

A SIMPLE WAY TO COLLECT PAST DUE MEDICAL BILLS

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Hospitals, assisted living facilities and other medical facilities often write-off medical bills once a patient becomes a resident of a nursing home and qualifies for New Hampshire Medicaid benefits. Since the patient would have spent-down his or her assets to \$2,500 in order to qualify for Medicaid benefits, the prevailing thought is that a small medical bill is not worth pursuing. However, there is a little known rule in New Hampshire that allows medical organizations to collect past due medical bills even after a patient becomes eligible for Medicaid benefits.

Specifically, on October 1, 2008, the New Hampshire Department of Health and Human Services issued a Supervisory Release implementing a new policy with respect to what is known as "nursing facility cost of care deductions." This Supervisory Release implemented the regulation, He-W 654.17(a)(7)(d), which states that the cost of "currently obligated, unpaid prior medical debt" can be subtracted from a nursing facility resident's monthly income in order to pay-off a past due medical debt. This means that by simply making a claim with the Department of Health and Human Services, the medical organization can begin receiving monthly payments without the need to pursue potentially contentious litigation.

Neither the patient nor the nursing home would likely challenge the medical organization's claim, as long as the bill itself is not disputed. The nursing home resident is typically only permitted to keep \$56 per month of his or her income regardless of the amount of his or her Social Security benefits, pension and other monthly income. The balance of the patient's monthly income is paid to the nursing home, less any offsets permitted by Medicaid. Likewise, the nursing home would not receive less as a result of the medical organization's claim. The nursing home is paid a fixed reimbursement rate for its Medicaid residents, which is set periodically by the New Hampshire Department of Health and Human Services. The reimbursement rate would not be affected by a claim made by a medical organization for a past due medical bill. Rather, only the amount contributed by the patient would be affected.

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The New Hampshire Supervisory Release and regulation are consistent with the federal government's position on this issue. The Centers for Medicare and Medicaid Services ("CMS") confirmed in a letter dated September 13, 2004 that a State is permitted to allow the patient liability amount to be used to pay-off unpaid medical expenses, including unpaid nursing facility bills.

The New Hampshire Supervisory Release and regulation make clear that non-nursing facility related medical expenses constitute "currently obligated, unpaid prior medical debts." In addition, they make clear that nursing facility expenses also constitute such debts, but only at the Medicaid reimbursement rate for the facility, not the private pay rate. However, the regulation includes two exceptions related to unpaid nursing home debts. First, the regulation states that nursing facility expenses incurred during any penalty period related to gifts made by the patient during the look-back period does not constitute allowable medical debt. Second, the regulation states that the nursing home resident's failure to pay his or her monthly patient liability amount does not constitute allowable medical debt. These two exceptions are intended to prevent the New Hampshire Department of Health and Human Services from being responsible for additional payments in situations in which Medicaid benefits are expressly barred.

A common situation in which the "cost of care deduction" can benefit a nursing facility is when a resident delays in filing the Medicaid application. Although the New Hampshire Department of Health and Human Services will pay the nursing facility retroactively for up to 90 days prior to the date of the Medicaid application, it is not uncommon for the resident to be "over-resourced" (i.e., have more than \$2,500 for a single individual) during this retroactive time period. If the resident is "over-resourced," then he or she would not be entitled to this retroactive reimbursement. In other words, the nursing facility could be left with a significant unpaid medical bill. However, because of the "cost of care deduction," Medicaid would permit the nursing facility to collect the unpaid medical bill from the resident's monthly income. For example, if an individual applied for nursing facility Medicaid assistance on September 1 and had \$5,000 in countable resources during the three previous months, he would have "currently obligated, unpaid prior medical debts" for June, July and August. Although his resources exceeded the resource limit during these three months and he was therefore ineligible for Medicaid benefits, the nursing facility bills for those three months could be reimbursed as "currently obligated, unpaid prior medical debts" once the resident becomes eligible for Medicaid benefits.

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