



Am I being sued for a medical debt?

What do I do?

First, figure out if you are being sued:

Check to see that the letter you received is a “Summons and Complaint.” This kind of notice means that you are being sued. A Summons and Complaint (another word for lawsuit) may be sent by regular mail or delivered to your home. If you receive a Summons and Complaint, you need to respond ASAP.

You should also receive a separate envelope containing an “Additional Notice of Lawsuit” addressed from the court clerk. This notice should include (1) the name of the original creditor if original creditor is not filing the lawsuit (2) a statement that you should file an answer as soon as possible (3) a statement explaining the consequences if you fail to respond; and (4) legal aid resources

What should I do if I got a “Summons and Complaint”?

Don’t delay! You have a limited time to respond. You respond to the Summons and Complaint by filing a form at the courthouse called an “Answer.” The court’s address will be on both the Summons and Complaint, and the additional notice from the court. You or your representative must go to court in person to file your Answer.

An Answer is your response to the claims made by the medical provider. The Answer should include your list of reasons why a lawsuit should be decided in your favor. The legal term for this is your list of “Defenses.”

Ask the court Clerk for an Answer form and fill it out. Sometimes they can help you fill out the Answer form. You can also use the Answer form found at www.lawhelpny.org/consumer. Fill out and print the form to take to the Clerk’s office.

How much time do I have to file an Answer?

You have 20 days to answer if you received the letter in person, or 30 days if it was mailed to your home. If you don’t act quickly, the provider may win just because you didn’t respond! This is called a “Default Judgment.” If you missed the 20-day time to Answer, go to the court and tell them if you have a good reason for missing the time and they may let you file it anyway.

What should I say in my Answer?

Here is a list of reasons why you may not owe the debt. Put them in your Answer if they apply to you:

- **Additional Notice not Received:** If the additional notice is returned to the court as undeliverable, no default judgment based on the defendant's failure to answer can be made
- **Improper Additional Notice:** If the additional notice did not include:
 - Statement both in English and Spanish
 - Name of the original creditor
 - Statement that the debtor should file an answer as soon as possible
 - Legal aid resources
 - Statement explaining the consequences of not responding to the lawsuit
- **Improper Service:** You never personally received the Summons and Complaint and found out about the lawsuit another way because:
 - You were never personally served with the documents;
 - A child or member of your household got the letter and never gave it to you;
 - The letter was sent to your old address.
- **Statute of Limitations:** In New York, lawsuits must be filed within strict time limits. This is called the “Statute of Limitations.” The time limit for collecting on a medical debt depends on when you had the medical services.

- For medical debts incurred before April 3, 2020, the provider has to sue you within 6 years of the date of service.
- For medical debts incurred **on or after** April 3, 2020, the provider cannot sue you within 3 years of the date of service.

Choosing to make partial payments or admitting, affirming, acknowledging, or promising to pay debt for which the statute of limitations has expired does NOT restart the statute of limitations period.

- **General Denial:** You should generally deny that you owe the debt in the Complaint if you are not sure if the allegations are true. Other general denials include:
 - **Suing for the Wrong Amount:** You can challenge the amount of debt, including all interest, collections costs and attorney fees.
 - **Illegal Acceleration Clause:** Medical providers cannot suddenly say you owe the full amount all at once because you missed an installment payment. This is called an acceleration clause and it is illegal for hospital debts, even if you signed a payment plan.
 - **Insurance coverage:** You had insurance that should have covered the service you are being charged for.
 - If you had Medicaid at the time of the service:
 - the Medicaid provider cannot sue you.
 - a non-Medicaid provider cannot sue you unless they informed in writing prior to receiving care that they did not accept Medicaid, and that you would have to pay out-of-pocket.
 - You did not have Medicaid, but you were eligible for it at the time of the service. The hospital must help you file a Medicaid application and tell you if the application was denied. It is important to cooperate with the hospital during the Medicaid application process.
 - If the application is approved, Medicaid may pay the bill. If you do not qualify for Medicaid, you should apply for Hospital Financial Assistance (charity care).
 - Hospitals are required to notify uninsured and underinsured patients about financial assistance and help them apply before attempting to collect the debt. Ask the hospital for an application and apply for financial assistance.
 - **Bankruptcy:** You filed for bankruptcy and received a discharge of this debt.
 - **Duress:** You were pressured into agreeing to the payment terms when you were so sick or in so much pain that you could not say no.
 - **Unconscionability:** The agreement was shockingly unfair and very one-sided in favor of the medical provider.
 - **Law of Necessaries:** You are only responsible for bills for yourself, your spouse, and your child. You cannot be required to pay bills for other family members.
 - **Victim of identity theft or mistaken identity:** Identity theft is when someone steals your name and personal information, pretending to be you. You are not responsible for debts that a thief made in your name. Mistaken identity is when you are sued for someone else's debts because you have similar names or similar identifying information.
- **A note on debt buyers:** If a company bought your debt from the medical provider and sued you, you may have additional defenses:
 - **Standing:** The debt buyer must prove that it owns your debt and, therefore, is allowed to sue you.
 - **Licensing:** In New York City, all debt buyers must be licensed by the NYC Department of Consumer Affairs. To find out if your debt buyer is licensed call 311 or check <https://a858->

elpaca.nyc.gov/CitizenAccess/. In New York City, if the debt buyer is not licensed, you can ask the court to dismiss the case. If the debt buyer is licensed, it must list its license number on the complaint.

What is a Default Judgment?

A Default Judgment is a ruling against you decided by a court or judge if you don't respond to the lawsuit in time by filing an Answer or don't appear in court. The judge can decide that you owe the debt since you did not make your case otherwise. A Default Judgment can hurt your credit score, you could have your wages garnished, and the provider could put a lien on your house.

If a default judgment was made, you can go to court and request to remove or vacate the default judgment. This will only be allowed in limited circumstances. Examples of when a default judgment may be vacated are: You never received the summons or additional notice, you do not owe the debt, the statute of limitations has expired, or you qualify for Hospital Financial Assistance to cover the debt in full or in part.

Failure to file an answer can only result in a default judgment when there is compliance with the Additional Notice Requirement and at least twenty days have lapsed from the date of mailing of this notice by the clerk.

Can a medical provider take my savings and income?

Not always. Some types of income are exempt from debt collection to pay a Judgment. Here is the list of income that cannot be garnished to satisfy a debt:

1. Supplemental Security Income (SSI)
2. Social Security
3. Social Security Disability (SSD)
4. Public Assistance (welfare)
5. Spousal Support, maintenance (alimony) or child support
6. Unemployment benefits
7. Disability benefits
8. Workers Compensation benefits
9. Public or private pensions
10. IRAs and other retirement accounts (including 403B's and 401K's)
11. Veteran's benefits (VA)
12. 90 percent of your salary or wages earned in the last 60 days
13. Railroad retirement
14. Black lung benefit
15. Economic payments a/k/a Stimulus payments

Where can I get more help?

You can visit www.lawhelpny.org/consumer for additional resources.

Who can I call if I have questions?

Call Community Health Advocates Monday - Friday from 9:00 a.m. to 4:00 p.m. at 888-614-5400.

DISCLAIMER: This fact sheet gives general information. This is NOT legal advice.