

Helping Older Americans Cope with Medical Debt

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National Elder Rights Training Project for the National Legal Resource Center.
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NLRC

Providing Legal Support to the
Aging Advocacy Network

- <http://www.nlrc.aoa.gov/>
- Collaboration developed by the Administration on Aging between the National Consumer Law Center, National Senior Citizens Law Center, American Bar Association Commission on Law and Aging, Center for Elder Rights Advocacy, and the Center for Social Gerontology
- See upcoming trainings, conferences, and webinars
- Request a training
- Request consulting
- Request technical assistance
- Access articles and resources

Presenter – Chi Chi Wu

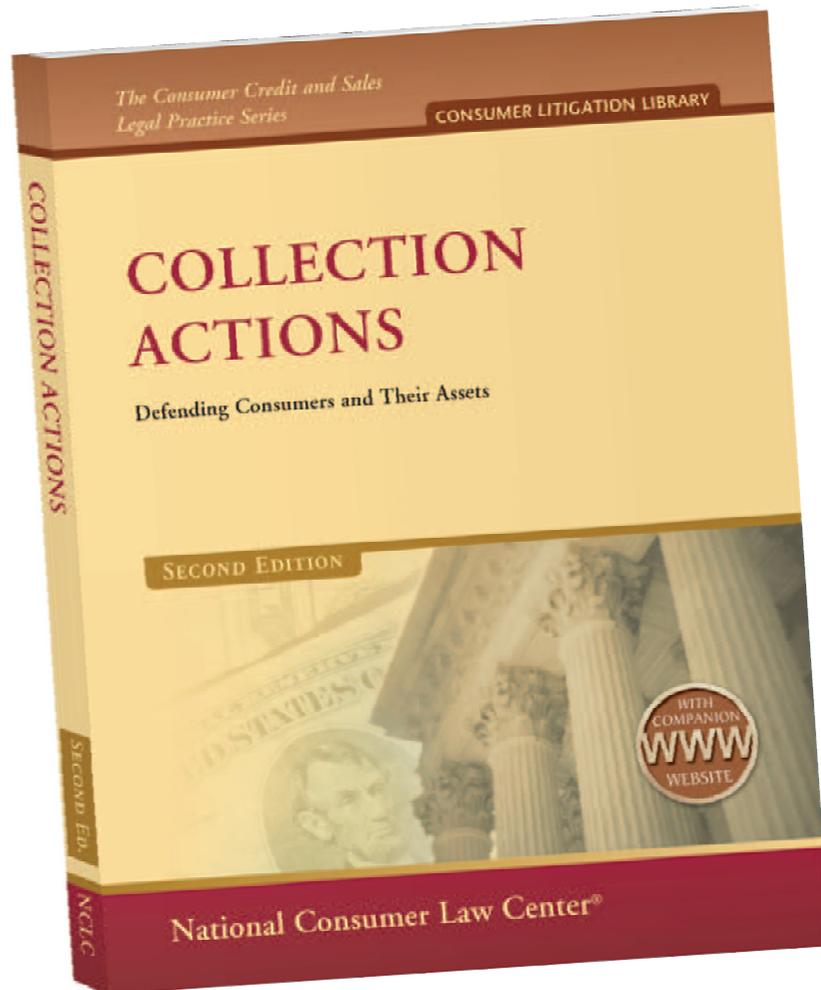
- A staff attorney at NCLC.
- Chi Chi focuses on consumer credit issues at NCLC, including fair credit reporting, credit cards, refund anticipation loans, and medical debt.
- Chi Chi is co-author of the legal manuals *Fair Credit Reporting Act* and *Credit Discrimination*, and a contributing author to *Cost of Credit*, *Truth in Lending*, and *Collection Actions*.
- Before joining NCLC, Chi Chi worked in the Consumer Protection Division at the Massachusetts Attorney General's office and the Asian Outreach Unit of Greater Boston Legal Services.

Presenter – Cheryl Fish-Parcham

- Deputy Director of Health Policy at Families USA, the national organization for health care consumers.
- Her current areas of focus are private insurance – in particular, implementation of the private market provisions in the Affordable Care Act - and state initiatives to cover the uninsured.
- Previously, she helped to form a national support center for consumer health assistance programs (the Health Assistance Partnership) and provided technical assistance on Medicaid issues.
- She is the author of numerous reports on designing consumer health assistance programs, the plight of the uninsured, and on Medicaid and private insurance. They are available on the web at www.familiesusa.org.

For More Information on Remedies to Cope with Medical Debt

see NCLC's *Collection Actions* Treatise



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Helping Older Americans Cope with Medical Debt

Chi Chi Wu
March 2012

Support from the Administration on Aging

Poll #1: Who Are You?

- Attorney in private practice
- Legal services, senior program, or other nonprofit
- Credit Counselor
- Government Worker
- Other

The Problem of Medical Debt

- Most recent study from CDC found in 2011
 - 1 in 3 American families experienced a financial burden from medical bills
 - 1 in 5 had problems paying medical bills
 - 1 in 10 medical bills they were unable to pay at all.
- Older Americans affected
 - While the chances of having trouble paying medical bills decreased with age, CDC study found 1 in 10 older Americans had problems paying medical bills in the past year
 - Earlier Demos/Access Project study found that 2 out of 5 older LMI respondents had credit card debt due to medical expenses, with average debt of nearly \$4,000.

Discriminatory Pricing

- Hospital and other healthcare providers use “chargemaster list” prices that no one pays – except “self-payors,” *i.e.*, the uninsured
 - Several times more than what HMOs, insurance companies, and the government pay
 - Sometimes three, four or even ten times what services actually cost

Client counseling

- Debt prioritization
 - Avoid putting on credit card
 - Avoid converting to home-secured debt
 - Special collections considerations – ability to receive future care
- Bankruptcy
- Determine if the client is judgment proof
 - Source of income
 - Protected Income (Social Security, TANF, Pension)
 - Wages – can only garnish amount over \$217.50/week or 25% of net wages
 - Homestead & other exemptions

Informal advocacy/negotiation

- Negotiate using discriminatory pricing
- Payment Plan
- Using Defenses Discussed Later
- Appeals Processes
- Get Someone Else to Pay
 - Charity care
 - Medicaid
 - Other sources of insurance

Polls #2 and #3: Affordable Care Act

- How many of you have heard of the Patient Protection and Affordable Care Act of 2010?
- How many of you know it contains medical debt provisions?

Affordable Care Act

- a.k.a. “Health Care Reform” law
- Medical Debt Provisions Added to IRS Code
 - Nonprofit hospitals must develop written financial assistance policies;
 - Nonprofit hospitals are prohibited from imposing chargemaster rates for patients eligible for financial assistance;
 - Nonprofit hospitals are prohibited from engaging in “extraordinary” collection actions before determining eligibility for assistance

Financial Assistance Policies

- Financial assistance policies must include:
 - Eligibility criteria
 - Basis used to calculate how much patients are charged
 - Description of how to apply for financial assistance
 - If no separate billing and debt collection policy, description of actions used to collect payment, including collection lawsuits and reporting to credit bureaus
- Does not actually require hospitals to provide financial assistance, just disclose their policies.
 - No minimum eligibility criteria or recommended application procedures
 - But advocates should obtain a copy – check IRS Form 990 Schedule H Part V.B

Protections Against Discriminatory

Pricing

- Applies only to patients eligible for financial assistance under hospital's policy
 - Hospitals cannot charge these patients more than the amount generally billed to patients covered by insurance.
- Prohibits hospitals from using “gross charges,” i.e., chargemaster rates.
 - Act requires hospitals to publish a list of standard charges annually.
 - No requirements to disclose the amounts billed to insured patients.

Restrictions on “Extraordinary” Debt Collection

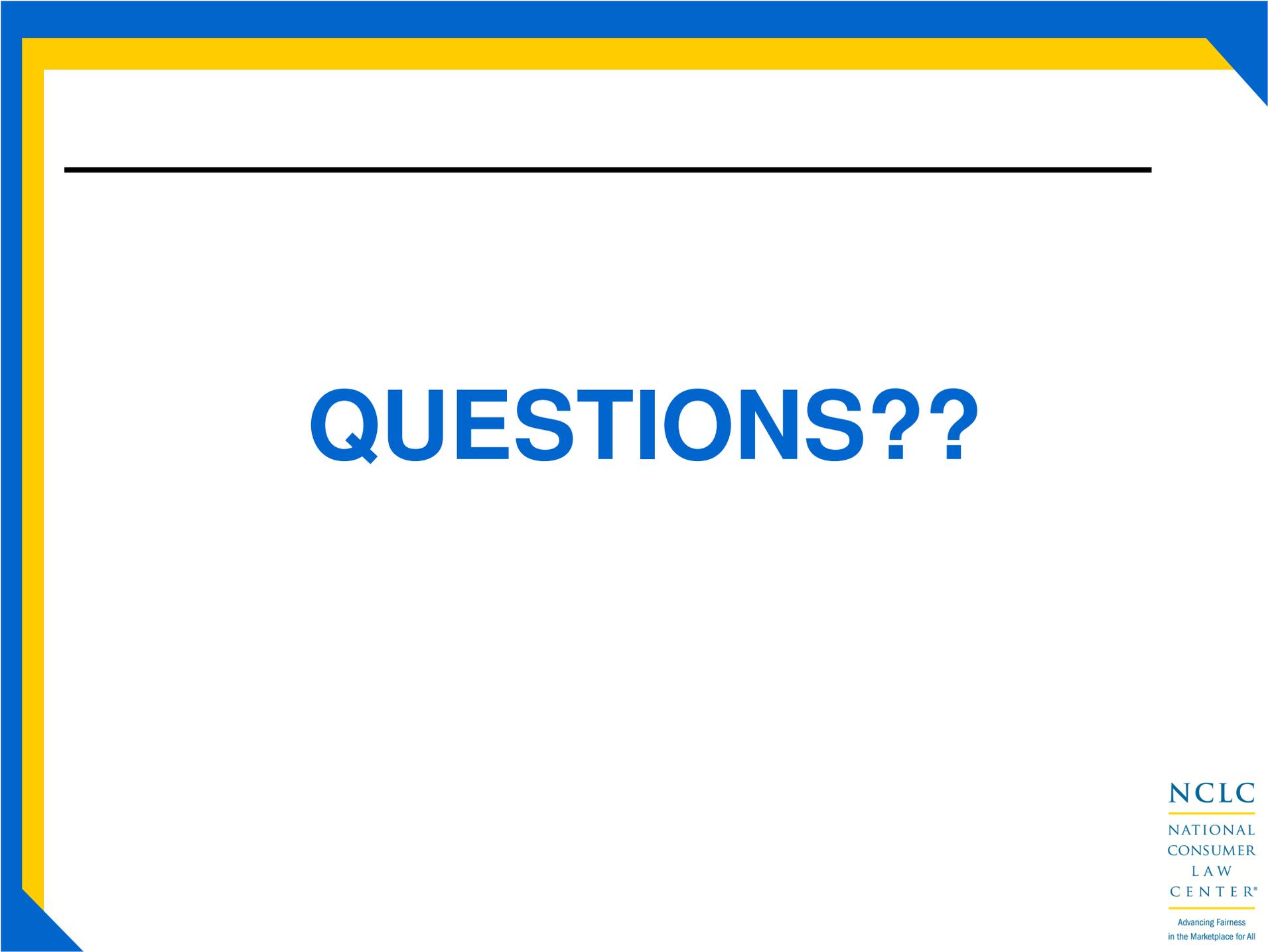
- Act prohibits non-profit hospitals from engaging in “extraordinary collection actions” before making “reasonable” effort to determine whether a patient qualifies for financial assistance.
- “Extraordinary collection action” undefined, but the legislative history suggests
 - Lawsuits
 - Liens on residences
 - Arrests and body attachments.
- “Reasonable efforts” includes notification of financial assistance policy upon admission and in written and oral communications

Community Needs Assessments

- Hospitals are required to engage in community needs assessments every three years.
- Provide advocates an opportunity to request that hospitals investigate the need for:
 - Better financial assistance
 - More patient friendly debt collection policies

Remedies for Violation

- Requirements and prohibitions are part of Internal Revenue Code
 - No private remedy
 - Many cases rejecting breach of contract or third party beneficiary theories for violations of IRS Code
- BUT could be expression of public policy for claim under state law prohibiting unfair or deceptive acts & practices (UDAP statute)
- Could be raised defensively in a collection lawsuit



QUESTIONS??

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Defending Collection Lawsuits

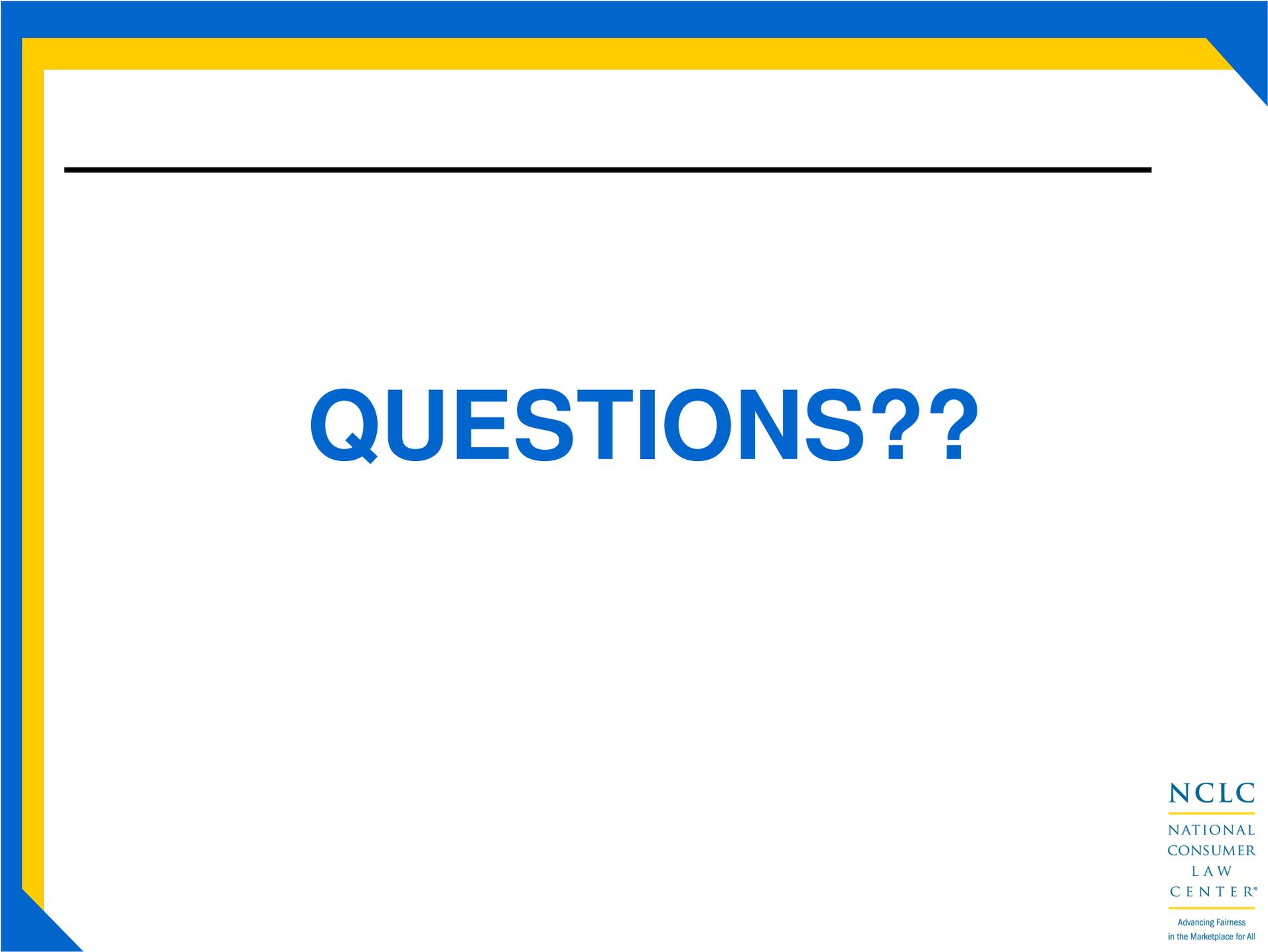
- Why advocacy or defending the case is important and useful
 - Avoid body attachments
 - Can raise claims as defenses
 - Can raise pricing issues
- Defenses to Breach of Contract
 - Duress
 - Unconscionable contract of adhesion
 - Reasonableness of charges
- Account stated
 - does the case meet the elements?

Defending Collection Lawsuits

- Quantum Meruit
 - Required to show reasonable price – is chargemaster price “reasonable”?
- Billing errors
 - 30% to 40%, or even 80%
 - Compare with medical record
 - Check for double billing, coding issues
 - Good resource – medical billing advocates
 - e.g. www.medreviewsolutions.com
 - www.medicalrefundsolutions.com, www.hollywallack.com
- Hospital Negligence
 - E.g. antibiotic resistant staph infections

Potential Unfair Practices

- Debt collection practices issues particular to medical debt
 - Demanding payment for bill that should be covered by insurance
 - Balance Billing - Collecting in addition to what is authorized by Medicaid/Medicare
 - Demanding payment from parent of adult child
 - Discriminatory pricing



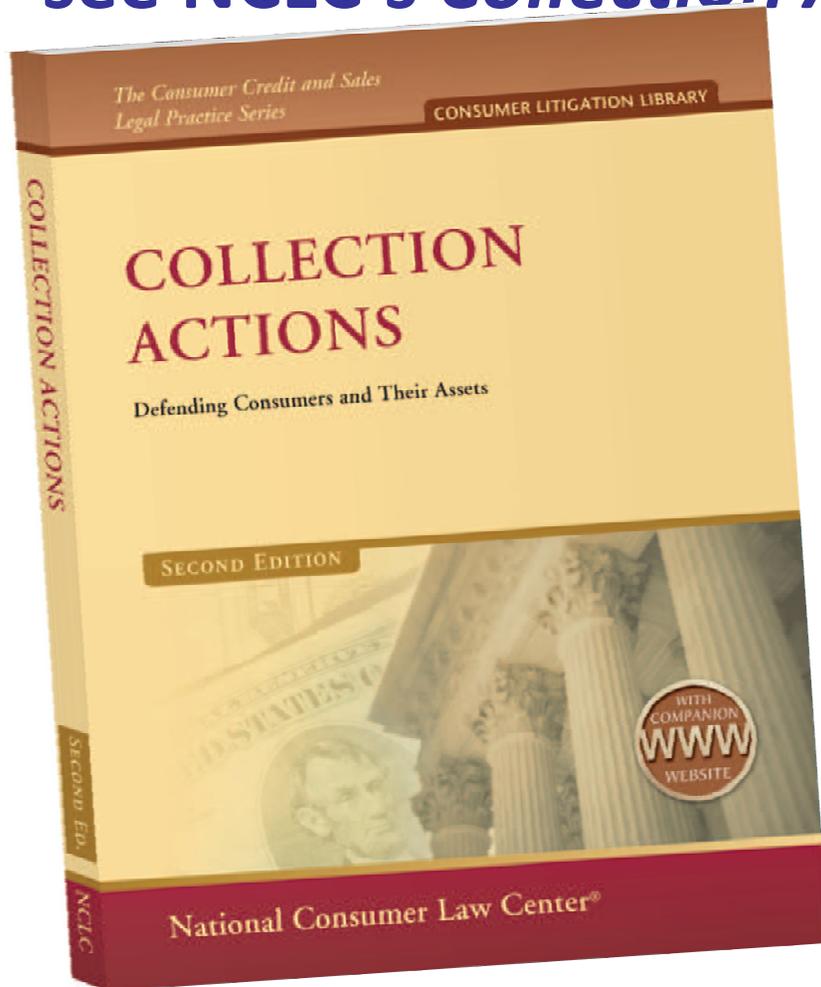
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Medical Debt: State and Federal Options

Cheryl Fish-Parcham

Families USA



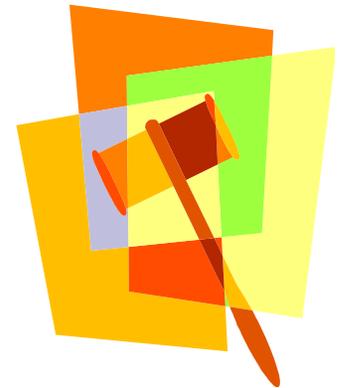
Affordable Care Act can help consumers avoid debt now

- Nonprofit hospitals have new obligations (discussed)
- For people with private insurance (e.g., under 65)
 - New appeal rights if private plans deny coverage
 - Sets floor on private plans' payment for emergency care
- New coverage for people with pre-existing conditions (www.pcip.gov); smaller Medicare donut hole

New appeal rights

Patients can appeal an insurer's decision not to pay for services when the insurer says

- The service was not medically necessary
- The patient is not eligible for the health plan or benefit
- The patient had a pre-existing condition
- The care was experimental or investigational





Appeal process

1. Get help from a consumer assistance program
2. Request an internal review from the insurer
 - Decision is reviewed by those not involved with original decision
 - Patient can provide testimony and evidence
3. Submit an external appeal to the independent reviewer
 - Patients in new plans have 4 months following internal review to submit external appeal
 - Insurer must follow reviewer's decision



ACA coverage of emergency services

- In emergencies, patients may not have access to providers in their insurer's network
- For out-of-network emergency services, insurers can no longer:
 - Require preauthorization or create extra administrative hurdles
 - Charge higher copayments or co-insurance
 - Not cover services it would cover for care received in-network



ACA floor on plan payment for out-of-network emergencies

- The ACA requires certain levels of payment by insurers to out-of-network providers
- Insurer must pay the *greatest* of:
 - Amount it pays in-network providers
 - Payment based on reimbursement to other out-of-network providers
 - Amount Medicare pays for the service

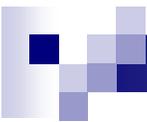
Resources about ACA

- www.familiesusa.org:
 - “Patients Bill of Rights and Other Protections”
 - “Consumer assistance program locator”
 - “Health Reform Central”
- www.healthcare.gov



Some states do more to protect against hospital debt.

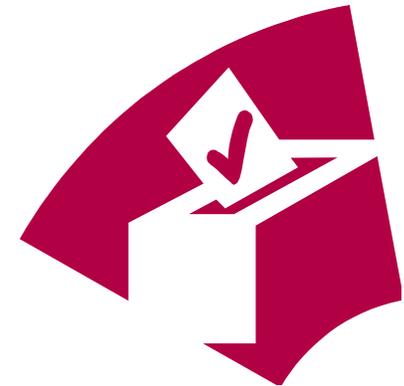




Poll

Does your state have its own laws about what hospitals can charge the uninsured?

- Yes
- No
- Don't know





State hospital billing/charity care laws and agreements

- Some apply to more hospitals, not just nonprofits
- What they provide beyond ACA protections:
 1. Notice provisions
 2. Income guidelines
 3. Charge limits
 4. Interest/collection practice limits



I. Hospitals notify patients of financial assistance or charity care

- California, Connecticut, Illinois, Maryland, New Jersey, New York
- Good notice requirements may include:
 - Multiple languages
 - Notices posted & in bills, with collection notices, patient educational brochures
 - Tell people how to dispute a bill



2. State sets income thresholds for hospital financial assistance

- CA: charity care or reduced charge below 350% poverty with low assets (lower guidelines for some rural hospitals)
- MD: medically necessary care free to 150% poverty; hospitals set income limit for reduced charge
- NJ: Free below 200% poverty, discount to 300% poverty – state health care subsidy fund
- NY: nominal fee below 100% poverty, sliding scale up to 300% poverty



3. Limits on charges to uninsured and/or underinsured for care

- California, Connecticut, Illinois, Maryland, New Jersey, New York
- Nevada: major hospitals provide 30% discount to uninsured who make payment arrangements within 30 days. Bureau for Hospital Patients arbitrates.
- Minnesota and Wisconsin: Attorney General agreements with some hospitals



4. Limits on interest for hospital bills

- States can limit the rate of interest owed on medical debt
 - California, Connecticut, Illinois, Maryland, New York
 - Examples: Can't charge interest if payment plan; cap interest at 5%; no interest unless judgment
- Illinois limits the annual amount of money that can be collected from a patient relative to their income (up to 25% of annual income)



5. Limitations on lawsuits

- Hospitals and debt collectors must follow processes before suing a patient for medical debt (CA, CT, IL, NY)
- CA: 150 days to negotiate payment, no garnishment except by court order, can't force the sale of primary residence during patient/spouse's lifetime

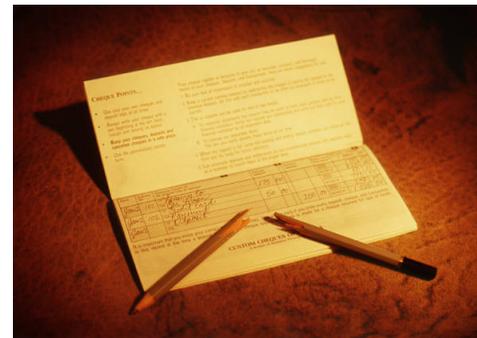


Limitations cont'd

- CT: special hearing before wage garnishment or bank execution; can't seize property or garnish wages or bank account while following a payment plan; \$125,000 of home is exempt from collection
- IL: Collectors must abide by hospital boards' policies – boards must approve any garnishment, lien
- NY: Hospital must approve collector's legal action; can't foreclose or force home sale.

State AG agreements with certain hospitals re fair debt collection

- MN: Hospital administrators must screen records before filing lawsuits, give patients time to dispute bills, cap interest
- WI: Income-based discounts and charity care



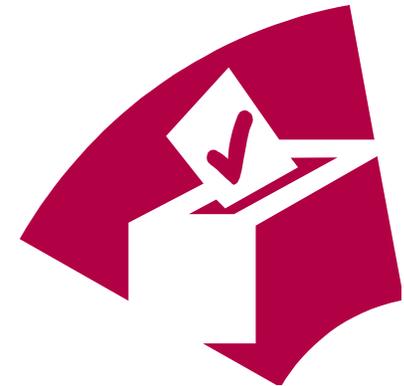
Some states do more to protect against balance billing.



Poll

Do you know anyone who was surprised to learn that they were treated by an out-of-network provider?

- Yes
- No





Protections against balance billing

- Require insurers to pay for certain out-of-network expenses (for example, emergency services)
- Require that charges to patients not exceed co-insurance or copayments for in-network providers
- CA, CO, DE, FL, MD, NY, RI, WV



State provisions re emergency service balance billing

- CA: Hospitals can't bill more than the plan's cost sharing for emergency/post-stabilization care; HMOs must pay "reasonable value"
- CO: Health care providers can't ask enrollees in managed care plans to pay more than copay or deductible for covered services
- DE: Providers can't bill patient for out-of-network emergency; negotiation & arbitration determines what plans must pay



State provisions (cont'd)

- FL: HMOs are responsible for out-of-network emergency and can't attempt to collect from patient
- IL: Providers of emergency transportation can't bill enrollees in HMOs for service
- MD: Providers can't collect from patient if HMO is responsible; law sets rates HMOs pay for emergency or pre-authorized out-of-network service



State provisions (cont'd)

- NY: Ambulance providers cannot balance bill enrollees in HMOs or PPOs, and acute care hospitals cannot balance bill HMO enrollees for end of life cancer care
- RI: HMO enrollees not liable for charges over copayment
- WV: HMO enrollees protected from liability

Some states do
more to regulate
medical debt
collection.





Regulation of debt collection

- 2-year time limit for medical debt (Arkansas)
- Restrictions on when wages can be garnished
 - Kansas: No garnishment during illness
 - North Carolina: No garnishment of low-income patients by public hospitals
- Forbid foreclosure for medical debt
 - For those with terminal or catastrophic illness (Louisiana)
 - Of occupied homes (Nevada and Ohio)



Regulation of debt collection

- Ohio limits responsibility in case of divorce
- Texas prohibits providers from collecting if they did not bill the insurer in a timely manner
- Virginia prohibits collection while the patient has a worker's compensation or crime victim's compensation claim in progress

What does this mean for you?

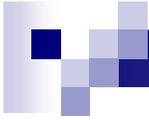


- See if your state has any specific protections
- If not, advocate for better laws!

Resources on state law

- “Medical debt: What States Are Doing to Protect Consumers” (Families USA, 2009)
- Community Catalyst, under topic “Free Care and Community Benefits”





Questions?