

Evaluating Estate Claims and Tips on Third Party Liability to Maximize Collections

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Creditor Claims

- No downside to filing a Creditor Claim
 - Zero costs (except postage)
 - Until the claim is disallowed, it holds open the Statute of Limitations for bringing a lawsuit

Filing Process for Creditor Claims

- To properly file a creditor claim against a SC Estate:
 - 1) The creditor must file the creditor claim with the Probate Court AND
 - 2) The creditor must send a photocopy of the claim to the Personal Representative of the Estate
 - 3) The creditor must file a Proof of Delivery Form with the Probate Court.
 - Date the claim was mailed
 - Name and address showing to whom it was mailed

Amount of Claim

- Creditor claim should accurately reflect amount owed
- Also state whether there is any uncertainty (health insurance pending)
- Be sure to indicate if claim is a Judgment claim
- Last illness

Last Illness

- Defined broadly
- Claims of last illness enjoy statutory priority in South Carolina—only the funeral bill and estate administration expenses come before a claim of last illness

DEADLINES for Creditor Claims

- The creditor claim filing period ends at the earlier of:
 - 1) Eight (8) months after the first legal notice to creditors runs in the newspaper OR
 - 2) One (1) year after the date of death
- There is also a three (3)-year statute of limitations on general obligations to pay in South Carolina.

Disallowance of Claim

- Once a claim has been filed, the Estate can:
 - 1) Allow the claim (and pay it);
 - 2) Disallow it in part; or
 - 3) Disallow it in whole.
- Notice of Allowance/Disallowance: if a creditor receives this form, creditor must ACT promptly and contact legal counsel to discuss whether to continue pursuit of the claim
 - Creditor has thirty (30) days from the *date of the mailing* of the disallowance of claim to bring a lawsuit or else the claim is permanently denied

SC Probate Code Changes

- In 2014, the Probate Code was updated.
- The Estate now has an affirmative obligation to act on a claim within the later of:
 - 14 months after the date of death OR
 - 60 days after the claim is presented

Petition for Allowance of Claim

- Must be filed within thirty (30) days from the date of mailing of the Notice of Allowance/Disallowance of Claim
- Creditor would need to engage an attorney to file Summons and Petition
- \$150 filing fee
- Must be served on the Personal Representative
- May be utilized when an Estate is failing to act on a filed creditor claim

Release of Creditor Claims

- When paid, claim should be released.
- When reduced payment is accepted as payment in full, the claim should indicate the reduced payment.
- No filing is necessary if a creditor decides not to pursue a Disallowance. Simply by not petitioning, the claim will be barred within 30 days after the Disallowance.

When to Pursue an Estate?

- Investigation:
 - Review the Inventory and Appraisement filed in Estate's probate file
 - Review the entire probate file
 - Review of public records
 - Check for transfers prior to death
 - Check property
 - Social media?

Necessaries Doctrine

- Common law doctrine existing in South Carolina
- Spouse #2 is liable to pay Spouse #1's obligations to a third party if the obligations arose because the third party provided "necessaries" to Spouse #1
- South Carolina courts have held that bills for hospital services are necessaries

Establishing Cause of Action under Necessaries Doctrine

Creditor must show:

- 1) The necessaries were provided to the spouse
- 2) The person against whom the action was brought was married to the person whom the necessaries were provided at the time the necessaries were provided
AND
- 3) Despite demand therefor, payment for the necessaries has not been made by the person to whom the necessaries were provided

Fraudulent Conveyance

- A lawsuit can be brought to set aside a transfer of property when someone transfers property without receiving adequate consideration for the transfer AND
- The transfer occurs while money is owed to a creditor AND
- The debtor does not have sufficient assets to pay the creditor

Third Party Liability Assignments

- Include third party liability assignments in admission paperwork
- If at all possible, obtain the patient's signature at the time of registration
 - If patient unable to sign due to physical infirmity, read the entirety of the liability assignment and obtain verbal consent
 - Document this verbal consent with two witnesses
 - If patient unable to sign due to mental infirmity, circle back to the patient in an attempt to obtain signature prior to discharge

Third Party Liability Assignments

- When a patient's attorney requests medical records or billing for a client, be sure to send a copy of the liability assignment to the attorney along with the records
 - This puts the attorney "on the hook" under the lawyer rules of professional conduct
 - Getting this assignment into the attorney's hands gives the medical provider much better leverage in negotiating a patient's bills

SC Rules of Professional Conduct for Attorneys

- Rule 1.15(d): Safekeeping Property: Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person
- Rule 1.15(e): When in the course of representation a lawyer is in possession of property in which two or more persons claim interests, the property shall be kept separate by the lawyer until the dispute is resolved

Comments on Rule 1.15

- Comments to Rule 1.15: Third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. The lawyer must refuse to surrender the property to the client until the claims are resolved.

Interpleaders/Declaratory Judgments

- If the total amount of medical claims being made on a liability settlement is greater than the total amount of liability monies recovered, the patient's attorney may file an Interpleader action or declaratory judgment action in circuit court to have a Judge rule on how the money is distributed
- If a provider is served with an Interpleader or Declaratory Judgment Complaint, seek legal counsel promptly as deadline to file answer is running.
 - 30 days to file a response

Other thoughts

- Liability limits are often inadequate to cover medical bills
 - \$25,000 for bodily injury to one person in one accident
 - \$50,000 to bodily injury to two or more persons in one accident
 - Therefore, consider alternative sources of coverage
 - Health insurance
 - Underinsured and uninsured motorist coverage
 - Although not assignable per SC law, attorneys are often willing to negotiate bills using this recovery in order not to leave their clients with uncertainty of medical bills, legal actions, collections, etc.

Questions?

- Thank You
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