



A Guide to Negotiating Medical Debt – Am I Being Sued for Medical Debt? What Do I Do?

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

How do I know that I am being sued?

1. You should receive a **“Summons and Complaint”** letter in person or via mail:

There are specific rules that the provider who is suing you must follow. They must give you legal papers called a “Summons and Complaint,” which is a notice that tells you that you are being sued. It may be sent by regular mail or delivered to your home by a “process server.” The legal papers can be left at your home or workplace with you, or with someone responsible and likely to give the papers to you. The person does not have to be adult, but they cannot be a small child.

2. You should also receive a separate envelope containing an **“Additional Notice of Lawsuit”** from the court clerk. It should include:
 - The name of the original creditor if they are not the one filing the lawsuit. For example, if your medical provider sent your debt to a debt collector, and the debt collector is suing you, this notice must contain the name of the medical provider.
 - A statement that you should file an answer as soon as possible.
 - A statement explaining the consequences if you do not respond.
 - Legal aid resources available.

What should I do if I’m being sued for medical debt?

1. Respond as soon as possible by filing an “Answer” form at the courthouse within:
 - 20 days, if the summons and complaint was received in person by you or someone else, OR
 - 30 days if the summons and complaint was mailed to your home.
2. Find the courthouse address on the Summons and Complaint letter.
3. Write down a list of reasons (see below) why you may not owe the debt in your Answer.
4. Go to court in-person and ask the court clerk for an answer form **OR** fill out online at <https://www.lawhelpny.org/forms> and bring it to the clerk’s office. A blank Answer form is attached to this resource.

What should I say in my Answer?

The Answer form is an opportunity to provide reasons why you may not owe medical debt. Add these reasons below to your Answer if they apply to you:

- **Additional Notice Not Received:** If you did not receive the “Additional Notice of Lawsuit” and it was returned to the court as undeliverable, the court cannot make a default judgment against you (see below for more on default judgments).
- **Improper Additional Notice:** You can use this explanation if the “Additional Notice of Lawsuit” did not include the name of the original creditor, a statement saying you should file an answer as soon as possible, legal aid resources, and/or consequences of failure to respond in both English and Spanish.
- **Improper Service:** You never personally received the Summons and Complaint and found out about the lawsuit another way, for example:
 - You were never handed the documents in-person by a “process server.”
 - Someone received the legal papers on your behalf who was not likely to give it to you (for example, because they were a small child or someone in your apartment building who does not know you well), and that person never gave them to you.
 - The legal papers were sent to your old address.
- **Statute of Limitations:** In New York, lawsuits must be filed within strict time limits, called the Statute of Limitations. The time limit for collecting payment of a medical debt depends on when you received medical services:
 - If your debt is from medical care you received **before April 3, 2020**, the provider must sue you **within six years of the date of service**.
 - For example, if you received medical care on January 1, 2020, and your provider is suing you to recover the debt you owe, the provider has until January 1, 2026, to sue you. After January 1, 2026, the provider will not be able to collect the debt from you.
 - If your debt is from medical care you received **on or after April 3, 2020**, the provider must sue you **within three years from the date of service**.
 - For example, if you received medical care on January 1, 2022, and your provider is suing you to recover the debt you owe, the provider has until January 1, 2025, to sue you. After January 1, 2025, the provider will not be able to collect the debt from you.
 - 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.
 - For example, if you received medical care on January 1, 2022, the provider has until January 1, 2025, to collect the amount you owe. On January 2, 2025, the provider cannot sue you to collect the debt. If you decide to make a payment to the provider on January 2, 2025, the statute of limitations does not start again. In this situation, you cannot be sued for medical debt.
- **General Denial:** If are not sure if the allegations are true, see if any of the below situations apply. General denials include:

- **Suing for the Wrong Amount:** You can challenge the amount of debt, including interest, collection costs, and attorney fees.
- **Illegal Acceleration Clause:** If you received care at a public or state-operated hospital, the hospital cannot charge you the full amount all at once, even if you missed an installment payment or entered a payment plan.
- **Insurance Coverage:** You had insurance that should have covered your medical care.
 - If you had Medicaid at the time of the service:
 - the Medicaid provider cannot sue you, AND
 - a non-Medicaid provider cannot sue you unless they informed you in writing prior to receiving care that they did not accept Medicaid, and that you would have to pay out-of-pocket.
 - If 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).
 - **Eligibility for Hospital Financial Assistance:** Hospitals are required by law to offer financial assistance to patients who cannot afford the full cost of their care. They are also required to help you apply before attempting to collect the debt. Hospitals cannot request certain information, like tax returns or proof of assets, unless they help explain your financial situation. There is no immigration status or citizenship requirement. You can apply even after the bill has been sent to a collection agency. Call the hospital billing department to request assistance. Find details on who is eligible and more [here](#).
- **Bankruptcy:** You filed for bankruptcy and received a discharge of the debt.
- **Duress:** You were pressured into agreeing to the payment terms when you were very sick or in too much pain to say no.
- **Unconscionability:** The agreement was shockingly unfair and very one-sided in favor of the medical provider.
- **Law of Necessaries:** This applies if you are being sued because a provider has held you responsible for a family member's medical debt. 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 your personal information and pretends to be you. Mistaken identity is when you are sued for someone else's debt because you

have similar names or identifying information. You are not responsible for debts incurred under these circumstances.

- **Hospital Financial Assistance Was Never Offered:** New York hospitals are required to offer patients the option of applying for financial assistance. If you are being sued by a hospital and you were not offered the chance to apply for financial assistance, you can state this in your Answer.
- **Debt Collectors:** If a debt collector bought your debt from your medical provider and sued you, you may have additional defenses:
 - **Standing:** The debt collector must prove that it owns your debt and is allowed to sue you.
 - **Licensing:** All debt collectors must be licensed by the NYC Department of Consumer Affairs. You can ask the court to dismiss the case if the debt collector is not licensed. To check if your debt collector is licensed, call 311 or check <https://a858-elpaca.nyc.gov/CitizenAccess>.

What happens if I don't respond to the lawsuit?

A court issues a default judgment when the person being sued either does not file an Answer within the allowed amount of time, or the person being sued does not appear in court to contest the lawsuit. When this happens, the court decides that you owe the debt because you did not make your case. As of November 2022, a default judgment in a medical debt lawsuit cannot result in your wages being garnished (i.e., taken out of your paycheck) or a lien being placed on your home (i.e., the court cannot take any property you own to repay medical debt). See [CHA's one-pager on the ban](#) for more details. Medical providers are also prohibited from reporting medical debt to credit agencies. See [CHA's one-pager on the Fair Medical Debt Reporting Act](#) for more details.

What if a default judgement was already made?

You can go to court and request to remove or “vacate” the default judgement. Removal will only be allowed in limited circumstances:

- You never received the Summons and Complaint or Additional Notice.
- You do not owe the debt.
- The Statute of Limitations has expired.

Can a medical provider take my savings and income?

Not always. Some [income types and savings accounts](#) are exempt from debt collection to pay a judgment, including:

- Supplemental Security Income (SSI)
- Social Security

- Social Security Disability
- Public Assistance (welfare)
- Spousal Support, maintenance (alimony) or child support
- Unemployment benefits
- Disability benefits
- Workers Compensation benefits
- Public or private pensions
- IRAs and other retirement accounts (including 403b's and 401k's)
- Veteran's benefits (VA)
- 90 percent of salary or wages earned in the last 60 days
- Railroad retirement
- Black lung benefit
- Economic payments (e.g., stimulus payments)

More Resources for Assistance

- Visit <http://www.lawhelpny.org> for additional resources.

Call Community Health Advocates if you need help resolving a medical debt at: 888-614-5400.

Instructions: FILL IN THE NAMES OF THE PARTIES AND THE INDEX NUMBER. COMPLETE THE BLANK SPACES NEXT TO THE INSTRUCTIONS PRINTED IN BOLD TYPE. PRINT AND USE BLACK INK ONLY. SIGN YOUR NAME IN THE PRESENCE OF A NOTARY PUBLIC.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Index No. _____ / _____

Plaintiff,

ANSWER

- against -

Defendant.

-----X

As and for his/her answer to the complaint herein, the defendant _____

_____ respectfully shows and alleges as follows:

___. Admits the truth of the allegations of Paragraph(s) _____

_____ of the complaint.

___. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations of Paragraph(s) _____

_ of the complaint.

___. Denies the allegations of Paragraph(s) _____

_____ of the complaint.

_____. _____

AFFIRMATIVE DEFENSES

2

[illegible]

Dated: _____

Signature

Print Name

Defendant's Address and
Telephone Number

VERIFICATION

_____, being duly sworn, deposes and says:

I am the defendant. I have read the foregoing answer and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true. To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of these papers or the contentions therein are not frivolous as defined in subsection (c) of section 130-1.1 of the Rules of the Chief Administrator (22 NYCRR).

Sign Name

Print Name

Sworn to before me this

___ day of _____, 200___.

Notary Public