When a patient dies leaving unpaid medical expenses, a health care provider may discover that the patient owned most or all of his or her assets jointly with another individual. The patient’s estate may contain insufficient funds to pay creditors’ claims (including medical claims) because of this joint property ownership. Any property the patient owned in a tenancy by the entireties or as a joint tenant with rights of survivorship passes by operation of law to the survivor upon the patient’s death and is not available to satisfy the patient’s debts. Without instituting protective measures, the provider may find itself writing off the unpaid account.

For many years, the common law Doctrine of Necessaries, which held spouses liable for each others’ medical expenses, offered a health care provider some protection against joint property ownership. However, in 1998, the Michigan Supreme Court abolished the doctrine in North Ottawa Community Hospital v Kieft, 457 Mich 394, 408; 578 NW2d 267 (1998). Now, absent an express agreement, an individual is not liable for necessaries supplied to his or her spouse. This leaves a health care provider in a particularly vulnerable situation when treating a married patient who owns his or her assets jointly with a spouse.

Fortunately, a health care provider is not without recourse if planning is done in advance. A provider may secure a guarantee of payment from a spouse or an individual who jointly owns property with the patient. To guarantee a patient’s obligations, a potential guarantor must execute a written guaranty. MCL § 566.132(1)(b). So long as a potential guarantor executes the guaranty at the same time the patient contracts with the health care provider (e.g. upon the patient’s admission), the services provided to the patient furnish sufficient consideration for the guaranty and no additional consideration is required. W.T. Rawleigh Co. v Trerice, 224 Mich 420, 428; 195 NW 79 (1923). While it may be possible to secure a guaranty at a later time, separate consideration for that guaranty is required. R.L. Polk Printing Co. v Smedley,155 Mich 249, 250; 118 NW 984 (1908). However, a guaranty executed after the patient’s death will likely be unsuccessful in expanding a health care provider’s rights. WKBW, Inc v Children’s Bible Hour, 332 Mich 569,
Though spouses or other individuals might sign a patient’s general admission forms on behalf of the patient, it is unlikely that the language of current forms provides more than an acknowledgment of the patient’s responsibility. Instead, particular guaranty language should be added to the admission form for the potential guarantor to sign separately. Requesting guaranties from spouses and other individuals who jointly own assets with patients will place the provider in a better position for possible future collections. If you would like assistance in reviewing and updating your forms, please contact any member of our health care practice group.