
TO COLLECT OR NOT TO COLLECT? OVERDUE BILLS AND RESULTING MALPRACTICE CLAIMS

A question that is frequently posed to PRMS risk management and claims staff is whether a psychiatrist should pursue an outstanding balance on a patient's account. The fear, of course, being that the patient may retaliate with a lawsuit or other type of action. Given the current practice environment, the options available to a healthcare provider - to collect or not to collect - can be equally uninviting.

It should be clear from the outset that anyone who provides a service for fees has the legal right to pursue payment according to the agreement made between the provider and the client. That being said, it is an oversimplification to suggest that one must exercise every available legal right that one possesses. This article will briefly explore potential negative outcomes that can occur when seeking collection on a patient's overdue bill.

One of the most common concerns of psychiatrists is that the patient will file a malpractice lawsuit in retaliation. Indeed, many an angry patient or patient's family member has made this very threat. Although the more likely scenario is a counter-claim made by the patient asserting that the services were not provided at all or that the services were so dissatisfactory that no payment should be required, patients do often make allegations of negligence in order to put more pressure on the physician to resolve the matter before a lawsuit is filed.

Patients are even more likely to file a complaint with the medical board or a healthcare organization because doing so is much easier and less costly than filing a malpractice lawsuit. Furthermore, these organizations have a greater goal of serving patients and the public at large. As a result, they are likely to have complaint forms readily available for patients to fill out and procedures in place for reviewing a member's standing with the entity.

The state board of medicine sets certain ethical and professional conduct standards. Professional organizations, workers compensation commissions, hospitals, HMOs and MCOs may also have standards for admission and continued membership as well as a mechanism in place to enforce those standards. In addition, such organizations/agencies may have specific rules and procedures with regard to collection proceedings.

Complaints made to such organizations can be difficult for the psychiatrist to defend because, unlike a lawsuit, the patient does not have to prove negligence and damages. Rather, a few select individuals affiliated with the entity will determine whether or not the psychiatrist has violated the entity's standards. This process takes place with few - if any - mechanisms to ensure fairness and objectivity; the extensive checks and balances present in the litigation process do not exist in these systems.

At this point in the article, one may have the impression that the best thing to do is simply write off the bill and forget about it. However, one obvious downside to doing that is lost revenue from the non-paying patient and from the paying patient who could have been seen. Another downside is that treating a non-paying patient can ultimately impact care which could give rise to a malpractice claim.

When faced with a non-paying patient, taking the following actions may minimize the possibility of an undesirable outcome. Provide patients with a financial policy at the outset of treatment and address non-payment of fees promptly. If a situation arises where use of a collection agency is being considered, the psychiatrist, as opposed to a staff member, should always make that determination. The psychiatrist has the training, experience, and personal knowledge of the patient necessary to determine whether or not collection is appropriate for a specific situation. Psychiatrists should be familiar with and adhere to state and federal laws, as well as the standards and requirements of the state medical board, professional organizations, and all relevant third-party payors concerning collections. Disclose only the minimum information necessary to the collection agency to avoid breaching the patient's confidentiality. Under HIPAA's Privacy Rule, covered providers must have a business associate agreement in place with the collection agency; non-covered providers should consider such agreements, as well.

In conclusion, as unfair as it may seem, a malpractice lawsuit or complaint to a licensing board or healthcare organization can arise simply because a provider chooses to collect on a patient's overdue bill. To minimize these risks, make your financial policy known to patients, address unpaid bills promptly, and approach the decision to pursue collection thoughtfully and professionally.

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