

Connect to Collect: An Innovative Approach to Medical Bills

Geoff Drucker,
American Health Law
Association and
Colin Rule, ODR.com



Geoff Drucker is the Senior Director of AHLA's Dispute Resolution Service. He is also an adjunct professor at the George Washington University School of Law, President of the Board of Directors of the NVMS Conflict Resolution Center, and the author of *Resolving 21st Century Disputes: Best Practices for a Fast-Paced World* (Prospecta Press 2012).

About one in four Americans (26%) struggle to pay for their health care. More than half (53%) of the uninsured are saddled with medical debt, and one in five working-age Americans with health insurance report problems paying medical bills.¹ By 2020, total medical debt was estimated to have reached \$140 billion, surpassing all other forms of consumer debt in collections.² A study in Wisconsin showed a 37% increase in lawsuits over unpaid medical bills for hospital care from 2001-2018.³

The problem is not confined to patients who received expensive care: 25% of consumers say they cannot pay a medical bill of \$400 or more in full. High deductibles, co-pays, and prescription drug costs saddle many insured patients with bills that are beyond their means.⁴

This is not just an economic problem. Medical debt impairs mental health⁵ and deters people from seeking needed care.⁶ Not surprisingly, the impact falls hardest on disadvantaged populations.⁷

Even for those who can afford to pay in full, medical billing practices are a source of frustration that can sever relationships with providers. In a recent survey, 90% of respondents said a good patient financial experience is a deciding factor for returning to a certain medical provider, and 96% said financial experience is key to overall health plan member satisfaction.⁸ In another study, 56% of consumers said they would consider switching providers for a better health care payments experience.⁹

The primary driver of patient dissatisfaction in the billing and payment experience is a lack of clarity. Over 70% of consumers are confused by their medical bills.¹⁰ According to Maxwell Kagan, Chief Financial Officer of Wellstar Medical Group, "Everybody thinks the patient is trying to get out of paying, but they actually want to pay." Patients want better explanations of bills, improved communication with their provider, accurate accounting of out-of-pocket costs, and consumer-friendly payment methods.¹¹ More than one-third (36%) of consumers want payment plan options.¹²

Consumer demand for contactless, convenient digital experiences was already on the rise before the pandemic hit in 2020. However, "legacy processes

dependent on staff intervention and paper statements continue to dominate the industry" because many providers "are not seeing the correlation between the patient healthcare payments experience and overall patient loyalty and satisfaction."¹³

The federal No Surprises Act¹⁴ and state surprise billing laws address only parts of the problem. The insured patient will no longer receive unexpected balance bills for certain out-of-network providers and services,¹⁵ but they must still contend with high deductibles and charges for uncovered and out-of-network services if they've been notified but still accept the services. Under limited circumstances (such as surgical procedures scheduled with much time for planning), the uninsured will have more advance notice of charges.¹⁶ However, once their bills arrive, they will be no better equipped to pay them than they were before the No Surprises Act was enacted given the expensive nature of health care services and procedures that will NOT be affected by these new laws.

Medical providers cannot make medical debt disappear, but they can improve communication with patients about what their bills are for and how much the patient can afford to pay. They can also make it easier for patients to negotiate and execute payment plans. Online Dispute Resolution (ODR) can achieve these goals at a very low cost per transaction.

ODR was created in the late 1990s to resolve disputes that arose in connection with e-commerce purchases. Websites like eBay needed a way for buyers and sellers who were geographically far apart to resolve problems fairly and efficiently. Its Resolution Center now handles in excess of 60 million disputes per year—more than the annual civil caseload of U.S. courts.

ODR systems work best when tailored to specific case types. A common structural design is a basic "Problem + Solution" wizard, where the complainant indicates the type of problem they are experiencing by selecting it out of a menu listing the most common types of issues. Once the complainant selects their problem type, they are presented with a set of common solutions to that problem. The complainant can then indicate which of the solutions they would be willing to accept, or even customize a proposed solution to their particular

needs. The respondent is then notified about the issue the complainant experienced, as well as the solutions that the complainant indicated would be acceptable. By streamlining the negotiation process, this basic algorithmic approach can match problems to solutions, often resolving 50% to 70% of cases without requiring intervention (other than from the parties).

Recently, the fastest growth in online dispute resolution has been in the courts for cases with similar fact patterns such as landlord tenant, traffic, family, and debt collection—including medical debt.¹⁷ More than 80 courts in the United States have launched online dispute resolution systems in the last five years. Each court system is independent, so each platform operates differently, and they vary tremendously in quality. To address these concerns, the American Health Law Association (AHLA) convened a diverse working group¹⁸ to explore the creation of a national ODR platform for resolving provider-patient disputes. In January 2022, AHLA's Board of Directors approved a pilot test in conjunction with ODR.com.

The platform enables patients to: (a) understand bills and resolve confusion over codes and services, (b) agree upon payment plans, (c) correct inaccurate invoices, and (d) apply for billing forgiveness and assistance. Potential advantages for providers are lower collection costs, increased collections, and improved patient satisfaction and loyalty.

Powerful case management and reporting tools enable providers to track each case to resolution. Pricing for the pilot is a flat rate of \$25 per case, paid by the provider.

ODR platforms have demonstrated 60-80% resolution rates in other contexts, and there is no reason to believe they will be any less successful in resolving medical billing disputes. In fact, as machine learning and artificial intelligence improve, ODR platforms are likely to become even more effective in performing many of the functions that now require human intervention, such as reality testing, proposing solutions, and identifying the likely zone of potential agreement.

1 *New Kaiser/New York Times Survey Finds One in Five Working-Age Americans With Health Insurance Report Problems Paying Medical Bills*, KFF Newsroom, Jan. 5, 2016, <https://www.kff.org/health-costs/press-release/new-kaisernew-york-times-survey-finds-one-in-five-working-age-americans-with-health-insurance-report-problems-paying-medical-bills/>.

2 Raymond Klunder, et al., *Medical Debt in the US, 2009-2020*. JAMA. 2021;326(3):250-256. doi:10.1001/jama.2021.8694. The \$140 billion estimate does not include the increasing number of lawsuits that hospitals file against patients to collect debt, which can lead to legal fees or wage garnishments. Nor does it include medical bills that patients pay with credit cards or have on long-term payment plans. See S. Kilff and M. Sanger-Katz, *Americans' Medical Debts Are Bigger Than Was Known, Totaling \$140 Billion*, N.Y. TIMES, July 20, 2021.

3 Z. Cooper, et al., *Hospital Lawsuits Over Unpaid Bills Increased by 37 Percent in Wisconsin from 2001-2018*, HEALTH AFFAIRS, Vol 40, No. 12, Dec. 2021, <https://doi.org/10.1377/hlthaff.2021.01130>.

4 *Trends in Healthcare Payments: Eleventh Annual Report: 2020* (Published Mar. 2021 by InstaMed (a J.P. Morgan Company)), <https://www.instamed.com/white-papers/trends-in-healthcare-payments-annual-report/>.

5 Jenkins R., et al., *Debt, income and mental disorder in the general population*. PSYCHOL MED. 2008;38(10):1485-1493; Meltzer H., et al., *The relationship between personal debt and specific common mental disorders*. EUR J PUBLIC HEALTH. 2013;23(1):108-113. See also *supra* note 2.

6 Kalousova L., and Burgard, SA, *Debt and foregone medical care*. J HEALTH SOC BEHAV. 2013;54(2):204-220.

7 See *supra* note 2. See also B. Haynes, *The Racial Health and Wealth Gap: Impact of Medical Debt on Black Families*, National Consumer Law Center, Mar. 2022.

8 S. Heath, *90% of Patients Say Loyalty Relies on Patient Financial Experience*, PATIENT ENGAGEMENT HIT, Dec. 7, 2021, <https://patientengagementhit.com/news/90-of-patients-say-loyalty-relies-on-patient-financial-experience>.

9 See *supra* note 4.

10 *Id.*

11 S. Rodriguez, *Consumers Don't Pay Patient Financial Responsibility After Bad Experience*, REVCYCLE INTELLIGENCE, Dec. 29, 2021, <https://revcycleintelligence.com/news/consumers-dont-pay-patient-financial-responsibility-after-bad-experience>.

12 *Cedar's 2020 Healthcare Consumer Experience Study*, <https://pages.cedar.com/2020-healthcare-consumer-experience-study>.

13 See *supra* note 4.

14 The No Surprises Act was signed into law on December 27, 2020, as part of the Consolidated Appropriations Act of 2021.

15 No Surprises Act, Section 104.

16 Requirements for good faith estimates for uninsured patients took effect on January 1, 2022, <https://www.cms.gov/nosurprises/consumers/understanding-costs-in-advance>.

17 *New Online Dispute Resolution Platform Offers Hope to Those with Medical Debt*, May 18, 2021, <https://www.tncourts.gov/news/2021/05/18/new-online-dispute-resolution-platform-offers-hope-those-medical-debt>.

18 The working group's co-chairs are Emily Black Grey, Partner, Breazeale, Sachse & Wilson, LLP emily.grey@bswlp.com and Patrick D. Souter, Of Counsel, Gray Reed, psouter@grayreed.com. Members include in-house counsel for hospitals and health systems, law firm attorneys representing both providers and payers, an attorney who represents patients in billing disputes, and a consultant with expertise in patient billing.



Colin Rule is CEO of ODR.com, and the former Director of Online Dispute Resolution at eBay and PayPal. In 2011 Rule co-founded Modria.com, an ODR provider he led as CEO and COO. In 2017 Tyler Technologies acquired Modria and Rule became Tyler's first Vice President of Online Dispute Resolution. Colin is the author of *Online Dispute Resolution for Business* (Jossey-Bass 2002, and *The New Handshake: Online Dispute Resolution and the Future of Consumer Protection*, (American Bar Association 2017). He received the first Frank Sander Award for Innovation in ADR from the American Bar Association in 2020, and the Mary Parker Follett Award from the Association for Conflict Resolution in 2013.