



VIRGINIA
LEGAL AID
SOCIETY

MEDICAL DEBT

A person or business you owe money to is called a creditor. If a creditor wants to force you to pay a debt, they first must ask the court for a judgment. Many people feel that having a judgment against them is the worst possible thing. It is not good to have judgments against you, as they have a negative effect on your credit rating. A judgment simply is a piece of paper at the local courthouse that says you owe someone a certain sum of money. This allows the creditor to use legal actions to collect the judgment. The creditor first must get a judgment, and then still has to take the proper steps to collect from you.

If you owe medical debt to a creditor, there may be options you can pursue to reduce or eliminate your debts.

Medical Financial Assistance

What is charity care?

Charity care is defined as hospital care for which no payment is received and which is provided to any person who meets certain guidelines of low income and assets.

Hospital charity care also includes other debt reduction services that hospitals provide, including write-offs of medical debts and acceptance of Medicaid payments for less than the total cost of service.

How do I find out whether my hospital provides financial assistance?

If your hospital is a non-profit charitable organization, having federal tax-exempt status, it is required to have financial assistance policies. These policies must include eligibility criteria, methods for calculating rates, application procedures, and publicity about the availability of assistance. Such hospitals are required to provide emergency care, without discrimination,

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regardless of your eligibility under their financial assistance policy. Non-profit hospitals are prohibited from trying to collect by “extraordinary” means (other than by normal billing), before they’ve made a reasonable attempt to determine if you’re eligible for financial assistance. This prevents them, for example, from turning your bill over to a collection agency unless they’ve first worked with you to see if you’re eligible.

Even if your hospital is not a non-profit, it is likely that they have written policies stating what medical billing assistance is available. You should ask about whether your hospital has a charity care program or reduced billing procedures for low income or noninsured patients.

Unless they are a non-profit organization, hospitals are not required to have charity care policies. However, if your hospital has a specific Charity Care program, it should be clearly stated in the hospital policy. If the charity care program requirements are not clearly stated, you may be able to raise this as a defense in your claim to reduce your medical debt.

A hospital with a charity care policy must:

- Conspicuously post information about the policy in public areas of the hospital, including admissions and registration areas, emergency departments, and waiting rooms.
- Provide information about eligibility criteria and procedures for applying for charity care.
- Include that information at the time of admission or discharge, or at the time services are provided.
- Include that information with any billing statements sent to uninsured patients.
- Include that information on any website maintained by the hospital.

Even if the hospital or medical provider does not have a specific Charity Care program or if you are over-income for assistance through other agencies, you should still ask the billing department about financial assistance options. You should write a letter stating your need for financial assistance and a request for a waiver or reduction of your medical bills. Many hospitals and medical providers will be willing to work with you if you request assistance.

What is the Hill-Burton Act?

The Hill-Burton Act is a federal law, enacted in 1946 and amended since then, that gave hospital, health care facilities, and nursing homes grants and loans to better provide for their patients. In return, the facilities that received funds were required to provide a reasonable amount of free services to persons who were unable to pay for medical care. Funding for the facilities under this Act has ended, but some facilities are still under their 20-year obligation to furnish free or reduced-cost services.

Most of the facilities that were required to provide free service have met their obligation to do so. However, even those facilities are still covered by a lifetime Community Assurance Obligation.

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This obligation includes a requirement, among other things, that hospitals cannot discriminate against Medicaid and Medicare recipients. Therefore, Medicaid and Medicare patients must have access to the same services as private pay patients. The facilities are also not allowed to turn away persons for emergency services for the reason they're unable to pay, or to discriminate on the basis of race, color, national origin, creed, or other reasons.

What must a hospital do to meet its Community Service Obligation?

There are several basic requirements that every Hill-Burton hospital or other facility must comply with to fulfill the community service obligation:

- A person residing in the Hill-Burton facility's service area has the right to medical treatment at the facility without regard to race, color, national origin or creed.
- Hill-Burton facilities must participate in the Medicare and Medicaid programs unless they are ineligible to participate.
- Hill-Burton facilities must make arrangements for reimbursement for services with principal state and local third-party payors that provide reimbursement that is not less than the actual cost of the services.
- A Hill-Burton facility must post notices informing the public of its community service obligations in English and Spanish. If 10 percent or more of the households in the service area usually speak a language other than English or Spanish, the facility must translate the notice into that language and post it as well.
- A Hill-Burton facility may not deny emergency services to any person residing in the facility's service area on the grounds that the person is unable to pay for those services.
- A Hill-Burton facility may not adopt patient admissions policies that have the effect of excluding persons on grounds of race, color, national origin, creed or any other ground unrelated to the patient's need for the service or the availability of the needed service.

What if the hospital does not want to provide financial assistance to me?

Under Virginia law, the hospital has a duty to attempt to mitigate damages. This means that it should help you seek other sources of funds to pay medical bills if you cannot pay. If you are covered by Medicaid or Medicare, the hospital or medical facility must make arrangements for reimbursement with programs such as Medicaid and Medicare. The facility cannot discriminate against patients that are using programs such as Medicaid and Medicare. The facility must take appropriate steps to make sure beneficiaries that receive benefits from state and federal programs have full access to all the services available in a reasonably prompt manner.

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If you are not receiving benefits from state or federal programs, the hospital or medical facility should still provide you with financial assistance options if you request them.

What if I cannot pay the cost share associated with my Medicaid?

If a copayment is due but you have no money, the provider will still give you the medical care you need, but you will be billed for the copayment. If the hospital or medical provider participates in the Medicaid program, they must accept the Medicaid payment as full payment aside from your copayment.

I am being billed for medical services I received. Will Medicaid cover the services if I have not yet applied?

Yes, as long as you were eligible for Medicaid at the time you received the medical services. Medicaid coverage can be retroactively applied up to 3 months before the application was made as long as you were Medicaid eligible for coverage during that period. So, if you incurred medical bills before you applied for Medicaid, you may be able to have those bills covered as long as you make your Medicaid application within the specified 3 month time frame. You can fill out a Medicaid application at your hospital or a local Department of Social Services office. Retroactive Medicaid applications apply only to medical bills that have not yet been paid.

Does Medicare also apply retroactively?

Yes, Medicare recipients may also be able to have the costs of medical care covered. However, the process may take much longer. Medicare has a 24 month benefit waiting period after a person becomes eligible for Social Security Disability Insurance (SSDI). If you can prove that you qualified for SSDI at the time you received medical care, you will be retroactively eligible for SSDI benefits and can then apply for Medicare. The 24 month waiting period does not apply to elderly people who qualify for Medicare at age 65 or to person under 65 with ALS, Lou Gehrig's disease, or kidney failure.

I paid a medical bill that Medicaid should have covered. Can I be reimbursed for it?

If you paid a medical bill that you received while you were covered by Medicaid, you may have received the bill in error. In general, medical providers should only send bills directly to Medicaid. However, you may receive a bill from your medical provider if you

- did not clearly identify yourself as a Medicaid recipient,
- requested non-covered service,
- failed to utilize prepaid health benefits from designated facilities, **or**
- received care from a non-designated provider.

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If you think that you have incorrectly paid a medical bill that should have been covered by Medicaid or if a collections agency is trying to collect a Medicaid-covered bill from you, you should contact the Department of Medical Assistance Services. The Customer Services Unit provides assistance to Medicaid recipients and their representatives who have been billed by the provider. For bills that you have already paid, you may only be able to get back the amount of money that Medicaid would originally have paid for the services.

Customer Services Unit
Department of Medical Assistance Services
600 E Broad St Ste 1300
Richmond VA 23219-1834
Recipient HELPLINE: 804-786-6145

Should my medical provider even be sending me a bill if I am a Medicaid recipient?

In general, medical providers who participate in Medicaid should not bill Medicaid recipients for the services rendered. A provider may bill and accept payment from a Medicaid recipient only for:

- Payments received from a third party insurance carrier **or**
- Patient's cost share, including co-payments. Spend-down patients with designated cost shares are responsible for paying a portion of their medical expense on a monthly basis. A provider may collect this cost share only if indicated on the patient's coupon.
- Services not covered by Medicaid.

Providers must accept the Medicaid Program's established rates as payment in full. Providers are prohibited from billing or collecting from Medicaid recipients the difference between a provider's charge and the total payments received from Medicaid. Therefore, you should not receive a bill charging you for the excess of the medical services not covered by Medicaid.

Virginia Medicaid will also cover emergency medical services you receive while temporarily outside of Virginia if the provider of care agrees to join Virginia's Medicaid Program and bill Medicaid. You should not receive a bill for the out of state medical services as long as the provider has agreed to bill Medicaid. If the provider has sent you a bill that is eligible to be covered by Medicaid, you should contact the Department of Medical Assistance Services at 804-786-6145.

Additionally, you should be aware of medical bills that you receive listing services for more than what you received or for services you did not receive. If you suspect that you are being billed or a debt collector is trying to collect for services that you did not receive, you should immediately report this to the Medicaid Fraud Control Unit:

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- Toll-free: 1-800-371-0824
- Local: (804) 371-0779 or (804) 786-2071

When a Creditor Sues

If a creditor wants to force you to pay a medical debt, they first must ask the court for a judgment. This allows the creditor to use legal actions to collect the judgment. A creditor with a judgment is called a judgment-creditor. If a judgment-creditor is trying to collect a judgment from you, you may want to contact Legal Aid or a private attorney for advice on your options.

What are some of my defenses in a medical debt claim?

If you have been sued for a collection of medical debt, you may have a defense available based on contract law. The hospital has entered into a contract with you by providing you with medical services in exchange for a fee. If the hospital knew you were eligible for financial assistance and did not offer or provide it, the hospital may have breached its duty based on either the terms of the admission or service agreement or in the public policies underlying the potentially relevant medical assistance programs. Additionally, you may also have a defense to a medical debt collection claim if there has been a violation of the Hill-Burton Act.

If a written contract was entered, the creditor must bring an action against you within 5 years. For an open account such as a doctor's bill, the 5 year period runs from the later of the last payment or the last charge for services. If there is not a written contract, the creditor has 3 years to bring a claim against you.

You may also have a defense if you have been sued for someone else's debt or if the amount of the debt has been figured wrong.

If you think you have a defense to your medical debt, you should contact Legal Aid or a private attorney to discuss your options. An attorney may be able to help you reduce or eliminate your medical debt.

I have a pending workers compensation case. Can the medical provider collect payments from me?

No. Virginia law states that while a workers compensation case is pending, the medical provider cannot go after the patient for payments.

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Can a collection agency try to collect on my medical bills from my spouse?

It depends. Under Virginia law, medical care has been found to be a “necessary” and a spouse is liable for the other spouse’s necessities. However, a spouse is not liable for the other spouse’s medical debts if they were incurred after they are permanently separated.

Even if you are not permanently separated, the collection agency cannot get a judgment that operates as a lien on property held by you and your spouse together as tenants by the entirety.

If your spouse has received emergency medical care, you will be liable for the emergency care given while the spouses are living together. In order for the medical care to qualify as “emergency,” it must be care that a doctor thinks is necessary to preserve the patient’s life or health. The collection agency may also be able to get a judgment for a lien against property that you and your spouse own together to collect for emergency medical care.

If you did not sign an agreement to pay for your spouse’s medical bills, the collection agency may still be able to collect from you under what is called “implied contract” law. However, the collection agency only has three years to bring this action against you.

Can I apply for financial assistance even if my case is already in litigation?

Yes. Even if your case is already in litigation, you may still be able to receive charity care or financial assistance. You should contact the hospital or medical provider and fill out the necessary forms for charity care or financial assistance.

A Collection Agency keeps calling me about my medical debts. What can I do?

There are strict rules about when a collection agency may call you and about how you can stop the harassment. These rules are found in the Fair Debt Collection Practices Act and **apply only to a collection agent/agency, NOT to the original creditor:**

- The collector must advise you that s/he is attempting to collect a debt, and must follow up by written letter which must tell you that you can contest the claim in writing within 30 days.
- A collector may only call between 8:00 a.m. and 9:00 p.m., unless you agree otherwise.
- A collector may not contact you at work.
- The debt collector must not contact you if you send a letter within thirty days of receiving the collection letter, telling them to stop contacting you. However, the debt collector may then decide to sue you.

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What can I do if I think a debt collector has violated my rights?

The Fair Debt Collection Practices Act allows you to sue for money damages and to get an injunction against the collector, which is a court order stopping illegal activities. Call Virginia Legal Aid Society, or contact a private attorney. If you don't know an attorney to contact, you may wish to call Virginia Lawyer Referral Services at 1-800-552-7977.

How can I avoid medical debt in the future?

It is important to take advantage of the state and federal resources that are provided to reduce the costs of medical care before you go into medical debt. Depending on your financial situation, you may be eligible for various state or federal programs that can reduce or eliminate your medical expenses:

- Medicaid
- Family Access to Medical Insurance Security (FAMIS)
- Hospital financial assistance
- Hospital Charity Care Programs
- Free clinics
- Local health department programs
- Health coverage components of state or local assistance programs
- Local Community Services Board
- Private or non-profit programs
- Workers Compensation Programs
- Virginia Department of Rehabilitative Services
- Patient Advocate Foundation at (800)532-5274

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Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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