

Economic Advisory

Debt Recovery Expenses

Preamble

The ASA has sought legal advice on the recovery of members' expenses when they engage a debt recovery agent to pursue outstanding accounts. The Advice is primarily based on NSW legislation and inquiries of the Department of Fair Trading. It is however considered relevant to all states and territories. Irrespective, you are advised to confer with your debt recovery agent regarding this advice.

General Advice

Strictly speaking, a debt collector cannot recover the expenses associated with the recovery of the debt. Whether the fees of the debt collector can be recovered at the time a debt is recovered depends upon the terms of the contract between you and your debtor. If you put the debtor on written notice that if the debt is not paid within a certain time frame the debt due will increase to meet the costs associated with recovery (and you specify the amount)¹ you could recover the total amount.

Invoice Terminology

When you provide a patient with an estimate or an invoice you should state the period in which the invoice is required to be paid and any 'incentive' discount for timely payment.

If you have not received the payment by the date stipulated you should issue a further invoice for the outstanding value together with a clearly worded statement to the effect that if payment is not received by a specific date that the cost of recovery of the debt (and specify this amount) will be a further debt due and owed by the patient.

Suggested wording for the subsequent invoice is:

Our records indicate that you may have overlooked my invoice and payment is outstanding for my medical services provided on (specify date).

If you have an enquiry concerning the invoice, the service provided or payment arrangements please contact me on (specify telephone number).

The attached re-issued invoice is payable on (specify date). After (specify date) the outstanding account will be referred for debt recovery and you will be charged the expenses of this recovery in addition to your current outstanding debt. The recovery fee will be an additional (specify recovery cost).

1. Section 19(3) of the Commercial Agents and Private Inquiry Agents Act 2004. The Act stipulates that debt collectors must not demand or collect from a person any payment for costs or expenses incurred by the debt collector in connection with the collection of the debt (section 19(1)). Section 19 (3) goes on to stipulate that the section does not limit any right that the person to whom the debt is payable may have at law with respect to the recovery from the debtor of the creditor's costs associated with recovering the debt. Although acceptable methods of obtaining IFC may involve another person providing the information, the treating anaesthetist is ultimately responsible. Where another person provides the information, there must be clear instructions from the anaesthetist to this person, and the anaesthetist should, where practical, affirm the consent during the pre-anaesthesia consultation.

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