

Medical Collections

Estates & Probate



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Medical collections pose difficulties far beyond those found in other industries, such as mortgage, banking, etc. The health care provider is focused upon caring for the patient and hire business staff, billing companies and collection agencies to work the receivables and collection on their behalf.

For those specialty providers treating the terminally ill, such as hospice, AIDS clinics, cancer treatment centers, oncologists, etc. collections becomes even more challenging.

This article is directed to those having to collect on a deceased patient's account and some of the complications surrounding estates and probate courts.



Obituaries

Your provider may not be aware that the patient has expired. Someone in your office should be assigned the duty to review the obituaries in the newspaper to check for patient names. Then check to see if a patient balance is outstanding.

Notification by publication cases often go unnoticed because they usually appear in a newspaper published in the decedent's county of residence. In cases where the creditor receives actual notice, the letter may go unnoticed until it is too late to make a claim. Notification letters are often not personally addressed, sent to a general address or do not reach the appropriate department. Therefore, it is advisable to create procedures to receive and handle notifications in a timely manner.

Financial Class

Once you have identified that the patient has expired, flag the account. Once all insurance claims are paid and only patient balances are evident, change the financial class or category to "Estate" or "Probate".

Running Reports

A designated collector should run routine reports on the designated financial class and check the aging of the accounts.

Wading through Probate

During probate, creditors are notified of the estate holder's death in a process governed by state law that may include personal letters and published notification.



There are some discrepancies among state laws regarding collecting debt from the estates of deceased consumers. Because this type of collection is emotionally charged for the survivors and not consistently regulated, it's important for debt collectors to create policies and procedures for estate collection with these issues in mind.

Probate is the process through which, upon a person's death, assets are gathered, calculated and used to pay debts, taxes, administrative costs and distributions. This process is governed by the laws of the state in which the deceased resided.

1. During probate, creditors are notified of the estate holder's death in a process governed by state law that may include personal letters and published notification.
2. Upon notification, the **creditor must submit a claim for the amount due** to either the personal representative or the court, depending on state law.
3. If the claim is approved by the personal representative or court for payment, the bill is paid out of the assets of the estate.
4. Conversely, if the claim is rejected, the creditor's next available remedy is to sue the estate for payment of the debt. Probate is designed to give creditors the ability to claim their debts out of an estate before the remainder is distributed to heirs.
5. In situations when the estate is insolvent or unable to pay all debts, state law further determines the order in which creditors are satisfied. In these cases, the personal representative will sell some of the estate's property to pay the outstanding debts. If claims still remain after liquidation, the assets are divided and distributed to the creditors proportionally.

6. In certain circumstances, a surviving spouse may be liable for the debt of the deceased spouse. Depending on state law, a surviving spouse may also be liable under the **doctrine of necessities**. In states that observe this doctrine, a spouse is liable to a creditor who sells or provides goods or services to that person's spouse, as long as the goods or services are rendered for sustenance, support or **healthcare**. Necessaries include food, medicine, clothing, shelter and personal services that are typically considered **reasonably essential** for the preservation and enjoyment of life. Because state laws on these issues vary, it is important to be cognizant of the relevant state law provisions.
7. Heirs may also be liable for the debts of the deceased if the deceased gave away his assets shortly before death or otherwise acted in a manner to defraud creditors. State law varies, but there is generally a "look back" period of six months to evaluate the validity of gifts.
8. Conversely, if the heir of the deceased removed assets from the estate, assumed liability for the pre-death hospital/nursing care, or otherwise guaranteed payment, the heir may be liable for some or all of the deceased person's debts.

The main purpose of probate law is to ensure quick and efficient handling of estates, including the collection of debts from the estate. Typically, unsecured creditors are the last in line to get paid out of the estate. Estates typically contain enough assets to pay a majority of pre-death debt, but because many debt collectors have not developed comprehensive estate collection procedures, they may miss their share of the estate.

Working with Your Collection Agency

Third-party debt collectors collecting from estates on behalf of a creditor are required to comply with the **Fair Debt Collection Practices Act (FDCPA)** and all applicable state collection laws.



It is important to note Section 1692a(3) (Section 803(3)) of the FDCPA includes personal representatives and administrators in the definition of "consumer." Therefore, it is necessary to send all communications to the personal representative upon notice of the consumer's (patient's) death.

Probate law establishes a period of time during which creditors are allowed to present a claim against the estate. Upon published or written notification, the creditor must present claims by the prescribed deadline. If the creditor's claim is not made within that time period, the claim is barred from payment.

The FDCPA expressly prohibits debt collectors from engaging in any harassment or abuse; from making any false, deceptive or misleading representations; and from using any unfair means in connection with the collection of a debt from any person, including the executor or representative of an estate or other relative.

In order to comply with the FDCPA, a collector may not communicate that an individual, other than the deceased, is obligated to pay the decedent's debt unless the collector has obtained information that indicates otherwise.



Debt collectors must approach estate collection with compassion.

In order to commence collection from the decedent's estate or through probate, a collector must contact the administrator or executor of the decedent's estate, often referred to as the personal representative. The law permits debt collectors to contact relatives or other third parties to identify the personal representative.

The personal representative is afforded the full protection of the FDCPA. This includes the ability to cease communications with the collector regarding the debt. If a collector receives a written notice from the personal representative requesting the collector cease communication or refusing to pay the obligation, the collector is obligated to comply with this request.

If a collector seeks payment of a debt from proceeds or an estate administered by a personal representative, the debt collector must provide a validation notice informing the personal representative of certain information regarding the existing obligation. The communication should include the Mini-Miranda as well as any state-required text.

In order for estate administrators to accept a claim, they must ensure there is evidence to support the claim, the claimant is the proper party to make the claim, the claim is not barred by any statute of limitation, and the claim is not subject to an affirmative defense or counterclaim that would surpass the amount of the claim. Therefore, it is important to cooperate with the estate administrator and present verification as requested to ensure your claim will receive proper determination for payment.

Collecting the debt of a deceased consumer presents many unique issues. Therefore, it is important to develop policies and procedures to assist in the collection process. And while it's possible for creditors to recover debts from deceased consumers, due to the specific time parameters involved it is of the utmost importance that collectors act with haste, diligence and compassion.