE CENTER

This guide was created and produced with support from the
Judges and Lawyers Breast Cancer Alert (JALBCA)

<https://jalbca.org/>

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INTRODUCTION

The Cancer Advocacy Project is a legal services program of the City Bar Justice Center. Our insurance law component provides legal advice and guidance to cancer patients and survivors in areas such as private insurance, Medicaid, Social Security Disability (SSD) and Supplemental Security Income (SSI) as well as federal legal rights under the FMLA (medical leave), COBRA and HIPAA (insurance portability). Our cancer-related employment discrimination component provides information, advice, and counseling on issues relating to workplace discrimination and employee benefits. The Cancer Advocacy Project also offers clients pro bono assistance in the preparation of a basic will, power of attorney, and advance directives.

This guide is intended to help cancer patients, survivors, and their family members to prepare for the financial strains that often result from a cancer diagnosis. It recommends questions to ask before treatment begins that may help you to avoid or reduce the subsequent bills, and offers potential sources of financial and other resources to help relieve the many burdens that result from out-of-pocket costs, including copayments, deductibles, and reduced income. For those already struggling with medical bills, the guide provides information about negotiating with doctors and medical facilities, dealing with debt collectors, debtors' rights protections, and examines whether and when to consider bankruptcy – and what that involves. We hope this guide will help you to avoid, contain/minimize or find your best solution to the stresses caused by medical debt.

IMPORTANT INFORMATION ABOUT THIS GUIDE

This guide is not intended to serve as legal advice and the Cancer Advocacy Project is not responsible for the accuracy or adequacy of any of the information contained in the guide or your reliance on this information.

ACKNOWLEDGMENTS:

- 1. Judges and Lawyers Breast Cancer Alert (JALBCA) provides grants to support legal and social services to cancer victims and their families, particularly those who could not otherwise afford them, as well as education and training efforts and early detection initiatives. The Cancer Advocacy Project truly appreciates JALBCA's contribution in support of its services.**
- 2. The bankruptcy section of this guide was provided by the City Bar Justice Center's Consumer Bankruptcy Project, which assists debtors filing pro se bankruptcy petitions, and provides pro bono representation to debtors in contested matters. We are grateful for their invaluable contribution.**

I. PREPARING FOR THE COST OF MEDICAL CARE

A cancer diagnosis usually comes with high treatment costs. This can involve not just the financial challenge of paying for the medical treatment, but also costs incurred in adjusting to a significant change in lifestyle. Preparing in advance financially to pay for the treatment costs may help ease the burden. The assistance of a good social worker or patient navigator who knows your situation and can assist with finding resources is highly beneficial.

A. Health Insurance

Health insurance will provide a source to pay for at least some of the cost of the medical care. Many employers offer individual and/or family plans. Individually obtained coverage is also available.

The Affordable Health Care Act (the “ACA”, also known as “Obamacare”) mandated medical insurance coverage for all. It increased health insurance coverage primarily by expanding Medicaid, the government’s (mostly) free health insurance plan for low-income individuals, and by providing subsidies to those slightly above the Medicaid eligibility limit to enable them to buy health insurance on the ACA’s “insurance exchanges.” For cancer patients and survivors, a crucial provision in the ACA prevents insurers from denying coverage to persons who have “pre-existing” conditions. To access the official insurance exchange, go to www.nystateofhealth.ny.gov.

Specialized cancer treatment insurance policies are also available.

If you do have insurance:

- Know your deductibles, copays, and coverage limits
- Make sure that the treatments and procedures for your condition are covered
- Get authorization for a specific procedure or referral to a specialist
- Is the prospective treatment in-network or out-of-network?
- Get authorization for treatment in writing, when possible
- If emergency treatment is needed, contact your insurer immediately, or at least within 24 hours of seeking treatment
- Discuss your payment resources and coverage with your physicians
- Make sure your invoices and statements are itemized and keep copies of all bills and authorizations
- Submit all claims within the stated time limits and with the necessary documentation

B. Health Savings Accounts

A Health Savings Account is a type of savings account that lets you set aside money on a pre-tax basis to pay for qualified medical expenses. By using untaxed dollars in a Health Savings Account to pay for deductibles, copayments, coinsurance, and some other expenses, you can lower your overall health care costs. Withdrawals from such accounts to pay for health care costs have tax advantages. These accounts are generally available to persons who have high deductible health insurance policies.

C. Health Care Reimbursement Accounts

An individual's or spouse's employer may offer Health Reimbursement Accounts to their employees. These accounts are funded solely by the employer; they cannot be funded through employee salary deductions. The employer sets the rules and boundaries for the Health Reimbursement Accounts, and any unused dollars remain with the employer. This option functions as a health reimbursement arrangement; when an employee has incurred approved medical expenses the employer reimburses the employee directly. There is no minimum or maximum contribution limit on the employer's contributions to an HRA.

D. Government Resources

1. Medicare

Medicare is the Federal health insurance program for people who are age 65 years or older, younger people with disabilities, or people with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant). The website is www.Medicare.gov.

2. Medicaid

If you are low income, you may qualify for governmental benefits to assist you with payment and treatment sources. The New York Department of Health administers the Medicaid program for the State of New York. The website is www.health.ny.gov/health_care.

E. Borrowing

This may be an option if you are able to borrow funds from third parties, such as a bank, relatives or friends. If you are of sufficient age and own real property (i.e. a house), another potential option is to consider whether a reverse mortgage on your home would be a feasible alternative. A reverse mortgage allows you to draw on the equity of your home, but still remain in your home for your lifetime. This is a serious decision and should be discussed with someone with expertise in this area.

F. If You Are Paying Out-of-Pocket

Hospitals often charge uninsured patients more than they charge patients who have insurance. Thus, uninsured patients are asked to pay significantly more than public or private insurance companies pay. However, under New York's Hospital Financial Assistance Law (HFAL) of 2007, patients whose income is at or below 300% of the Federal Poverty Level (FPL) should not be charged more than the hospital would charge a health plan. HFAL is discussed in further detail in Section III below.

Sometimes hospitals ask patients to pay a deposit in advance before being admitted or treated. These pre-admission deposits are permitted under HFAL, but:

- They must be based on your ability to pay
- They must not be an undue obstacle to obtaining needed health care or financial assistance
- The amount must be included in the maximum charges allowed under HFAL

- If you cannot afford a pre-admission deposit, you may negotiate with the hospital to pay no more than 10% of your monthly income as a deposit

Important! Under Federal and New York law, hospitals may not turn you away if you cannot pay for emergency care. This law applies to emergency care only.

You also have protections under New York State law which similarly prohibits hospitals from discriminating against you because you cannot pay. If you believe you have been denied treatment or necessary care from the hospital because of your inability to pay, contact the New York State Attorney General's Health Care Bureau.

II. ASSISTANCE WITH MEDICAL COSTS AND CARE

In addition to paying for medical treatment, a patient and his or her family will often face challenges in paying for collateral costs such as temporary housing and transportation to treatment centers or specialists. Following are some resources that may help avoid or reduce these expenses.

A. Financial Assistance

Out-of-Pocket Expenses

Financial assistance for help with the high costs associated with a cancer diagnosis, including out-of-pocket costs not covered by insurance, are available from several sources, including foundations and non-profit/charitable organizations. As examples, the following organizations provide financial assistance in various forms, including insurance premiums, copayments, coinsurance, deductibles, and reimbursement for travel expenses. However, demand for financial assistance is usually greater than the funds available so you may need to contact a number of organizations in your search. To find out which illnesses are supported by an organization, what type of expenses they will cover, and the eligibility requirements for financial assistance (if funds are available) please contact the organization directly.

1. The Pink Fund

The Pink Fund (www.pinkfund.org) provides financial assistance of up to \$3,000 on a short-term basis to help meet critical expenses such as insurance, housing, utilities and transportation. Applicants must be undergoing active treatment for breast cancer and have a household income of less than 500% of the Federal Poverty Level (FPL). Telephone: 877-234-7465.

2. CancerCare – Financial Assistance Program

CancerCare's Financial Assistance Program (www.cancercare.org/financial) assists with certain medically-related costs including home care, child care and transportation. Breast cancer patients can also receive help with pain, nausea and oral hormonal medications, lymphedema supplies and durable medical equipment. Telephone: 800-813-4613.

3. CancerCare – Co-Payment Assistance Program Foundation

CancerCare's Co-Payment Assistance Program (www.cancercare.org/copayfoundation) helps with insurance copayments, chemotherapy, and target treatments. Telephone: 866-555-6729.

4. Good Days

Good Days (www.mygooddays.org) offers assistance with copayments, insurance premiums, travel costs and diagnostic tests. Help is available for a number of cancers including metastatic breast cancer, acute lymphoblastic leukemia, multiple myeloma, and multiple myeloproliferative diseases. Applicants must have a household income below 500% of the federal poverty level. Telephone: 877-968-7233.

5. Patient Advocate Network Foundation

The PAN Foundation (www.panfoundation.org) helps to pay out-of-pocket medical costs for patients with life-threatening, chronic and rare diseases. Coverage includes pharmacies and insurance plans. Telephone: 866-316-7263.

6. PAN Co-Pay Relief

The PAN Co-Pay Relief program (www.copays.org) includes assistance for various types of cancer including breast cancer, metastatic breast cancer, multiple myeloma, prostate cancer and ovarian cancer. Telephone: 866-512-3861.

7. Patient Services Inc.

Patient Services Inc. (www.patientservicesinc.org) helps with insurance premiums, copayments, Medicare Part D coinsurance and reimbursement for travel expenses. Supported illnesses include metastatic melanoma, metastatic renal cell carcinoma, as well as breast cancer screening. Telephone: 800-366-7741.

8. Leukemia & Lymphoma Society – Financial Aid Program

The Leukemia & Lymphoma Society (www.lls.org) provides limited financial assistance for those diagnosed with a blood cancer, including leukemia, lymphoma and multiple myeloma in financial need. Telephone: 800-955-4592.

B. Transportation

9. Air transportation

The National Patient Travel Center (www.patienttravel.org) refers patients to over three dozen charitable or special discounted patient air transport service groups, including air ambulance services. The National Patient Travel Helpline screens the callers, verifies the illness and need for transport, and determines if the patient is eligible for assistance through one of the air travel programs. They may be contacted at 800-296-1217.

The Air Charity Network serves all 50 states and provides free flights to persons with medical need. (Website: www.aircharitynetwork.org; Telephone 877-621-7177).

10. Ground transportation

Angel Wheels to Healing provides non-emergency, long distance ground transportation to financially challenged patients for treatment. Telephone 800-768-0238.

The American Cancer Society Road to Recovery® program is available in some areas to offer volunteers to drive patients to and from treatment. Call 800-227-2345 to find out more about the program in specific locations.

C. Housing

11. Hope Lodge

The American Cancer Society operates more than 30 Hope Lodge facilities throughout the United States and Puerto Rico. These facilities offer cancer patients older than 18 and their caregivers a free place to stay when seeking treatment away from the patient's home city. There is a Hope Lodge facility in Manhattan at 132 W. 32nd Street, New York. To contact the American Cancer Society to check for a Hope Lodge in a particular city call 800-227-2345.

12. Healthcare Hospitality Network

This is a group of nearly 200 non-profit organizations throughout the US that provide free or low-cost family-centered lodging to families receiving treatment far from home. You can check online at www.hhnetwork.org or call 800-542-9730.

13. Ronald McDonald House

Cancer treatment for children often involves travel away from home to a specialized pediatric treatment center. Many of these centers have a Ronald McDonald House nearby. These houses provide low-cost or free housing for patients and their immediate families. There are two Ronald McDonald Houses in New York; one is in Manhattan and the other is in New Hyde Park. You can check www.rmhc.org or call 630-623-7048 for more information.

14. Joe's House

Joe's House is an organization that assists cancer patients seeking treatment away from home find a place to stay during treatment. Lodging is generally in hotels and other similar lodging, and offers centralized inventory of places and a medical discount. (Website: www.joeshouse.org).

15. Governmental resources

If you are low-income, you may qualify for affordable housing. In New York City, the Department of Housing Preservation and Development (HPD) offers affordable housing programs. For online information, go to www1.nyc.gov/nyc-resources/service/1021/affordable-housing.

Temporary Assistance for Needy Families (TANF) is a grant program for people with low incomes. It provides monthly cash to help pay for food, clothing, housing, utilities, transportation, home, medical supplies not covered by Medicaid, and other basic needs. In New

York, the website otda.ny.gov/programs/temporary-assistance provides further information on TANF. There is also a telephone hotline at 800-342-3009.

D. Food

16. Governmental benefits

Formerly called the Food Stamp Program, the Supplemental Nutrition Assistance Program, or “SNAP”, is a Federal government program that provides financial assistance to needy persons to purchase food. It allows people to shop in grocery stores using an Electronic Benefits Transfer card, similar to a bank debit card. In New York this program is administered by the New York Department of Social Services. You may apply online at myBenefits.ny.gov, or visit a local Department of Social Services (see a list of departments at otda.ny.gov/workingfamilies/dss.app). There are also several SNAP enrollment sites throughout New York. The Foodbank of New York City (www.foodbanknyc.org) provides assistance with enrollment and referral to an enrollment site. Their SNAP Benefits HelpLine telephone number is 212-894-8060.

Other government food programs include the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Commodity Supplemental Food Program (CSFP), and the Emergency Food Assistance Program (TEFAP).

17. Donations

Foodbank for New York City also offers help to locate soup kitchens, food pantries, senior centers, and free tax preparation assistance sites.

Individuals aged 60 or older who are homebound may qualify for home delivery through Meals on Wheels (Website: www.mealsonwhellsnys.org). In New York City, the organization is CityMeals on Wheels (Website: www.citymeals.org; Telephone 212-687-1234).

E. Other Considerations and Third Party Resources

18. Charitable organizations/churches and social organizations

In addition to financial assistance, CancerCare also provides counseling, support groups, and educational opportunities. They also offer free community programs in New York, Connecticut and New Jersey, and free professional support services and information to help persons manage the emotional, practical and financial challenges of cancer. (Website: www.cancercare.org; Telephone 800-813-HOPE (4673)).

The Cancer Financial Assistance Coalition is a coalition of organizations, including the American Cancer Society, helping cancer patients manage their financial challenges. (Website: www.cancerfac.org.)

The Community Service Society provides information and assistance to families and individuals seeking help with accessing or maintaining public benefit programs and publicly subsidized housing in New York. It offers utility assistance to qualified low-income persons in New York. (Website: www.cssny.org; Telephone 212-614-5484),

You may also want to check for other charitable and social organizations that may provide funds to assist with payment or treatment at low or no cost, or other forms of support and

assistance. A good place to check for such organizations is the American Cancer Society's "Resources" list at www.cancer.org/treatment/support-programs-and-services .

19. Governmental benefits

Check with the New York Department of Social Services and the New York Department of Health for other government benefits that may be available to you and your family.

20. Financial planning

You should consider financial planning with a professional financial planner or counselor. These persons can assist with long term financial planning, organization, and budgeting, or challenges with credit issues. They may also provide needed guidance if you encounter short term financial crises. If you are low-income, you may qualify for financial counseling with agencies such as:

New York City Financial Empowerment Center

<https://www1.nyc.gov/site/dca/consumers/get-free-financial-counseling.page>

Telephone 311

The New York Financial Education Network - also offers information about financial education programs and services. Providers offer free or low-cost financial education classes, workshops and counseling services in New York City.

<https://www1.nyc.gov/nyc-resources/service/2488/financial-education-network>

21. Estate planning

You should consult with an attorney to prepare appropriate estate planning documents. You should have a Power of Attorney allowing others to assist you with managing your financial affairs in the event of your disability or incapacity. Health care directives are also important so that your family and health care providers are aware of your intentions regarding your medical treatment in the event that you become unable to direct your own treatment. In New York, there are three types of directives: a Health Care Proxy form, a Living Will, and a Do Not Resuscitate Order. If you do not have such documents, expensive and lengthy guardianship proceedings in court may be necessary, adding to the cost and delay in taking care of your medical needs. Finally, you may want to consider executing a Last Will and Testament to help assure that your designated heirs receive your assets.

If you are unable to afford an attorney, there are several non-profit organizations that offer low-income persons free or discounted legal services that can assist you with preparing necessary documents, including the Cancer Advocacy Project.

III. ONCE MEDICAL COSTS HAVE BEEN INCURRED

A. Verify the Accuracy of Your Bills.

- Make sure that the charges are accurate, reflect your actual treatment, and are calculated correctly.
- If you are a Medicaid recipient, note that:
 - 1. It is illegal for a Medicaid provider to bill a Medicaid patient more than the Medicaid rate.
 - 2. A physician is not required to accept Medicaid patients, but they must inform the patient of that prior to treatment and the patient agrees to pay the fees out-of-pocket in writing.
 - 3. If your Medicaid was active on the date of the procedure(s), and your doctor continues sending you medical bill(s) for that procedure, contact the Centralized Complaint Hotline of the New York State Department of Health (800-804-5447) or the Legal Aid Society's Health Law Helpline (212-577-3300)

Submit all appropriate documentation to your insurers within the stated time limit. Keep track of all conversations regarding your billings, and send all important communications by certified mail, return receipt requested.

If you are not able to pay, immediately contact your hospitals and doctors. Let them know of your financial difficulty. Your providers may be willing to work out arrangements to pay over time on an installment basis, possibly at no or low interest, or discount your balance due. You may thereafter qualify for reduced or even free care. You may need to submit proof of income, expenses and assets, so you may want to make sure that you have available sufficient documentation to establish this. If an agreement is worked out with your providers, make sure you comply with the terms of payment.

If you fail to contact your providers and simply stop paying, they may send your account to a collection agency!

B. Patients' Rights

1. Hospital Financial Assistance Law (HFAL)

Since implementation of the New York Hospital Financial Assistance Law (HFAL) in 2007, all public and private hospitals in New York are required to offer financial assistance to low-income and/or uninsured patients. Hospitals receive funding from New York State to compensate them for providing care to such persons. Hospitals must offer a sliding-scale fee for uninsured patients living at or below 300% of the Federal Poverty Level (FPL). In some situations, patients' savings must be below a certain level. HFAL requires hospitals to inform patients about the availability of financial assistance during registration and on all medical bills. Hospitals must also post signs about financial assistance in public care areas, such as waiting rooms, outpatient clinics, and billing and Medicaid offices. These notices must be in English and in any languages commonly spoken in the community.

2. Financial Assistance Eligibility under HFAL

The FPL sets out a “fee schedule” that hospitals must follow when providing discounts. In order to be eligible for HFAL, a household must be at or below 300% of the FPL. A sliding scale fee will apply between 100% and 300%.

Following are the FPL maximum annual household incomes at 100%, 150%, 250% and 300%:

100% of the FPL: One-person household = \$12,490
 Two-person household = \$16,910

150% of the FPL: One-person household = \$18,735
 Two-person household = \$25,365

250% of the FPL One-person household = \$31,225
 Two-person household = \$42,275

300% of the FPL: One-person household = \$37,470
 Two-person household = \$50,730

Depending on your income level, you may be eligible for a reduction of your bill:

- Patients **between 251% and 300%** of the FPL cannot be charged more than the hospital would charge a public health insurance plan.
- Patients **between 151% and 250%** of the FPL can be charged between 20% and 100% of what the hospital would charge a public health plan.
- Patients **between 101% and 150%** of the FPL pay on a sliding scale from the nominal fee up to (no more than) 20% of what the hospital would charge a public health insurance plan.
- Patients **at or below 100%** of the FPL may not be charged more than the following:
 - Inpatient Services: \$150 per discharge
 - Ambulatory Surgery and MRI testing: \$150 per procedure
 - Adult Emergency Room or Clinic Services: \$15 per visit
 - Pediatric Emergency/Clinic or Prenatal Services: no charge

Example: You have an MRI. Your monthly income is \$1,500 (or \$18,000 per year). Let’s say that in this case you are in the “151% to 250%” bracket of the FPL. You learn that the standardized charge for an MRI at the hospital is \$1,000. Under the HFAL fee schedule, you should only be charged between \$200 (20% of the standardized charge) and \$1,000 (100% of the standardized charge). Since your income is close to the lower end of the sliding scale, your reduced charge will be closer to \$200 than \$1,000.

Each hospital’s financial assistance program is different. Some may assist patients up to 400% of the FPL, some have approval from New York State to consider patients’ savings in determining their eligibility, and others may provide assistance with co-pays and deductibles. Most hospitals will consider exceptional circumstances on a case-by-case basis.

Hospitals that have been approved to take patients’ savings into consideration may do so only for patients whose income is at or above 150% of the FPL.

These types of savings are not counted:

- Primary home;
- Tax-deferred retirement savings account(s), such as IRA or ;
- College savings account(s);
- Cars regularly used by patient or immediate family.

In any case, the hospital cannot use the information about your savings to deny financial assistance, only to increase the amount you owe. Even then, the hospital may not charge you more than what it would charge a public health insurance plan.

Some services may not be covered by HFAL, including:

- Services not otherwise provided by the hospital
- Services by provider(s) not employed by the hospital
- Services that the hospital determines to be “not medically necessary” or “therapeutically contraindicated” (for example, cosmetic surgery); and
- Services provided by a hospital that only provides mental health services.

Important! HFAL applies only to hospitals, and to health care providers who are directly employed by hospitals. If you are billed by doctors practicing at a hospital (hospital privileges), but not employed by the hospital, you do not have the same protections for their bills.

3. Applying for financial assistance under HFAL

- a. Ask your hospital about how you can apply for financial assistance.
- b. Applications must be readily available and simple to understand and fill out.
- c. Ask for help in filling out the application if you have questions. Hospitals are required to provide assistance in completing the application.
- d. Hospitals must allow 90 days from the date of service/discharge for you to file the application.
- e. You have 20 days to complete the application once the application process begins.
- f. Hospitals may not take action to collect on the bill(s) from the day you file the application until it is processed. This rule does not apply to non-hospital provider’s bills incurred during your hospitalization.
- g. Hospitals may require you to apply for Medicaid as a pre-condition for receiving financial assistance, if they reasonably believe you are eligible for Medicaid. However, you do not have to apply for and be denied Medicaid before you may apply for financial assistance at the hospital.
- h. Be prepared to show proof of your current income, address, and in some cases proof of resources, when you apply for financial assistance. However, you may not be denied consideration for financial assistance because you cannot show proof of income. Hospitals may not ask you to submit tax returns and may not ask about monthly bills.
- i. Hospital’s decision on your application must be made within 30

- days after you submit your complete application.
- j. Hospitals must inform you about your right to appeal an unfavorable decision.
 - k. Hospitals must provide written notice that they have denied you financial assistance at least 30 days before referring your debt to collections.

4. Benefits under HFAL

- a. The hospital must allow you to pay your medical bill in installments.
- b. Under HFAL, you may not be required to pay more than 10% of your gross income each month.
- c. HFAL also limits collection practices for hospitals. It prohibits hospitals from issuing bills or collection notices while your application for financial assistance is pending.

5. Immigration and residency status

Hospitals must make emergency services available to eligible patients who reside anywhere in the State of New York. Furthermore, hospitals must treat all eligible patients regardless of race, language, or immigration status. Hospitals have a duty to maintain patient confidentiality and they must not report a patient's immigration status.

6. Other Patients' Rights

- a. A hospital may ask you to agree to pay the entire amount due as penalty for missing an installment payment(s). This penalty is called an acceleration clause. It is illegal for hospitals to use these clauses.
- b. Do not sign any agreements that place responsibility for payment on your family members or legal representatives. They should also not sign any acceptance of such responsibility. If they do sign, they should sign on your behalf using a Power of Attorney.
- c. Do not agree to the provisions that require you to pay the hospital's debt collection costs.

IV. DEBT COLLECTION

So now you are not able to keep up with payments to your medical providers. If negotiating with the hospital/doctor fails, they may send your overdue medical bill(s) to a collection agency. When that happens, you may have to work with the collection agency directly to resolve your debt. What's next?

A. Debtors' Rights

1. Rights Under HFAL

Under HFAL, the hospital must inform you 30 days in advance that it plans to send your account to a collection agency. You may still be able to apply for discounted or free health care or work out a flexible payment plan with the hospital even after your bill is sent to a collection agency. Under HFAL, the collection agency must follow the hospital's financial assistance policy and procedures.

2. Rights under the Fair Debt Collection Practices Act

Under Federal law (the Fair Debt Collection Practices Act or FDCPA), you have the right to receive a written notice of your medical debt, sent within 5 days after first being contacted by a collection agency. The notice must include:

- a. The amount you owe;
- b. The name of the creditor (the hospital/doctor seeking payment); and
- c. What action you can take if you think you do not owe some or all of the bill(s).

3. New York Consumer Protection Regulations

In 2015, New York State implemented new consumer protection regulations that are broader than those provided under the FDCPA, including extending the time period for consumers to request and submit documents. The regulations should help to combat fraud and debtor confusion. They also address some of the questionable behaviors and practices that have been common in the debt collection industry. A debt collector who is licensed to operate in New York must comply with New York State's tougher consumer protection regulations. The provisions include:

a. "Zombie" Debts

Some debt collectors try to collect on debts that are 'dead', because they are older than the six year statutory limit. Now, before they accept payment, the debt collector must provide you with a notice stating that:

- they believe the Statute of Limitations may have expired on the debt and that,
- if they take the case to court, you may be able to avoid paying the debt by informing the judge that the Statute of Limitations has expired.

b. Written Confirmation of Settlement Agreements

If you have negotiated with the debt collector to pay them an agreed amount to settle the debt, the debt collector must:

- send written confirmation of the key terms of the debt settlement agreement made with you; and
- send you written confirmation once a debt has been paid off or settled.

Debts are often sold by the original creditor (e.g. a bank, or hospital) to a third party debt collector, from where it may be sold on to multiple debt collectors. In the past, debt collectors frequently agreed to settlements with consumers, who then paid the agreed amount, but later found themselves being chased for the same debt by a different collector. The regulations should provide protection in such cases as the consumer will have written proof of the settlement and confirmation that it has been paid.

c. Email Contact

If preferred, you have the right to communicate with debt collectors by using your own personal email, rather than by telephone. This may reduce the number of harassing phone calls and provide documentation of your interactions with the debt collector.

d. Detailed Initial Disclosure

When a debt collector first contacts you claiming that you owe them money, they must provide you with general information on debtors' rights and, in the case of 'charged (written) off' debts, provide specific information about the debt they are attempting to collect. This includes:

- the amount owed when the debt was written-off;
- the amount of the debt that consists of interest, charges and fees;

In the past, it has been difficult for consumers to identify the source and amount of the debt they are being asked to repay. Under the regulations, debt collectors must provide information that clarifies the origin of the debt, and give a breakdown of the total amount, e.g. how much of it is the actual debt, and how much is added interest and fees.

e. Substantiation of Alleged Debt

If you dispute (challenge) the debt, the debt collector must prove that you do, in fact, owe the debt. You can dispute the debt at any time during the collection process and can do so orally (e.g. in person or by telephone) or in writing. This gives broader protections to consumers than the FDCPA which requires the alleged debtor to challenge the debt in writing and to request verification within 30 days of receiving notice. Once you have challenged the debt, the debt collector

must stop the collection process and provide you with documentation proving the validity of the debt, and the creditor's right to collect that debt, within 60 days.

B. Disputing a Debt

If you think you do not owe some or all of the charges:

1. Send a letter to the collection agency within 30 days, stating that you are challenging the bill(s);
2. Send a copy of the letter to the hospital/doctor who wants to collect on the bill(s);
3. Tell the collection agency about the steps that you are taking to resolve this matter;
4. Ask the collection agency not to take the matter to court while the issue is being investigated;
5. Contact the hospital/doctor to explain the dispute. If it is a coverage issue, include information from your insurance carrier about the status of your insurance at the time you received medical care. Request that your medical bill(s) be submitted to all your insurers, if that has not already been done;
6. If you receive Medicaid, tell the hospital/doctor and the collection agency;
7. Send all correspondence to the hospital/doctor and the collection agency by certified mail, return receipt requested. Keep the receipts.

C. Harassment is Prohibited

Collection agencies are not permitted to:

1. Contact you at unreasonable times or places. They cannot call you before 8am or after 9pm unless you have given them permission to do so;
2. Contact you at work if you tell them that your employer disapproves;
3. Contact your friends, relatives, employer, or others, except to find out where you live or work;
4. Tell your friends, relatives, employer, or others that you owe money;
5. Threaten to harm your reputation, use swear words, or make frequent telephone calls;
6. Threaten to have money deducted from your paycheck;
7. Threaten to sue you, unless they or the hospital/doctor actually intends to do so, and it is legal to do so;
8. Threaten to seize your personal property;
9. Make any false statements, including saying that you will be arrested or that your children will be taken away;
10. Contact you after you have sent them a Cease-and-Desist Letter, except to notify you that they intend to take specific action, like filing a lawsuit.

Important! If a collection agency does any of the above, they are harassing you. You can send them a Cease-and-Desist Letter, telling them to stop contacting you. State that you will report them to a government agency if they continue to harass you. If the collection agency continues to harass you, file a complaint with the New York City Department of Consumer Affairs (call 311 or 212-639-9675 or <http://www1.nyc.gov/nyc-resources/service/2475/debt-collection-agency-guide-or-complaint>) and/or the New York State Attorney General's Office of Consumer Frauds and Protection (800-771-7755 or <https://ag.ny.gov/>).

D. If You Are Sued

To sue you for collection, the hospital/doctor or the collection agency must file a Summons to begin the court case. Copies of the Summons must be served on you, in person or by mail. You should consult with an attorney to assist you with this process. If you are low income, several organizations offer free or low cost legal assistance.

Important! Do not ignore the Summons! Take note of any deadlines and court instructions, or you risk losing by default. If you were served in person, you have 20 days to file an Answer. If you were served by mail, you have 30 days from time of delivery to file an Answer.

Your typical defenses may include:

- You had Medicaid or other insurance when you were treated, and the hospital/doctor failed to properly bill your insurance provider(s);
- You were eligible for Medicaid, but the hospital did not help you file an application, ask you to provide more documents, or tell you that your application was denied.
- You never received the bill(s) or other notice(s) that you owed money to the hospital/doctor;
- The charges are too high or are not correct;
- You have low income, and the hospital never offered you financial assistance;
- You have some other reason why you should not be responsible for all or part of the bill(s).

If you do not file an Answer, the hospital/doctor can win a Default Judgment against you on that basis alone. If you find out that the hospital/doctor has already won a Default Judgment against you, you can go to court and file an Order to Show Cause. You can then go before the judge and explain your story.

The typical reasons to file the Order to Show Cause are:

- You never received any court papers (Summons) from the hospital's/doctor's attorneys;
- You had insurance at the time of treatment(s) and thought that your insurer already paid the bill(s);
- You could not make the court date because you were ill or for another good reason;
- Other reasons.

E. What the Collector Can Do

1. Freeze Your Accounts

If the hospital/doctor wins a Judgment against you, they can use it to "freeze" your bank account (this is called a "restraining order"). Generally, they can "freeze" twice the amount of the judgment, plus costs and interest.

Important! Under the Exempt Income Protection Act of 2009 (EIPA), the hospital/doctor cannot “freeze” or take any money from your account if it contains only “exempt funds”. Exempt Funds/Government Benefits include:

- Social Security payments;
- Supplemental Security Income (SSI);
- Social Security Disability benefits (SSD);
- Public Assistance benefits;
- Alimony/child support;
- Pension;
- Unemployment benefits;
- Veterans’ benefits;
- Worker’s compensation;
- Certain earned income.

If you have \$2,750 or less in your account, the creditor cannot freeze or take any money – even if it contains both exempt and non-exempt funds. Even if there are no exempt funds in your account, it can contain up to \$3,120 before a creditor can freeze or take money from it.

Note: If you receive notice that your bank account has been “frozen,” act quickly to avoid unnecessary bank charges:

- a. Complete the forms that the bank must provide you with to determine if your funds are exempt and return them to the bank and the hospital/doctor within 20 days.
- b. If the hospital/doctor fails to respond to your proof of exempt funds, the bank must release your account within 7 days.
- c. If the hospital/doctor disagrees with your proof of exempt funds, they must take the case to court, and court will decide if your funds are exempt.

2. Garnish Your Wages

If you earn more than minimum wage, the hospital/doctor who wins a judgment against you can place a garnishment against your wages (an automatic deduction of a portion of your debt that goes directly to the hospital/doctor).

Important! The hospital/doctor cannot garnish more than 10% of your gross income. If your weekly disposable earnings (after taxes and Social Security deductions) is \$390 or less, the hospital/doctor cannot garnish your wages at all. The hospital/doctor can only take one garnishment at a time against your earnings.

Note: Your employer is not allowed to fire you because your wages are being garnished by the hospital/doctor.

V. BANKRUPTCY

If you become absolutely unable to pay your debts, you may consider filing for bankruptcy. This is a legal process established under the United States Constitution and Federal law that allows people to eliminate, or discharge, their legal obligation to repay many types of consumer (including medical) and business debts and gain a “fresh start.”

The most common types of proceedings available to individual consumer debtors are Chapter 7 and Chapter 13. In a Chapter 7 bankruptcy, or “liquidation”, debtors ask the Court to discharge their obligation to repay many of their debts, but this often means losing much of their property as well. In a Chapter 13 bankruptcy, also known as a “debt adjustment” or “wage earner plan”, debtors “reorganize” or enter into repayment plans to pay some or all of their debts over time, and allows them to keep most of their property. The information below is to provide an overview of the process and consequences of filing for bankruptcy and is not intended to be a comprehensive how-to guide but is only to help you decide whether or not a bankruptcy may be an option for you.

A. Who Should Consider Filing for Bankruptcy

These are the types of debtors who generally consider bankruptcy:

- Debtors who are unable to pay their various creditors after meeting their monthly household expenses, such as rent, food and utilities.
- Debtors being sued by a consumer creditor on a defaulted credit card, installment or personal loan.
- Debtors threatened with the loss of income or property, such as a wage garnishment or automobile repossession.
- Debtors faced with property foreclosure or whose home has been foreclosed but still owe a deficiency on the mortgage.
- Debtors who have significant medical debt.
- Debtors who have suffered income loss or property damages, and have incurred debt due to some form of disaster, such as a hurricane.

B. Advantages to Filing for Bankruptcy

- Bankruptcy triggers an “automatic stay,” which stops all collection activities, including wage garnishment, property foreclosure, auto repossession, and utility shut-off.
- Bankruptcy will discharge most unsecured consumer debts, such as credit and retail card debt, personal loans, and medical bills.
- Debtors may be able to protect and keep their personal property such as basic household goods and furnishings, clothing, and 401(k) and retirement plan accounts. They may also be able to keep their home. New York Laws have provisions specifying what property may be claimed as “exempt” or protected when a debtor files for bankruptcy. These items include:

- Clothing and household goods such as household furniture, a stove, refrigerator, radio, television, cookware, tableware, sewing machine, books and pets
- Cash up to \$5,000
- Alimony, maintenance and child support owed to the debtor
- Government/Public benefits such as Social Security, SSI, Unemployment Compensation, Veteran's Benefits, Disability Benefits, Worker's Compensation Benefits
- Personal Injury recoveries up to \$7,500
- Pensions, Keogh, 401(k), 403(b) plans, IRA and most annuities
- a cemetery plot
- Motor vehicle up to \$4,000
- Tools of the trade/working tools up to \$,300
- Watch, jewelry and art up to \$1,100
- Homestead exemption for the debtor's home (primary residence)¹

The availability and limits of these exemptions vary depending upon which combination of exemptions are being claimed. The values are adjusted periodically for cost of living. Federal exemptions may have higher limits.

- The discharge of the unsecured debt will result in an economic fresh start which will enable debtors to rebuild their lives financially.
- A Chapter 13 bankruptcy may allow debtors to keep all of their property which protecting co-borrowers from being pursued by creditors, provided the debtors pay all of the debts in the plan.
- A debtor does not lose future income and property, except if the debtor becomes entitled to receive an inheritance, a property settlement, or life insurance benefits within 180 days (6 months) after filing a bankruptcy. Such money or property may have to be turned over to the trustee for distribution to creditors.

C. Disadvantages/Consequences of Filing for Bankruptcy

Filing for bankruptcy may have the following consequences:

- Affects a debtor's credit score and remains on the debtor's credit report for up to 10 years, thus impacting the debtor's ability to obtain credit, a job, insurance or even rent an apartment.
- A debtor's assets may be required to be sold to pay creditors (Chapter 7). To keep the property a debtor may have to "redeem" or purchase the property out of bankruptcy, or if the creditor has a "security interest" in the property, which means the property is collateral for the debt, then

¹\$170,825 per debtor for residents of Kings, Queens, Manhattan, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester, and Putnam Counties; \$142,350 per debtor for residents of Dutchess, Albany, Columbia, Orange, Saratoga, and Ulster Counties; and \$85,400 per debtor for residents in remaining New York counties.

the debtor may reaffirm the debt and continue making the required payments.

- Not all debts may be discharged. Debts such as child support, alimony, criminal restitution, fines, parking violations, student loans, and some tax obligations may be “non-dischargeable.”
- Debts for luxury purchases of more than \$500 within 90 days before the petition is filed, or cash advances of more than \$750 within 70 days before the petition is filed is also non-dischargeable.
- Co-debtors/co-signers may remain liable even if the debtor is discharged.
- Payments may be required over a three to five year period and adds to the debtor’s monthly budget. (Chapter 13)
- Chapter 13 bankruptcies can be complex and usually require the debtor to hire an attorney to be successful.
- Debtors must complete required pre-bankruptcy and post-filing credit counseling and debtor education courses.
- The debtor must attend a “First Meeting of Creditors” with a “Case Trustee”.
- The debtor must fully and accurately disclose all information required in the bankruptcy form. Failure to do so may result in the denial of discharge, dismissal of the debtor’s bankruptcy case, and/or criminal prosecution.

D. Some Requirements to File a Bankruptcy

- A debtor cannot file a Chapter 7 bankruptcy if he or she previously filed a Chapter 7 bankruptcy within the last eight years, or a Chapter 13 within the last two years.
- There is a filing fee, which may be paid in installments. If the debtor’s income is below 150% of the Federal Poverty Guidelines, the debtor may apply for a waiver of the fee.
- The debtor (and the debtor’s spouse and any other household member contributing to the support of the debtor’s household) must meet the requirements of the “Means Test” or his Chapter 7 case may be dismissed. The test is complicated and the debtor must file a form to calculate their “current monthly income”, which is the debtor’s average total gross income from all sources for the past 6 months (excepting Social Security benefits). If a debtor’s current monthly income falls below the state’s “median family income” established for the State of New York, then the means test does not apply and the debtor will be eligible to file for Chapter 7 bankruptcy relief. The Median Family Income for New York can be found at:

www.justice.gov/ust/eo/bapcpa/20181101/bci_data/median_income_table.htm

E. Steps to Filing For Bankruptcy

1. The debtor must complete credit counseling within 180 days prior to filing for bankruptcy at the debtor’s cost. The approximate cost is \$100.
2. The debtor must complete and file the official bankruptcy filing forms, including a Creditor List and the Certificate of Credit Counseling. The

filing is made with the U. S. Bankruptcy Court of the Southern District of New York (for Manhattan and Bronx residents), or the U. S. Bankruptcy Court of the Eastern District of New York (for Brooklyn, Queens, and Staten Island residents).

3. When filing, the debtor must pay the filing fee or file an Application to Pay the Fee in Installments or for a Waiver of the Filing Fee.
4. The debtor will receive a notice of filing from the Bankruptcy Court which will include the date of the First Meeting of Creditors with a Case Trustee.
5. The debtor must submit “pay advices”, pay stubs or other income information for the last 60 days and copies of Federal and State income tax returns for the two years prior to the bankruptcy filing.
6. The debtor must attend the First Meeting of Creditors and provide both a photo ID and a Social Security Card.
7. The debtor must complete the required Debtor Education Course with 60 days after the First Meeting of Creditors.
8. The Bankruptcy Court will issue a Discharge of Debt.

F. Reasons For Denial of Discharge or Reorganization

There are several reasons a debtor’s petition for bankruptcy may be denied, including:

1. The debtor failed to pay the filing fee.
2. The debtor did not complete both the approved credit counseling and the personal financial management course.
3. The debtor did not comply with the directives of the trustee or orders of the bankruptcy judge.
4. The debtor concealed, destroyed or transferred property with the intent to hinder, delay or defraud before the bankruptcy petition was filed or after filing.
5. The debtor intentionally concealed or destroyed records of financial dealings unless he or she can show a good reason for doing so.
6. The debtor lied under oath at the First Meeting of Creditors or any other court hearing.

G. Bankruptcy Courts

- a. U. S. Bankruptcy Court of the Southern District of New York
(For Manhattan and Bronx residents)
1 Bowling Green, New York, New York 10004
www.nysb.uscourts.gov
- b. U. S. Bankruptcy Court of the Eastern District of New York
(For Brooklyn, Queens and Staten Island residents)
371 Cadman Plaza East, Brooklyn, New York 11201
www.nyeb.uscourts.gov
- c. The official bankruptcy forms can be found at:
www.uscourts.gov/forms/bankruptcy-forms

The consumer debt and bankruptcy basics covered by this guide are intended to educate and inform, but not to substitute for legal advice. The Cancer Advocacy Project is available to help you to identify potential sources of assistance for consumer debt issues. For further information please contact the Cancer Advocacy Project at:

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