Overview:
In order to maintain their tax-exempt status as charitable hospitals, such organizations must implement a number of financial policies and practices to comply with IRS requirements regarding charity care. Areas that must be addressed include providing a written financial assistance policy, specific limitations on charges, certain billing and collection considerations, and the need to conduct a community health needs assessment.

Summary of Analysis:
This document will provide a summary of the final 501(r) regulations for charitable hospitals, with a focus on the aspects of the requirements that will affect billing and collection activities.

Practical Considerations:
Debt collectors, as well as other companies impacted by the regulations, should begin discussions with hospital clients now in order to implement any required changes to collection practices. Make sure that your company understands the regulations so you can better assist your clients and reassure them as any required changes are implemented. For specific considerations see the practical considerations section below on page seven of this document.

Key Takeaways
- Charitable hospitals must address 501(r) requirements or risk losing their tax-exempt status.
- Certain “extraordinary collection actions” are prohibited (including reporting of medical debts to CRAs) until after certain timeframe and notice requirements are met.

Related SearchPoint Documents
- Patient Protection and Affordable Care Act – What it Means for the Collection Industry, #3084.
501(r) Final Regulations for Charitable Hospitals

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Section 501 of the Internal Revenue Code provides for the tax-exempt status of certain organizations, including charitable hospitals.¹ Section 501(r) was added to the Internal Revenue Code by the Patient Protection and Affordable Care Act and imposes new requirements on § 501(c)(3) charitable organizations that operate one or more hospital facilities.² These requirements are also applicable to any governmental hospital that has applied for 501(c)(3) tax-exempt status.

Proposed IRS regulations addressing the Internal Revenue Code Section 501(r) requirements have been pending since 2012 and 2013. On Dec. 29, 2014, the IRS and U.S. Treasury issued final regulations implementing certain provisions of Section 501(r). These regulations impose four main requirements on tax-exempt hospitals:

1. Written Financial Assistance Policy
2. Limitations on Charges
3. Billing and Collection
4. Community Health Needs Assessment

In order to maintain their tax-exempt status as charitable hospitals, such organizations must implement a number of financial policies and practices to comply with these requirements, some of which will have an effect on the practices of debt collection companies that collect debts on behalf of charity care hospitals.

This document will provide a summary of the final 501(r) regulations for charitable hospitals, with a focus on the aspects of the requirements that will affect billing and collection activities.

Written Financial Assistance Policy

Internal Revenue Code Section 501(r)(4) requires a charitable hospital to establish a written financial assistance policy (FAP) and emergency medical care policy.³ According to the regulations, a hospital facility’s FAP must apply to all emergency and other medically necessary care provided by the hospital facility, including all such care provided in the hospital facility by a substantially-related entity.⁴

The FAP must include:

- The eligibility criteria for financial assistance and whether such assistance includes free or discounted care.⁵
- The basis for calculating amounts charged to individuals.⁶
- The method for applying for financial assistance.⁷
- The actions that may be taken in the event of nonpayment. For hospitals that provide a separate billing and collection policy, the FAP must state that the actions the hospital may take in the event of nonpayment are described in a separate policy and explain how members of the public may obtain a copy of the billing and collection policy.⁸
- If applicable, any information the hospital facility obtained from sources other than the individual seeking financial assistance, and whether and under what circumstances the hospital facility uses prior FAP-eligibility determinations, to presumptively determine that the individual is FAP-eligible.⁹
- A list of any providers, other than the hospital facility itself, delivering emergency or other medically necessary care in the hospital facility and specify which providers are covered by the hospital facility’s FAP and which are not.¹⁰

Eligibility Criteria for Financial Assistance

As noted above, the FAP must detail the criteria used to determine eligibility for financial assistance or free care.¹¹ The regulations do not mandate any specific eligibility criteria, which allows the hospital flexibility in determining who qualifies for financial assistance or free care. Debt collectors may be in a good position to assist their hospital clients in determining who should qualify for financial assistance, as debt collectors are often
To satisfy this requirement, a hospital must do the following:

**Actions the Hospital May Take in the Event of Nonpayment**

Also detailed above is the requirement that the FAP list the actions the hospital (or its agents) may take in the event of nonpayment, including extraordinary collection actions (ECAs). Because the debt collector will likely be the party undertaking collection actions, this is an area where debt collectors may assist clients in identifying the way accounts will be handled and the actions that may be taken when consumer’s fail to pay.

**Providers Other Than the Hospital**

The FAP must list out any providers that will deliver medically necessary care that are not covered by the FAP. This will likely be an important aspect of the FAP that debt collectors will need to be aware of in cases where a patient qualifies for the FAP, but some charges for care are not covered by the FAP and end up in collections. In these instances some patients will likely have questions about why certain charges were not covered by the FAP, thus debt collectors may need to be able to explain why a particular charge was not discounted or paid for by the FAP.

**Widely Publicize FAP**

The hospital facility must widely publicize its FAP within the community to be served by the organization. To satisfy this requirement, a hospital must do the following:

- Make the FAP, FAP application form, and plain language summary of the FAP widely available on a website.
- Make paper copies of the FAP, FAP application form, and plain language summary of the FAP available upon request and without charge, both by mail and in public locations in the hospital facility, including, at a minimum, in the emergency room (if any) and admissions areas.
- Notify and inform members of the community served by the hospital facility about the FAP in a manner reasonably calculated to reach those members who are most likely to require financial assistance from the hospital facility; and
- Notify and inform individuals who receive care from the hospital facility about the FAP by:
  - Offering a paper copy of the plain language summary of the FAP to patients as part of the intake or discharge process.
  - Including a conspicuous written notice on billing statements that notifies and informs recipients about the availability of financial assistance under the hospital facility’s FAP and includes the telephone number of the hospital facility office or department that can provide information about the FAP and FAP application process and the direct website address (or URL) where copies of the FAP, FAP application form, and plain language summary of the FAP may be obtained.
  - Setting up conspicuous public displays (or other measures reasonably calculated to attract patients’ attention) that notify and inform patients about the FAP in public locations in the hospital facility, including, at a minimum, the emergency room (if any) and admissions areas.

Notably, one aspect of the requirement to widely publicize the FAP is the requirement to include a “conspicuous written notice on billing statements” that notifies and informs recipients about the availability of financial assistance under the FAP. Based on this requirement, the hospital as well as any debt collector working for the hospital may need to include notification of the FAP in any billing statements sent to consumers receiving care from the hospital facility.

**Emergency Medical Care Policy**

A charitable hospital must also establish a written policy that requires the hospital facility to provide, without discrimination, care for emergency medical conditions to individuals regardless of whether such individuals are FAP-eligible. The policy must not interfere with provision of emergency medical care, for example, by demanding that emergency department individuals pay before receiving treatment or by permitting debt collection activities that interfere with the provision of emergency medical care. The emergency medical care policy must also require the hospital to provide care for emergency medical conditions as detailed under section 42 C.F.R., Chapter IV, Subchapter G of the Code of Federal Regulations.

**Limitation on Charges**

Internal Revenue Code Section 501(r)(5) requires charitable hospitals to limit the charges for emergency or other medically necessary care provided to individuals eligible for assistance under the hospital’s FAP to not more than the “amounts generally billed” to insured individuals. In the case of all other medical care, the hospital must charge a FAP-eligible individual less than
the gross charges for any medical care covered under the hospital’s FAP.22

**Amounts Generally Billed**

For purposes of meeting the requirements for limitations on charges, a hospital facility must determine the “amounts generally billed” (AGB) for emergency or other medically necessary care. The regulations provide two methods for determining the AGB for care, including the prospective Medicare method and the look-back method.23 The regulations also provide explanations of terms such as “gross charges” and “medically necessary,” and provide a “safe harbor” provision for certain charges in excess of the AGB.24 While hospitals will generally determine the methodology that will be used to arrive at the AGB, debt collectors should understand the process in the event they are required to show how they arrived at a certain amount for particular bill.

**Billing and Collection**

Internal Revenue Code Section 501(r)(6) requires a hospital make “reasonable efforts” to determine eligibility under FAP before engaging in “extraordinary collection actions” against any responsible party.25 According to the regulations, these protections are extended to the patient and to any other individual who has accepted or is required to accept responsibility for the patient’s care.26 The regulations prohibiting ECAs extend to any actions taken by any purchaser of the individual’s debt, any debt collection agency, or other party to which the hospital facility has referred the individual’s debt.27

**Extraordinary Collection Actions**

The regulations expressly state that extraordinary collection actions (ECAs) include:

- Actions that require a legal or judicial process, including but not limited to:
  - Placing a lien on an individual’s property;
  - Foreclosing on an individual’s real property;
  - Attaching or seizing an individual’s bank account or any other personal property;
  - Commencing a civil action against an individual;
  - Causing an individual’s arrest;
  - Causing an individual to be subject to a writ of body attachment; and
  - Garnishing an individual’s wages.28

- Selling an individual’s debt to another party (other than certain debt sales which are detailed below).29
- Reporting adverse information about the individual to consumer reporting agencies.30
- Deferring or denying, or requiring a payment before providing medically necessary care because of an individual’s nonpayment of one or more bills for previously provided care.31

The regulations expressly state that ECAs do not include:

- Certain debt sales32
- Liens on certain judgments, settlements, or compromises (i.e., hospital liens)33
- Filing a claim in a bankruptcy proceeding34

The commentary included with the final regulations also addressed some other billing and collection activities that are not directly addressed in the final regulations themselves, but that would not be considered ECAs. According to the regulator, “writing off an account to bad debt, sending an individual a bill, or calling an individual by telephone to make reasonable inquiries, are not ECAs.”35 Thus, general collection activities such as sending collection notices or calling to request payments that do not involve any legal or judicial process or credit reporting activities will generally not be considered ECAs. The commentary also noted that charging interest on a medical debt is not an ECA, as the regulators “view the charging of interest on medical debt as a charge for the extension of credit rather than a collection action.”36

**Reasonable Efforts to Determine Eligibility for FAP**

Before any of the ECAs outlined above can be taken, the hospital must make “reasonable efforts” to notify the individual about the hospital’s FAP. The final regulations only require such notifications to be made to the patient population that the hospital facility intends to take ECAs against, not the entire patient population.

**Notification and Application Periods**

The final regulations require hospitals to wait 120 days before initiating ECAs against patients whose FAP-eligibility is undetermined.37 The regulations also provide a 240-day period during which a hospital facility is required to process any application submitted by the individual.38 A hospital may, however, accept applications outside of the 240-day application period if it so chooses.39

The applicable 120-day and 240-day periods start on the date the first “post-discharge” billing statement for care
is provided. A billing statement is considered “post-discharge” if it is provided to an individual after the care is provided and the individual has left the hospital facility.

**Notification Requirements**

The hospital will only have satisfied the requirements to make reasonable efforts to notify the individual about the FAP, if it does the following at least 30 days before initiating one or more ECAs:

- Provides the individual with a written notice that indicates financial assistance is available to eligible individuals, identifies the ECA(s) that the hospital facility (or other authorized party) intends to initiate to obtain payment for the care, and states a deadline after which such ECA(s) may be initiated that is no earlier than 30 days after the date that the written notice is provided; and
- Provides the individual with a plain language summary of the FAP with the written notice described in the paragraph immediately above (or, if applicable, the notice required before deferring or denying care due to nonpayment for prior care); and
- Makes a reasonable effort to orally notify the individual about the hospital facility's FAP and about how the individual may obtain assistance with the FAP application process.

A hospital facility may satisfy the notification requirements simultaneously for multiple episodes of care and notify the individual about the ECAs the hospital facility intends to initiate to obtain payment for multiple outstanding bills for care. However, if a hospital facility aggregates an individual's outstanding bills for multiple episodes of care before initiating one or more ECAs to obtain payment for those bills, it will have not have made reasonable efforts to determine whether the individual is FAP-eligible unless it refrains from initiating the ECAs until 120 days after it provided the first post-discharge billing statement for the most recent episode of care included in the aggregation.

**Complete or Incomplete FAP Applications**

In the case of an individual who submits an incomplete FAP application during the 240-day period (note that the 240-day periods start on the date the first “post-discharge” billing statement for care is provided), the hospital must suspend any ECAs until it provided the most recent post-discharge billing statement for care and states a deadline after which the hospital facility will have made reasonable efforts to determine whether an individual is FAP-eligible unless it refrains from initiating the ECAs until 120 days after it provided the first post-discharge billing statement for the most recent episode of care included in the aggregation.

In the case of an individual who submits a complete FAP application during the 240-day period, the hospital must provide the individual with a discharge billing statement for care and states a deadline after which such ECA(s) may be initiated that is no earlier than 30 days after the date that the written notice is provided; and

- Provides the individual with a billing statement that indicates the amount the individual owes for the care as a FAP-eligible individual and how that amount was determined and states, or describes how the individual can get information regarding, the AGB for the care; and
- Refund the individual any amount he or she has paid for the care (whether to the hospital facility or any other party to whom the hospital facility has referred or sold the individual's debt for the care) that exceeds the amount he or she is determined to be personally responsible for paying as a FAP-eligible individual, unless such excess amount is less than $5; and
- Take all reasonably available measures to reverse any ECA (with the exception of a sale of debt and an ECA to defer or deny care due to previous nonpayment) taken against the individual to obtain payment for the care.

Reasonably available measures to reverse any ECA may include taking measures to: vacate any judgment against the individual; lift any levy or lien (other than any lien described in paragraph § 501(r)-6(b)(3) of this section) on the individual's property; or remove from the individual's consumer report any adverse information that was reported to a consumer reporting agency.

**Determination Based on Complete FAP Applications**

A hospital facility will have made reasonable efforts to determine whether an individual is FAP-eligible if, before initiating any such ECAs, it determines whether the individual is FAP-eligible for the care based on a complete FAP application and otherwise meets the requirements described above for complete FAP applications. If these conditions are satisfied, the hospital facility will have made reasonable efforts to determine whether the individual is FAP-eligible for the care, regardless of whether it has notified the individual of the existence of the FAP.

**Determination Based on Medicaid Eligibility**

A hospital facility will be deemed to have made reasonable efforts to determine whether an individual is
FAP-eligible for care if, upon receiving a complete FAP application from an individual who the hospital facility believes may qualify for Medicaid, the hospital postpones determining whether the individual is FAP-eligible for the care until after the individual’s Medicaid application has been completed and submitted and a determination as to Medicaid eligibility has been made.\(^{53}\)

**When no FAP Application is Submitted**

It should be noted that the requirements above relating to incomplete and completed FAP applications only apply when an individual actually submits a FAP application. Assuming no FAP application is ever submitted, the hospital facility will have made reasonable efforts to determine whether the individual is FAP-eligible for care, and the hospital may initiate one or more ECAs to obtain payment for the care, once it has met the requirements that are not contingent on an individual’s submission of a FAP application.\(^{24}\) For example, unless and until a hospital facility receives a FAP application from an individual during the application period, the hospital facility has made reasonable efforts to determine whether the individual is FAP-eligible for care (and thus may initiate ECAs to obtain payment for the care) once it has notified the individual about the FAP as explained above under the section for notification requirements.\(^{55}\)

**Agreements with Other Parties**

If a hospital facility sells or refers an individual’s debt to another party during the 240-day application period, the hospital facility must have a legally binding written agreement with the party that no ECAs will be taken to obtain payment for the care until reasonable efforts have been made to determine whether the individual is FAP-eligible for the care.\(^{56}\) The regulations detail the minimum information that must be included in such an agreement.\(^{57}\)

**Anti-Abuse Rule**

A hospital facility will not have made reasonable efforts to determine whether an individual is FAP-eligible if the hospital facility bases its determination that the individual is not FAP-eligible on information that the hospital facility has reason to believe is unreliable or incorrect or on information obtained from the individual under duress or through the use of coercive practices. For purposes of this section, a coercive practice includes delaying or denying emergency medical care to an individual until the individual has provided information requested to determine whether the individual is FAP-eligible for the care being delayed or denied.\(^{58}\)

**Waiver Does Not Constitute Reasonable Efforts**

For purposes of the requirements to make reasonable efforts to notify individuals about the FAP, obtaining a signed waiver from an individual, such as a signed statement that the individual does not wish to apply for assistance under the FAP or receive the information for notification of the FAP, such waiver will not itself constitute a determination that the individual is not FAP-eligible and will not satisfy the requirement to make reasonable efforts to determine whether the individual is FAP-eligible before engaging in ECAs against the individual.\(^{59}\)

**Clear and Conspicuous Placement**

A hospital facility may print any written notice or communication described in the requirements for notification, including any plain language summary of the FAP, on a billing statement or along with other descriptive or explanatory matter, provided that the required information is conspicuously placed and of sufficient size to be clearly readable.\(^{60}\) Any written notice or communication described in the requirements for notification may be provided electronically (e.g., via e-mail) to any individual who indicates he or she prefers to receive the written notice or communication electronically.\(^{61}\)

**Community Health Needs Assessment**

It should also be understood that the Internal Revenue Code Section 501(r)(3) requires charitable hospitals to conduct a “community health needs assessment.”\(^{62}\) This requirement tells hospitals what to do to define and meet the needs of their community. Because this aspect of the Code and regulations is unlikely to require the involvement of third-party debt collectors, it is not addressed in this document. For more information on this section of the regulations, hospitals should consult the sections of Final Regulations cited here\(^{63}\) as well as the commentary that accompanies the final Regulations.

**Failure to Satisfy Requirements**

There is no private right of action for failure to comply with the regulations.\(^{64}\) A hospital organization that fails to comply with the requirements of Section 501(r) may lose its 501(c)(3) status or be subject to an excise tax depending on the level of noncompliance.\(^{65}\) The regulations provide, however, that minor or inadvertent errors and omissions will not result in the loss of 501(c)(3) status.\(^{66}\) The regulations also make clear that failures that were neither willful nor egregious shall be excused if the hospital facility corrects the failure and makes disclosure to the IRS.\(^{67}\)
**Effective Dates**

The statutory requirements of the Internal Revenue Code Section 501(r) are generally effective for taxable years beginning after March 23, 2010 (date of enactment). However, the community health needs assessment requirement applies for taxable years beginning after March 23, 2012.

The final regulations apply to taxable years beginning after Dec. 29, 2015. For taxable years beginning on or before Dec. 29, 2015, a hospital may rely on a reasonable, good faith interpretation of Section 501(r). A hospital will be deemed to have operated in accordance with a reasonable, good faith interpretation of section 501(r) if it has complied with the provisions of the proposed or final regulations under Section 501(r).

**Practical Considerations**

Debt collectors, as well as other companies impacted by the regulations, should begin discussions with hospital clients now in order to implement any required changes to collection practices. Make sure that your company understands the regulations so you can better assist your clients and reassure them that any required changes are implemented. Some of the actions that may be helpful include:

- Identify any actions that your company generally takes that are considered ECAs, so those activities can be separated from the healthcare collection process.
- Closely examine any “early out” or “pre-collect” services that are provided prior to 120 and 240 days from the first post-discharge billing notice to determine how those services will be impacted by the regulations.
- Understand that FAP eligible individuals may still end up in collections despite any process by the hospital designed to identify FAP-eligible individuals and prevent them from being placed in collections.
- Provide instruction to staff regarding the FAP of the hospital so that staff is prepared if and when patients ask about the hospital’s FAP and how to apply for financial assistance.
- Consider providing the service of sending the final notice required 30 days prior to initiating any ECAs.

**Conclusion**

For more detailed information on the regulations with respect to the creation of financial assistance policies and procedures or conducting a community health needs assessment, please review the Final Regulations issued by the IRS, which includes the agency’s extensive comments and analysis of the regulations. For more general tax information on charitable organizations, please review the information on charitable organizations and the requirements for 501(c)(3) hospitals under the Affordable Care Act on the IRS website. For general information about the Affordable Care Act, members can review document #3048, Patient Protection and Affordable Care Act – What it Means for the Collection Industry.

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1 26 U.S.C § 501(c)(3) (2012).
6 26 C.F.R. § 1.501(r)-4(b)(1)(iii)(B) (2015). To learn more about the basis for calculating charged to individuals see 26 C.F.R. § 1.501(r)-4(b)(2) of the rules, including the examples provided therein.
8 26 C.F.R. § 1.501(r)-4(b)(1)(iii)(D) (2015). For hospitals that do provide a separate billing and collection policy, more information about how to detail the actions that may be taken in the event of nonpayment can be found at 26 C.F.R. § 1.501(r)-4(b)(4)(ii) of the rules.
notification requirements in an alternative manner. Hospitals can satisfy the notification requirements in an alternative manner. See 26 C.F.R. § 1.501(r)-6(b)(3) (2015).

To review the methods of determining the amounts generally billed as well as explanations of the terms “gross charges” and “medically necessary,” review section 26 C.F.R. §§ 1.501(r)-5(b) of the rules.

See 26 C.F.R. § 1.501(r)-5(d) of the rules for the safe harbor provisions for certain charges in excess of AGB, and §§ 1.501(r)-5(c)-(e) of the rules for explanations of the terms “gross charges” and “medically necessary” care.

To review the methods of determining the amounts generally billed as well as explanations of the terms “gross charges” and “medically necessary,” review section 26 C.F.R. §§ 1.501(r)-5(b) of the rules.

See 26 C.F.R. § 1.501(r)-5(d) of the rules for the safe harbor provisions for certain charges in excess of AGB, and §§ 1.501(r)-5(c)-(e) of the rules for explanations of the terms “gross charges” and “medically necessary” care.


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