The Legal Guide for Families in Medical Crisis:
A Project of the Allegheny County Bar Association Young Lawyers Division

Making healthcare decisions has never been easy, especially nowadays, with state and federal healthcare regulations changing virtually everyday. Whether it’s trying to determine if health insurance will pay for a medical procedure or dealing with an employer that is reluctant to give medical leave, the process of finding the right answers can sometimes be more stressful than the treatment itself. The ACBA Young Lawyers Division wants to help.

ACBA Young Lawyers Division is proud to present this guide to the residents of Allegheny County, Pennsylvania, to help us all more easily navigate healthcare planning and decision making. Through the hard work of 16 young attorneys with specialties ranging from insurance law to family law, we’ve tried to analyze and thoroughly explain all the topics that could play into difficult healthcare decisions. We’ve also included a host of links to important resources, specific to Allegheny County, that can be used to dig even further.

We hope you find this guide useful and that you’ll share it with others in need. Although the ACBA Young Lawyers Division cannot accept legal questions on the topics discussed in this guide, users are invited to submit suggestions on how we can improve this guide by e-mailing us at the address provided below.
Healthcare providers

What are the varying levels of care?

- Hospitals
- Long-term acute care facilities
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Learning more about your healthcare providers

Patient Bill of Rights

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Complaints

- Complaints while you are a patient
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Learning more about your healthcare providers

The traditional way of making sure you've chosen a good health care provider is to talk to friends, family, co-workers, and neighbors. In the last several years, many websites have emerged with the sole purpose of providing online reviews of health care providers. These websites include:

http://www.healthgrades.com/

http://www.vitals.com/

http://www.angieslist.com/

By linking these websites, the ACBA Young Lawyers Division is not endorsing any of the views or opinions expressed on them.

These online resources can certainly be helpful, but they should be taken with a grain of salt. As with anything posted online, just because it's there doesn't mean it's true. Also, some websites that rate health care providers do not afford them the opportunity to respond to complaints. As such, they should be treated as one of many sources of information in selecting a health care provider, not the only source.

The Pennsylvania Department of State maintains a website that allows patients to search for licensure information on their health care providers, including physicians, nurses, chiropractors, dentists, occupational and physical therapists, pharmacists, podiatrists, radiologists, and more. It can be viewed online at:

http://www.licensepa.state.pa.us/

If you or a loved one is receiving care in a hospital or long-term care facility, the Pennsylvania Department of Health posts information online about the facilities' survey history and licensure status. This information includes descriptions of citations issued for possible violations of state and federal regulations. It can be viewed online at:

Hospitals:

http://www.portal.state.pa.us/portal/server.pt/community/outpatient_facilities/14151/health_facility_locator/558512

Nursing Homes:

http://www.portal.state.pa.us/portal/server.pt/community/nursing_home_care/14152/nursing_home_facility_locator/558487
Patient Bill of Rights

From the point you enter a health care facility, you should be aware of certain rights and responsibilities you have. It doesn’t matter whether you have come to the facility as an outpatient for testing, you are visiting the emergency room, or being admitted to an inpatient stay; there are specific expectations you should have concerning your treatment from the physicians and other health care providers you encounter. Additionally, you should be aware of the fact that you also have responsibilities that, when fulfilled, enable health care professionals to provide you the best possible treatment.

All health care facilities, as a condition of the law and their accreditation, maintain a Patient Bill of Rights. This document, to which you are entitled a copy, will normally be prominently posted at your point of entry into the facility, usually at the point of registration. That point might be the admitting office, outpatient registration, or emergency registration. This document describes the basic outline of rights you as a patient have with respect to your relationship with the organization, as well as those behaviors and information the organization expects of you. In many ways it spells out the terms of a contract between you and those who will provide your care.

Each organization’s bill of rights is specific to the organization, but all contain very similar terms which include statements that describe the following rights and responsibilities:

**Patient rights**

- Considerate and respectful care
- Current and understandable information concerning patient care
- Information about treatments and procedures and their risks, benefits and alternatives, as well as an outline of your plan of care
- The identity of those providing care
- Right to provide advanced directives consistent with state law
- Right to privacy, confidentiality in your health information and medical records, as well as privacy during your treatment
- You have a right to review your records and have them explained to you and interpreted by health care professionals.
- You have the right to request transfer to another facility which will be evaluated by the provider taking into consideration the medical appropriateness, urgency of your condition, and capabilities of the other institution
- Information concerning business relationships between your providers and other health care providers, educational institutions, or businesses
- You have the right to decline participation in any experimental research yet receive the most effective care that the provider can otherwise provide.
- Information and assistance with continuity of care when inpatient hospital care or continuing care with a certain provider is no longer appropriate
- Information concerning hospital or provider policies and practices relating to their operation that are provided for efficient operation, resolution of complaints and disputes, as well as information related to all charges for services.

**Patient responsibilities**

- Patients and their families and surrogates must cooperate and participate in their care.
- Patients should be open and honest regarding their condition, past illnesses, medications, and other matters that affect their health status.
- Provide any documentation for providers that relate to your advanced directives such as living wills or health care powers of attorney
- Respect the hospital’s obligation to provide efficient and equitable care to other patients.
- Provide accurate and up to date health insurance information or other information as may be necessary to process payment arrangements.
- Accept personal responsibility for one’s health and follow-up treatment including adhering to the instructions of providers related to medications and personal life style.

You can read more about your rights as a patient and access a variety of resources describing your rights and federal law concerning patient rights at:

Complaints

Complaints while you are a patient

Patents' rights and responsibilities are not restricted to hospitals and large institutions; they also apply to your family doctor as well. This is why your doctor's office, your dentist, and your health care insurance provider. Relative to your health care provider, visit specific other rights and responsibilities included with descriptions of your health insurance coverage policies and procedures or on website. These rights are secured by a variety of state and federal laws. These rights and responsibilities in the health care system in the United States.

There is almost nothing more personal than our own and our family members' health care. While it is good to know that your rights are well protected, everyone has questions and concerns about the most personal aspects of their health care. Patients need clear and fair answers to these questions and concerns. It is often difficult for you to understand the care that is being provided to you, including the medications and procedures that have been prescribed for you by your doctor. A growing trend across the United States has seen the development of procedures to allow you or your family members to call a temporary "time-out" in your care and request immediate assistance from health care providers who can be assigned similar to teams of providers who are assigned for health care emergencies, or "codes." The teams of providers, including both medical providers as well as other health care providers not directly involved in your care, will assess the situation and address any misunderstanding or questions you have about your or your family member's care. As well as that you understand the treatment recommended for your care, you can serve as an assurance that full and open communication is taking place, and as a double check on the appropriateness of your care, avoiding possible errors in your treatment.

Medical care coordination

Patients with complex or chronic conditions such as diabetes often have conditions and symptoms that effect a variety of body systems, social and family situations, or even financial planning, and may require assistance from a variety of medical specialists, including healthcare professionals, therapists, medical equipment suppliers, and home medical equipment suppliers to support their treatment. Because it is often difficult for your primary care physician to keep track of all the various treatments and procedures taking place, a concept of care coordination has emerged. Put simply, care coordination is a discipline which involves an "interdisciplinary approach to integrating health care and social support services in which an individual's needs and preferences are assessed, a comprehensive care plan is developed, and services are managed and monitored by an identified care coordinator following evidence-based standards of care." While the effort is still in its infancy by your primary care physician, the effort may involve a nurse coordinator, or other specially trained individual who assists the physician and patient with the complexity introduced when a variety of specialists and services are needed and where conflicting priorities or instructions might be provided to the patient.

Use of formal care coordination processes is also becoming more common in complex pediatric cases. Some coordination projects across the United States are resulting in or the reorganization of traditional medical practices into what has come to be known as "medical homes" for pediatric care programs have begun to experiment and as well with "Care Coordinators" assigned to assist the primary admittance physician and patient with the complex task of coordinating the variety of specialists and allied professionals who might need to be involved in comprehensive care for the patient. It is a proactive effort in enhancing communication and guarding against conflicting courses of treatment that might cause harm rather than healing.

To learn more about care coordination, ask your primary care physician or the patient representative, or you can learn more about care coordination at http://www.socialworkleadership.org/resil/Brown_Executive_Summary.pdf

Reporting complaints: state regulators and accrediting bodies

While most complaints can be settled directly with those responsible for providing your care, you also have the right to seek help from the State Department of Health, or report incidents you feel need to be brought to the attention of accrediting bodies like the Joint Commission. Concerns about network or fee-for-service arrangements for hospitals and outpatient facilities used by most organizations in the United States.

You have a right to report serious incidents and complaints to your state's Department of Health. The Pennsylvania Department of Health is responsible for licensing the operation of health facilities in the Commonwealth of Pennsylvania. Complaints will be investigated and the results reported back to you. In Pennsylvania, you can find information regarding Tog formal complaints at

http://www.portal.state.pa.us/portal/server.pt/community/complaint_form_20164

The Joint Commission's website and complaint processes are described at:

http://www.jointcommission.org/export_a_complaint.aspx

Another useful site for understanding rights and complaint processes can be found at:

http://www.mhn.nih.gov/midiseps/patientrights.html
Decision-making

Guardianship

Power of attorney

- Financial power of attorney
- Healthcare power of attorney
- Useful links

Privacy issues

- About HIPAA
- Information collected
- Authorization
- Uses of information
- Permitted disclosures
- Required disclosures
- Pennsylvania Statute on Alcohol and Drug Treatment
- Accounting, disclosure and access
- Minimum necessary standard
- Health records of deceased patients
- Filing complaints
- Useful links
Guardianship

A guardianship is a court appointed role wherein a guardian is appointed on behalf of an “incapacitated” person to make decisions and to act on his/her behalf. There are two types of guardianships: **guardian of the person** and **guardian of the estate**. The guardian of the person is appointed to make daily decisions, including medical decisions, as well as decisions such as where the person will live and as to what medical, therapeutic, educational, and social services he/she receives. The guardian of the estate is a financial role, as this Guardian has control over the person’s finances and is authorized to engage in financial transactions on the person’s behalf. The same person may be appointed as both Guardian of the Person and Estate, but this is not required, and two separate persons, or an institution, may be appointed as guardian. Both types of guardian may be limited or plenary (unlimited).

A guardianship is generally only appropriate where a person is found to be “incapacitated” and completely unable to manage his/her own affairs. As a guardian has a great deal of control over another person’s life, including both medical and financial decisions, the court has an extensive process for determining whether a guardian is truly necessary. Guardianships are often most appropriate for elderly persons suffering from dementia or other conditions affecting the memory and their decision making capacity, as well as persons with special needs, who may lack the capacity to make legal decisions.

In order to be appointed as guardian, a guardian must petition the court, and a hearing will be held to determine whether the person is truly incapacitated and unable to make decisions for him/herself. A doctor’s testimony is required to establish medical evidence of incapacity, and the court will hold a hearing to determine whether a guardian is truly necessary. Once a guardian is appointed, he/she is often required to post a bond with the court and is required to file an inventory and account on an annual basis with the court.

In Allegheny County, guardianships are handled by the Allegheny County Court of Common Pleas, Orphans’ Division. Many guardianship forms and additional information can be found online at the Orphans’ Division webpage:

http://www.alleghenycounty.us/wo/
Power of attorney

A power of attorney is a legal document that is signed by one person (the "principal") granting the authority to another person or persons ("agents") to make decisions on the principal's behalf. It is important to note that a power of attorney document is only in effect during the lifetime of the principal. At the death of the principal, this document, and all the powers it confers on the Agents, is null and void. A Power of Attorney may be either durable or springing. A durable power of attorney is in effect as soon as it is signed; a springing power of attorney goes into effect only when the principal is incapacitated and cannot make decisions for himself/herself.

There are two types of a power of attorney document: a financial power of attorney and a healthcare power of attorney (often called a "living will" or an "advanced directive"). When planning ahead, it is important to have both of these documents, as they will allow you (the principal) the ability to guide others to make decisions on your behalf when you are not able to make them yourself. While the Agents may be the same person for both your financial and healthcare powers of attorney, they do not need to be the same person. Consider your agents carefully, and select persons you know will be best suited for the role.

Financial power of attorney

This document grants the authority to enter into financial transactions on behalf of the principal, including managing bank accounts, investments, buying and selling property, and making gifts. When drafting your power of attorney, you have the ability to limit any of these abilities, and to dictate how much control your agent can have over your finances.

Healthcare power of attorney

This document grants the authority to make healthcare, and end of life, decisions on behalf of the principal. This gives your agent the ability to make medical decisions on your behalf, including decisions as to surgeries, medical treatment and medications. Most importantly, this document gives your agent the authority to make end of life decisions, and whether or not you wish to have life-sustaining treatments, including feeding tubes, resuscitation and respirators withheld. It is important that you discuss these decisions and your wishes with your agent before signing the power of attorney, as these decisions are often controversial and always difficult decisions to make. Be careful when selecting your agent, as you want to ensure that he/she will be able to honor your wishes, regardless of his/her individual preferences.

Note: due to changes in privacy laws, and regulations by the Health Information Portability and Accountability Act of 1996 (HIPAA), it is important that your healthcare power of attorney contains a HIPAA provision which permits hospitals, doctors, and other healthcare providers to disclose healthcare information about you to your Agent.

For more information regarding HIPAA privacy laws:
http://www.hhs.gov/ocr/privacy/

Useful links

http://www.nhdd.org/ – National Healthcare Decision Day. It has a lot of information and links for advanced planning resources.
http://www.acba.org/Public/Legal-information/Living-will.asp – Allegheny County Bar Association website with information on living wills and healthcare powers of attorney.
Privacy Issues

About HIPAA

HIPAA, also known as Health Insurance Portability and Accountability Act of 1996, is public law 104-191 and an act of the 104th Congress of the United States that empowers the Secretary of the Department of Health and Human Services to develop regulations on the confidentiality and confidentiality of medical records. You have several rights you may assert under HIPAA that will help you to further protect the privacy of your medical health records.

HIPAA and Your Authority

The information collected by any health care provider, health care plan, and the health care clearinghouses will vary in every situation. Generally the information that HIPAA allows to be shared is all individually identifiable health information held or transmitted by a covered entity.

Authorization

Upon entry to the hospital you will be asked to sign an authorization form. The substance of the authorization form will vary by institution, but generally, you are authorized to authorize the hospital to release your medical records to any other institutions of your choice. The specific forms of your information will be kept only by HIPAA. Notice of Privacy Practices: If you want to know how your information will be used by the request institution, you should request a copy of this paper.

Permitted Disclosures

Under HIPAA, permitted disclosures include disclosures to you, disclosures authorized by you, and other permitted disclosures, such as payment, health care treatment, payments for health care treatment, and health care operations.

Pennsylvania Statutes

In Pennsylvania, records for treatment for drug or alcohol abuse are protected under PA 1988, 1990. Records of drug and alcohol treatment may not be disclosed except in the following cases: the patient’s consent; the court’s order; the health care professional’s determination that the treatment is necessary for the diagnosis or treatment of the patient; or in the event of emergency or other public interest or in the event of judgment patient as a result of drug or alcohol abuse or drug or alcohol dependence.

There are only a limited number of other circumstances under which your records for treatment of drug or alcohol abuse may be disclosed under Pennsylvania law.

ACCOUNTING, DISCLOSURES, AND ACCESS

Under HIPAA you are permitted to access your records at any time by requesting a copy be made available. If you request a copy of your records, the patient is entitled to make an appointment to review your records. If your request is denied you must be provided a written statement regarding why your request was denied and how the health information is used.

You have the right to request an accounting of all disclosures made by health care institutions regarding your personal health information except for disclosures made for the purpose of treatment, payment, and health care operations. These accounts generally only include disclosures made during the past five years.

Minimum Necessary Disclosure

A general principle of HIPAA is that when making disclosures, health care institutions must make efforts to reduce the specific minimum necessary amount of information. A covered entity may disclose only information necessary to carry out the required function. Less than minimum necessary disclosures may occur in the event of a death, but should not occur in the event of a living individual.

Health Records of Deceased Patients

HIPAA provides that people who have the same privacy rights in death as they do in life. The Health Insurance Portability and Accountability Act (HIPAA) principles are applicable to health care providers who make no effort to receive the specific authorization of next of kin or of a living patient who has become incapacitated.

Filing Complaints

Before filing a formal complaint for an underservice disclosure of your medical record should you have a problem, please discuss the matter with the privacy manager or the privacy manager of the organization. If you are not able to resolve your problem you should by contacting the following organizations for the formal complaint.

Pennsylvania Department of Health

65 North Grant Street
Harrisburg, PA 17110
1-717-575-HEALTH

Office of Civil Rights, Health and Human Services
1-800-368-4249
http://www.hrsa.gov/officeirs/hipaa/complaints/

Pennsylvania Department of Health

65 North Grant Street
Harrisburg, PA 17110
1-717-575-HEALTH

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U.S. Department of Health

15th Street at Independence Avenue
Georgetown, D.C., 20003
(202) 426-2226
http://www.hrsa.gov/officeirs/hipaa/complaints/

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Paying for medical care

Insurance issues

- Is it covered?
- What can I do if coverage is denied?
- Can my premiums be raised?
- Pre-existing conditions
- Life insurance
- Long-term care insurance
- PA Children’s Health Insurance Program
- No insurance

Medicare/Medicaid

- Medicare
- Medicaid

Special needs trusts

Prescription drug coverage / Medicare Part D

- What questions you should ask

Dealing with debt from medical expenses

Emergency medical treatment and active labor act

Tax implications

- Useful links
- Tax help for low income individuals

Reimbursement for family caregivers
Special needs trusts

If you are the parent, or guardian, of a special needs child or adult, a special needs trust is an essential estate planning document, as it allows you to provide all the supplemental benefits to your child without compromising his/her eligibility for governmental benefits. In order to qualify for governmental benefits such as Medicaid or SSI, an individual cannot have more than $2,000.00 in assets in his/her name in any given month. A special needs trust allows for planning ahead and effectively saving money for your child’s future, without compromising his/her government benefits. A special needs trust may be funded when created or may be funded upon your death by a life insurance policy or other investment.

The intention of a special needs trust is to supplement, and not supplant or replace government benefits. It is not designed to provide things such as food, shelter, and clothing, but rather to allow you to continue to provide the “extras” for your child, without harming his/her eligibility for health insurance and other valuable government programs. These “extras” include all things that have a “reasonable relationship” to your child’s needs, and may include things such as summer camps, vacations, adaptive equipment, and other things that will enhance the quality of your child’s life.

If your child has a special needs trust, it is very important that all assets, gifts, and other income the child receives go into the trust, not to the child individually. It is important to tell other family members and close friends who may be making gifts to your child about this trust, so that they do not accidentally disqualify your child for his/her governmental benefits. Also, be sure to discuss this with grandparents, who may have named your child in their wills; this well-intentioned gift may end up disqualifying your child. Instead, let these family members know that they may make gifts to the trust, or may name the trust as a beneficiary, so as to preserve your child’s benefits.

As a cautionary note, if you wish to establish a special needs trust for your child, please consult an attorney who specializes in special needs estate planning, as this is a highly specialized form of a trust. In order to meet the regulations and requirements established by the federal government to qualify as a special needs trust, there are specific statutory language and provisions that must appear in your trust documents. Simply labeling a trust “special needs trust” is insufficient, and may have a very adverse impact on your child’s eligibility for health insurance and other essential government programs.

For more information regarding the Social Security Administration regulations visit https://secure.ssa.gov/apps10/.
Prescription Drug Coverage / Medicare Part D

Anyone who has Medicare is eligible to receive prescription drug coverage by joining a Medicare drug plan. In order to obtain Medicare prescription drug coverage, you must join a plan that is run by an insurance company or other private company that has been approved by Medicare. To join a Medicare Prescription Drug Plan, you must have either Medicare Part A or Part B. For information on joining a Medicare drug plan, contact Pennsylvania’s State Health Insurance Assistance Program at 1-800-692-7462.

What you will pay will depend on the prescription that you use, the plan that you choose, whether you go to a pharmacy in your plan’s network, whether your drugs are on your plan’s drug list, and whether or not you qualify to get Extra Help paying for your Part D costs. If you have low income or foresee having difficulty paying for a drug plan, please ask about Extra Help. This is a Medicare program to help people with limited income to pay for a Medicare drug program.

What questions you should ask

Before choosing a plan make sure you look at the plan’s formulary (drug list). This will tell you what drugs are covered under the plan. Make sure you choose a plan that has the medications that you are taking listed on its formulary. You can visit www.medicare.gov/find-a-plan to view the plan’s formulary and to look at current plans that are available.
Dealing with debt from medical expenses

It is estimated that about 75 million Americans have trouble paying their medical bills. Here are some of the ways that you and your family can address the issues of unexpected medical bills.

- Review your bill. It's very important that you review your bill when it comes in the mail. Hospitals bill often come weeks after the hospital stay and can be very long. Be sure to check and make sure that all of the charges are correct. If you have questions, call and speak with someone at the hospital's billing department. Make sure to request that you get the bill back in writing. You may want to check on the status of the dispute process through the health care provider. Sometimes, it is not as easy to deal with a bill after you have started making payments.

- Negotiate. Sometimes it is worth calling the hospital or health care provider and asking if the fee can be reduced.

- Payment plans. Many doctors and hospitals will work with patients and their insurance companies when working to address the medical bills. It is important to ask if there is an interest rate. It is very important that a realistic payment is created. Make sure that the payment plan is written in the reduce amount. Should circumstances change, ask if you may renegotiate the payment plan. Also, ask if there is a payment dispute process in the payments. Your insurance company will not allow you to pay the part of the bill that you do not dispute while working to resolve the issues on the bill.

- Hospital programs. Many hospitals have programs that pay for part of the medical bills for eligible or special needs families. Each program will have different criteria and restrictions. It is not always easy to find information on these programs. It is important to ask the hospital if they provide such a program and if you should speak to the program.

- Creditors. If unaddressed medical bills will be turned over to collection agencies, you should be contacted by a collection agency. Ask them if they are what they are for and how much it is owed. Under federal law, they cannot contact you between the hours of 9:00 a.m. and 9:00 p.m. Your wages cannot be garnished by a collection agency unless they take you court and win an action against you.

- Organizations. The following organizations may be able to help you get your health care provider. As with any service, contact them and request that there are any of the services, it is not possible to do research online.
  - The Access Project (www.accessproject.org). This nonprofit organization provides Medical Debt Resolution Program. The organization does not provide medical assistance. The Access Project will provide individuals with information on how to have a service to help them manage medical debt.
  - Alliance of Claims Assistance Professionals (www.claims.org). This is a nonprofit organization that helps you find an individual or an organization that can help with the services listed below. It is important to note that some organizations may charge you for their services. Some of the services provided:
    - Challenge denials of claims by the insurance company
    - Organize health insurance paperwork
    - Audit hospital and provider charges
    - Negotiate with providers on patient balances
    - Review medical bills and determine proper payment
    - Review various types of insurance claims (medical long term care, FDAP, HSA)
    - Track claims to ensure they are accurately processed
    - Contact providers and insurance companies to resolve claim problems
    - Assist in selecting Medicare Part D drug plans and Medicare supplement plans
    - Assist with choices during employer open enrollment
    - Provide education on benefits and options
    - Negotiate provider's fees for uninsured patients or procedures

- HealthWell Foundation (www.healthwellfoundation.org). The HealthWell Foundation provides financial assistance to eligible individuals to cover copayments, premiums, health care premiums, and deductibles for certain treatments. This means that you've been approved for the insurance coverage, but you cannot afford the copayment or coverage. They may be able to help by paying some or all of your Medicaid associated with the medication. Also, if you are eligible for health insurance, but cannot afford the insurance premium, they may be able to help by paying some or all of the medical portion of your insurance premium.

- United Healthcare Children's Foundation (http://www.uhcfcf.org). The UHCFCF organization provides medical cash grants of up to $2,000 to children's families to help them in need for non-covered medical services, bills, and expenses from their commercial health plan.

- Patient Access Network Foundation (http://www.panfoundation.org). The Patient Access Network Foundation is an independent, national 501(c)(3) organization dedicated to providing uninsured patients with copayment assistance through the specialty-specific funds that give them access to the treatments they need.

- Chronic Disease Fund (http://chdf.org). Chronic Disease Fund is an independent 501(c)(3) non-profit charitable organization helping patients with chronic diseases, cancer, or life-threatening conditions obtain the expensive medications they need. They assist patients through the United States who meet income qualification guidelines and have no insurance or a Medicare Part B plan but cannot afford the cost of their specialty medications.

- Bankruptcy. This is the last option to be considered. There are quite a few things to consider before you proceed with this option. It is very important that you speak with a bankruptcy attorney to determine important information about bankruptcy. If you do not know a bankruptcy attorney, contact your local bar association for a list. You may contact the Alameda County Bar Association's Lawyer Referral Service at 415-221-5555 or www.acbars.org.
Emergency Medical Treatment and Active Labor Act (EMTALA)

The EMTALA statute is a federal statute enacted by Congress in 1986. EMTALA prevents hospitals nationwide from “dumping” or getting rid of emergency patients who present for medical care but are unable to pay for medical services either through insurance or from their own pockets, until after the patient’s emergency medical condition has been stabilized. This provision also applies to those women who present to a hospital on an emergency basis in active labor with contractions. Other types of “emergency medical conditions” as defined by the statute may include significant impairment of bodily functions, significant impairment or failure of bodily organs, and severe pain.

It is important to note that a hospital is only required to provide an emergency patient an “appropriate medical screening examination within the capability of the hospital’s emergency department.” If, after this initial examination and stabilization, the hospital believes you would be better served at another facility, they are permitted to transfer you. Transfer from one hospital to another may occur because the hospital accepting transfer is better equipped to care for a patient in your condition, or the accepting hospital may have more specialized physicians on staff who are better trained to manage your health emergency.

Hospitals that transfer or “dump” patients in violation of the EMTALA statute may be fined by the federal government. If you feel that you have suffered personal harm as a direct result of a hospital’s violation of the requirements of the EMTALA statute, you may have the right to receive monetary damages in a lawsuit. As always, please consult a qualified attorney or attorney referral service if you have questions about EMTALA and how it may apply to the medical care you have received.

For additional information on the EMTALA statute, please consult:

42 U.S.C. §1395dd (federal statute citation)
http://www.law.cornell.edu/uscode/42/usc_sec_42_00001395--dd000-.html

Center for Medicare/Medicaid Services
http://www.cms.gov/EMTALA/

American College of Emergency Physicians
http://www.acep.org/emtala/

American Academy of Emergency Medicine
http://www.aeem.org/emtala/

Emergency Nurses Association
http://www.ena.org/government/emtala/Pages/Default.aspx
Tax Implications

The Internal Revenue Code allows individuals and joint filers, who itemize their deductions, to deduct the cost of medical and dental expense. This deduction can apply to expenses incurred by a spouse and dependents. This section will discuss the allowable deductible expenses and the limitations on deduction.

The first question to ask is: what expenses are deductible? The deduction for medical and dental expenses is related to the prevention or alleviation of physical or mental defects or illnesses. The expenses include payments for the diagnosis, cure, mitigation, treatment, or prevention of diseases. The Internal Revenue Service (IRS) website lists specific items that are deductible and should be considered in preparing your return. See www.irs.gov/taxtopics/tc502.html.

There are limitations on deductions for medical and dental expenses. The primary limitation is that your medical expense must exceed a percentage of your adjusted gross income to allow for a deduction. In addition, you cannot deduct expenses for which you received a reimbursement. Also, cosmetic surgery cannot be deducted. Finally, the medical expenses must have been paid during the tax year.

The key points to remember are (1) save your medical and dental bills for your tax records; (2) specific medical and dental bills are deductible if related to prevention or treatment of a medical condition; and (3) visit the IRS website or contact your tax provider for more information.

Useful links:

http://www.aarp.org/money/taxes/aarp_taxaide/

Tax help for low income individuals

The Internal Revenue Service has two programs to assist low-income tax filers. The Volunteer Income Tax Assistance (VITA) program is designed to help low-income taxpayers and the Tax Counseling for the Elderly (TCE) program is designed to assist taxpayers age 60 and older with their tax returns. Many VITA sites offer free electronic filing and all volunteers will let you know about credits and deductions you may be entitled to claim. To find the nearest VITA or TCE site, call 1-800-829-1040. The University of Pittsburgh Law School provides tax assistance for low income individuals. See http://www.law.pitt.edu/academics/juris-doctor/clinics/tax.

Useful links:

IRS information for tax payers on dental and medical deductions:

Further IRS information for medical deductions:

AARP information for elderly tax payers:
http://www.aarp.org/money/taxes/aarp_taxaide/
Reimbursement for family caregivers

Caring for a loved one at home can be a time-intensive and tiresome endeavor, so much so that the caregiver may be forced to reduce his/her hours at work or even quit altogether. In these situations, there are sometimes resources available to pay the family member who is providing care.

If the patient has long-term care insurance, it is possible that the policy will cover family caregivers in certain situations. Of course, the terms of the policy itself will govern whether this is possible, so be sure to read it carefully, ask your insurance agent, or see a lawyer to determine if reimbursement is possible.

In Pennsylvania, reimbursement may also be possible through either the Family Caregiver Support Program or the Services My Way program (part of Medicaid’s Cash and Counseling program), depending upon eligibility. More information on these programs can be viewed online at:


Services My Way: [http://www.portal.state.pa.us/portal/server.pt/community/provider_information/17893/services_my_way/716269](http://www.portal.state.pa.us/portal/server.pt/community/provider_information/17893/services_my_way/716269)

In most situations where a family caregiver is seeking reimbursement, it is helpful to prepare a short contract outlining the terms of the arrangement, including an hourly rate and work schedule, a description of the care to be rendered, and, if possible, how payment will be made. As this could be a complicated situation between family members, having an attorney prepare the contract can help avoid hard feelings and ensure that the contract will be legal. The individuals receiving reimbursement need to be mindful that money earned under such an arrangement is income and is likely taxable.
The Legal Guide for Families in Medical Crisis

My job and my family

Family & Medical Leave Act

Americans with Disabilities Act

Disability

Workers' compensation

Custody and expense reimbursements

- Children
- Parents
- Other links

YLD
Allegheny County Bar Association
Family & Medical Leave Act (FMLA)

If you are suffering from a serious medical condition or need to care for a family member who is suffering from a serious medical condition, the FMLA may allow you to take up to 12 weeks of leave from your job. Also, if your employer has provided you with health care coverage and you are eligible for protected medical leave under the FMLA, your employer must continue your health insurance coverage during your medical leave. Although the FMLA does not require your employer to pay you during your medical leave, your employer must return you to your previous job or a substantially similar job, if you are able to return to your job within 12 weeks.

To be eligible for protection under the FMLA, you must satisfy certain requirements. First, you need to have worked for your employer for at least 12 months. Second, you need to have worked at least 1,250 hours in the 12 months preceding your request for medical leave. Third, your employer must employ at least 50 employees within 75 miles of where you work.

If your medical leave is foreseeable, you must provide your employer with at least 30 days notice of your intention to take FMLA leave, unless your medical treatment requires you to take leave within 30 days, in which case you must provide your employer with notice of your intention to take FMLA as is practicable. Although a written request for FMLA is not necessary, you should always request leave in writing by providing a letter or other form to your employer that specifically requests “FMLA leave.” Also, you should always ask your employer if it requires you to complete specific forms or follow specific procedures for requesting FMLA leave or for staying in contact with your employer while on leave.

For more information on how the FMLA protects you in the workplace, visit http://www.dol.gov/whd/fmla/.
Americans with Disabilities Act (ADA)

The ADA prohibits most employers from discriminating against individuals with disabilities. In order to be protected under the ADA, your employer must employ at least 15 employees, and you must have a "disability" as defined by the ADA. A "disability" under the ADA includes any of the following: 1) a physical or mental impairment that substantially limits one or more major life activities; 2) a record of such an impairment; or 3) being regarded as having such an impairment.

The ADA does not specifically define "disability" and does not identify every medical condition that entitles an individual to protection under the ADA. Nonetheless, even if you do not suffer from and do not have record of suffering from a physical or mental impairment that is substantially limiting, you may still be protected by the ADA if your employer perceives you as being disabled. In addition, the ADA prohibits employers from discriminating against employees because of their relationship with an individual with a disability. For instance, an employer cannot discriminate against an employee because his/her spouse has a disability.

In order to be protected under the ADA, you must also be able to perform your job with or without a reasonable accommodation. The ADA requires employers with 15 or more employees to make reasonable accommodations for individuals with disabilities unless the accommodation would cause the employer significant difficulty or expense. Examples of reasonable accommodations might include changes to the work setting such as making an office wheelchair-accessible or modifying an individual's work schedule.

For more information on how the ADA protects you in the workplace, visit http://www.eeoc.gov/laws/types/disability.cfm.
Disability

Social Security benefits are available to some individuals who cannot work because of a medical condition. The SSA offers two types of benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI).

Individuals who have worked long enough and earned enough to meet the SSA’s earning requirements may be eligible for SSDI when they become disabled. If you are eligible for SSDI, your spouse and children may also receive SSDI benefits. In order to be eligible for SSDI, your medical condition must be expected to last at least one year or result in death. Furthermore, you must be able to demonstrate that you are not only unable to perform your previous work but are unable to perform any other type of substantial gainful employment.

If you are eligible for SSDI, the SSA does not issue your first monthly SSDI payment until the sixth full month after you become disabled. In other words, you do not receive SSDI benefits during the first five months of disability. Your monthly SSDI payment amount depends on how long you worked and how much you earned before becoming disabled. Individuals who receive two years of SSDI payments are also eligible for Medicare.

In contrast to SSDI, eligibility for SSI is needs-based, meaning that you must have a low income and few resources in order to be eligible for SSI. You must be disabled, blind, or 65 years of age or older in order to be eligible for SSI. Individuals who are eligible for SSI may also be eligible for Medicaid.

For more information on SSDI and how to apply for SSDI, visit http://www.ssa.gov/pubs/10029.html.

For more information on SSI and how to apply for SSI, visit http://www.ssa.gov/pubs/11000.html.

In addition to applying for Social Security benefits, an individual who cannot work because of a medical condition should always find out if his/her employer provides short-term or long-term disability benefits. Short-term and long-term disability plans differ with regard to eligibility requirements and the amount of benefits available. For instance, some plans may require an individual to apply for SSDI, and plans will differ as to the duration of benefits.

Employers and plans are required to provide you with a written summary of the disability benefits they provide. Therefore, an individual should consult the particular plan’s summary and contact the employer’s human resources representatives in order to find out how to apply for benefits and the amount of benefits to which he/she is entitled.
Workers’ Compensation

The Pennsylvania Workers’ Compensation Act (PWCA) provides wage loss and medical benefits to employees who are hurt at work in Pennsylvania. Workers’ compensation benefits are also available to dependent widows, widowers, parents, children, and siblings of workers who die as a result of a work injury.

Work injuries include physical injuries, mental injuries, hearing loss, occupational diseases, and scarring to the head, neck, or face. Work injuries also include work-related aggravations of pre-existing conditions regardless of whether the pre-existing condition is work-related. An injured worker is not ineligible for benefits simply because he/she was at fault for the injury.

In order to be eligible for benefits under the PWCA, the injured worker must report the injury to his/her employer within 120 days. The employer’s workers’ compensation insurance company is responsible for processing the claim for benefits and paying workers’ compensation benefits. Within 21 days of reporting the injury, the injured worker should receive a notice in the mail stating whether the insurance company will pay benefits. Because employers and their insurance companies often make mistakes that can affect the injured worker’s eligibility for benefits, the injured worker should always seek a free consultation from an attorney right away to make sure the claim is processed properly.

For more information on how the Pennsylvania Workers’ Compensation Act protects you in the workplace, visit [http://www.portal.state.pa.us/portal/server.pt?open=514&objID=552715&mode=2](http://www.portal.state.pa.us/portal/server.pt?open=514&objID=552715&mode=2).
Single parents: custody & expense reimbursements

Custody:

Medical crisis can often lead to custody issues if parents are separated. These issues are different if a parent faces the medical crisis or if a child faces the medical crisis. Many issues about child custody in Allegheny County can be answered by the Allegheny County Adult Family Court Manual.

Children:

When children face a medical crisis and the parents are separated, a trying time can be even harder. Often times custody schedules no longer work or parents do not agree on a course of treatment. It is important that these issues be brought to a court’s attention whenever there is a custody order and the parents are not in agreement. When the issue is a disagreement about the treatment for a child, the courts can step in and make the decision or appoint one of the parents to have sole Legal Custody with regard to medical decisions. It is important parents work together to make these decisions whenever possible. If the issues become contentious some doctors may refuse to move forward without a court order or agreement from the parties. Also, doctors may request that a family find a new doctor if the doctor starts to get involved in a legal custody matter. When the medical crisis affects the physical custody schedule (i.e. where the child lives and stays) and the parents cannot agree to alter it, they must proceed through the court process. The Allegheny County Family Court process starts with the Generations Program with education and mediation and then continues to progress through the courts until a judge makes a determination. The courts encourage parents to make decisions about their children, but will step in when necessary. In cases of emergency, the court will hear arguments with limited notice to the other party.

If you have a family law attorney, you should consult him/her. If not, you should look into the Allegheny County Family Court Pro Se Motions program which offers assistance to family law litigants without attorneys.

Parents:

When the parents face the medical crisis, it may impair their ability to care for a child. Sometimes parents do not realize how their medical issues are affecting children or other aspects of their life. If a parent’s medical condition is affecting the safety of the child, this can be dealt with through the court system. Again, this should be discussed with an attorney, if you have one. If you do not have an attorney, you should consider the Allegheny County Adult Family Court Pro Se Motions Program.

Other links:

Allegheny County Adult Family Court Manual
Allegheny County Adult Family Court Pro Se Assistance Program
Allegheny County Adult Family Court Pro Se Motions
Allegheny County Family Court FAQ
Map of Allegheny County Family Court
Allegheny County Generations Program
Allegheny County Custody information Packet

Expense reimbursements:

Many child support orders contain a provision for unreimbursed medical expenses. Unreimbursed medical expenses are out of pocket expenses not covered by an insurance policy such as a co-pay, deductible, or co-insurance. You should look to the order to see how much each party is responsible for paying. In the Commonwealth of Pennsylvania the support recipient must pay the first $250 of unreimbursed medical expenses per year per child, and then there is usually a percentage split for anything over and above the first $250 (i.e. father pays 70% and mother pays 30%).

If you receive the support, you must collect your receipts and be able to show them to the payor when you request reimbursement for the medical expenses. It is important that all expenses are submitted by March 31 of the year after they were incurred (i.e. March 31, 2012 for all expenses in 2011). If the payor refuses to pay, this can be enforced through the courts. There is a “Summary of Medical and/or Dental Bills” form in the Allegheny County Family Court Manual.

If you pay support, make sure that you receive documentation of the expenses and that you pay them timely. If you do not agree with the court, you can contest the expenses in a timely manner.

Other links:

PA Child Support website (PACSES):
PA Child Support Forms
Allegheny County Adult Family Court Manual
Allegheny County Adult Family Court Pro Se Assistance Program
Allegheny County Adult Family Court Pro Se Motions
Allegheny County Family Court FAQ
Map of Allegheny County Family Court