

Asset Protection for Patients

By Robert J. Mintz, JD

In a new and ironic twist, a growing number of individuals are now legally protecting themselves from their doctors. The idea may be surprising, but with rapidly disappearing health coverage, medical expenses are now a realistic and high probability threat to the lifetime savings of millions of Americans. Just as physicians have been diligent about planning to minimize their malpractice liability risks, now patients are anticipating and protecting themselves against the serious financial consequences of unforeseen medical expenses.

No one doubts that there's a monumental crisis in health care coverage. Forty-five million Americans have no medical insurance and even those with group or private policies are sometimes stuck with unexpected and un-payable bills. Higher deductibles and co-pays can easily balloon out-of-pocket costs beyond anything anticipated. Even those who think they have solid insurance, in a good plan, may find out, when it's too late, that their coverage means a lot less than they thought. Every day we hear stories from clients and the news about insurers refusing payment during or after treatment. In a recent CBS News report about one of the nation's largest insurers, Richard Blumenthal, Connecticut Attorney General, declared that "The company [Assurant Health] offers the illusion of coverage while challenging any large claim." In the report, a former claims adjuster revealed that it was company policy to scrutinize any significant claim, often manufacturing excuses to avoid payment. Unfortunately, despite a few notable fines and lawsuit settlements, these hardball tactics appear to be the normal course of business for at least some insurers.

When Patients Can't Pay

What happens when a large medical bill can't be paid? Usually the outcome is a lawsuit filed by the hospital or collection agency with a judgment and a lien filed against the patient's home and accounts. In most states, a percentage of the debtor's employment earnings can be garnished. Generally, before this point is reached, the patient files a personal bankruptcy to stop the wage garnishment and wipe out the medical bills and other accumulated debts. But that requires that he give up all of his assets including savings accounts, real estate and equity in his home. These assets, except those that are specifically exempt, are turned over to the Court and divided among the creditors.

According to a 2005 study by Harvard University, about half of the 1.5 million annual bankruptcy filings are caused by illness and medical bills. And surprisingly, three fourths of those had health insurance at the start of the illness which triggered the filing. "Unless you're Bill Gates, you're just one serious illness away from bankruptcy", said Dr. David Himmelstein, the study's lead author and an associate professor of medicine. "Most of the medically bankrupt were average Americans who happened to get sick."

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How Patients Protect Themselves

The high level of financial risk posed by an unpredictable medical event is now leading patients to take steps to protect their savings from this threat. For instance, I met with Mr. and Mrs. X last week, a couple in their early 50s. They have about \$300,000 of equity in their home and \$200,000 in savings. Mr. X is self-employed and Mrs. X works for a small company. Both are covered under her group plan, but, with rising costs, the company might cut back or terminate the plan sometime soon. Individual policies may be available at that point but the cost and extent of the coverage is unknown. The goal of their planning is to protect their savings from large, unexpected bills at any point in the future. Asset protection, using techniques such as a Family Savings Trust (MDNet Guide, March 2004) can effectively shield savings from these events, but the planning must be completed before the fact. If bills have been incurred, or expenses loom, planning is too late at that point.

Conclusion

Of course the real solution to the problem is for everyone to have affordable insurance which covers any health care costs. However, it's almost impossible to imagine a scenario in which competing financial and political interests are able to agree and implement a worthwhile plan, at least for the foreseeable future. For now, many believe that their only reasonable choice is asset protection to minimize these risks. Early planning and advice from a knowledgeable local attorney are essential to the success of these measures.

Robert J. Mintz, JD, is an attorney and the author of the book Asset Protection for Physicians and High-Risk Business Owners. To receive a complimentary copy of the book call 800-223-4291 or visit www.rjmintz.com.