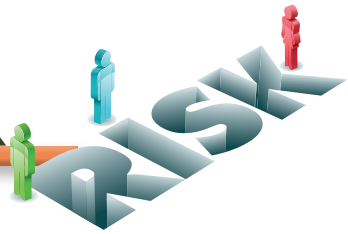

Tread carefully before seeking payment in bankruptcy cases

Question: The parent of my minor client has declared bankruptcy and owes me $300. Must I go through the bankruptcy court to get paid? Must the parent sign an authorization so I can release information? I did receive notice from the bankruptcy court that the parent turned over information to the court regarding the money owed to me.

Answer: If your client's parent has filed for bankruptcy, he or she is required to list all creditors, including health care providers like you. Once the petition has been filed, you cannot call the client's parent to try to get him or her to circumvent the bankruptcy process. Doing so could make you potentially liable for punitive damages.

Bankruptcy proceedings can be complicated, but you will want to find out whether the parent has filed for Chapter 7 relief (liquidation) or Chapter 13 relief (reorganization of debt). The only money typically available to a creditor under the Chapter 7 proceedings comes from those debtor's assets that the court is allowed to seize and sell. This may not include the debtor's home, so often there are no large assets that can be sold to satisfy the debt to you and other creditors. In other words, the chances of recovering money may be small. If you are owed money from a health insurance carrier, you can usually recover that amount. You may have a better chance of recovering some money if the parent filed under Chapter 13, but it may take a long time before you actually receive any funds.

You might consider building into your informed consent document that you reserve the right to collect unpaid amounts (outside the context of bankruptcy) or file a "proof of claim" should the client or parent/guardian file for bankruptcy. However, that alone may not protect you if you end up revealing private information. Only minimal information should be released.

A recent case in North Carolina illustrates the problems that health care providers may face when patients/clients (or parents/guardians) file for bankruptcy. In 2015, a health care system called WakeMed, based in Raleigh, filed a claim for $553 in unpaid medical services in a Chapter 13 bankruptcy case. The patient's attorney discovered that WakeMed had filed a proof of claim electronically that included personally identifiable information about the patient. The attorney went on to find many similar instances of privacy breaches and sought an order from the court in which sanctions and damages were requested.

This past August, the bankruptcy court ruled that sanctions were appropriate in cases in which the health care entity had failed to redact Social Security numbers and dates of birth in proofs of claim and also failed to take steps to remedy the situations after becoming aware of the facts. In addition to sanctions and attorneys' fees, the court awarded punitive damages. (See "Disclosing Personal Info in Bankruptcy Claims Leads to Sanctions" at *bna.com/disclosing-personal-info-n73014447375/*.)

This case demonstrates the importance of counselors and other health care professionals exercising careful consideration before deciding to file proofs of claim in a client's (or parent's/guardian's) bankruptcy proceedings. According to the court in the WakeMed case, Rule 9037 of the Federal Rules of Bankruptcy Procedure mandates redaction of Social Security numbers, tax ID numbers, full account numbers, birthdates and names of individuals, other than the debtor, who are identified as minors.

There is also the possibility that release of protected health information could cause ethics problems for you and lead to sanctions under the Health Insurance Portability and Accountability Act (HIPAA). You are certainly free to speak with a local attorney who is familiar with both bankruptcy proceedings and HIPAA. However, you will likely want to ascertain whether the potential and actual costs of getting legal advice and filling out the proof of claim is worth the amount of money, if any, that you may recoup. If the amount owed is $300, you may actually spend more on attorney's fees than what you could hope to recover by filing a proof of claim.

In the future, the best way to avoid becoming involved in collections or bankruptcy proceedings is to require payment (or copayment if you take insurance) at the time of counseling sessions. Do not let a large bill accrue. If your client is truly indigent, consider offering pro bono services, perhaps for a mutually agreeable period of time.

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The question addressed in this column was developed from a deidentified composite of calls made to the Risk Management Helpline sponsored by the American Counseling Association. This information is presented solely for educational purposes. For specific legal advice, please consult your own local attorney. ❖

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