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## ISSUE: New Treasury Requirements for Charitable 501(c)(3) Hospitals

### OVERVIEW:

As hospitals await the release of final charity care rules, the Internal Revenue Service and Treasury issued two notices in 2014, instructing them to follow proposed rules that implement Affordable Care Act requirements.

"We want to remind charitable hospitals that they must also take important steps to protect patients – including protecting them from hidden and high prices, and unreasonable collection actions," the Treasury stated in a blog post about the guidance.

The first notice includes a procedure for hospitals to correct and disclose failures to satisfy the requirements under section 501(r) of the Internal Revenue Code. Following this process would assure hospitals that they would not lose their tax-exempt status, according to the Treasury.

The second notice specifies charitable hospitals' responsibilities under section 501(r). Specifically, the proposed rules require tax-exempt hospitals to "clearly define the financial assistance available, how to apply for it and publicize their policies so that community members are aware that aid is available."

The regulations also include provisions to "curb the use of discriminatory pricing and collection schemes—by providing that individuals eligible for financial assistance cannot be charged more for medically necessary care than insured individuals, explicitly prohibiting collections activities in emergency rooms and requiring tax-exempt hospitals to re-issue previous bills at a discounted amount if a patient is later determined to be eligible for financial assistance."

Section 501(r), added to the Code by the Patient Protection & Affordable Care Act (ACA), imposes new requirements on 501(c)(3) organizations that operate one or more hospital facilities (hospital organizations). Each 501(c)(3) hospital organization is required to meet four general requirements on a facility-by-facility basis:

- establish written financial assistance and emergency medical care policies;
- limit amounts charged for emergency or other medically necessary care to individuals eligible for assistance under the hospital's financial assistance policy;
- make reasonable efforts to determine whether an individual is eligible for assistance under the hospital's financial assistance policy before engaging in extraordinary collection actions against the individual; and

- Conduct a Community Health Needs Assessment (CHNA) and adopt an implementation strategy at least once every three years. (These CHNA requirements are effective for tax years beginning after March 23, 2012).

Under Code Section 501(r), which was enacted as part of the ACA, tax-exempt hospital organizations are required to (i) periodically conduct a community needs assessment; (ii) establish a financial assistance policy; (iii) limit charges for emergency or other necessary care; and (iv) refrain from engaging in extraordinary collection efforts. Since 2010, the IRS has been working to establish guidelines for compliance with these new requirements. In 2011, Notice 2011-52 was issued, which outlined anticipated regulatory provisions for the implementation and administration of the CHNA requirements. The IRS issued its first set of proposed regulations in June 2012, which addressed the other requirements of Code Section 501(r).

While AAHAM Supports the Intent of Section 501(r), the Proposed Rule, if made final, will impose more burdensome and duplicative paperwork on hospitals. This should not be the intent of any new regulations.

**Issue:**

If hospitals have effectively communicated their Financial Assistance Policy (FAP), the proposed 120-day notification period allows sufficient time for completion of a FAP application. Adding a second 120-day period that precludes collection actions requiring a legal or judicial process will inhibit collections from patients with resources available to pay rightly owed balances.

**Proposed Solution:**

The Fair Debt Collection Practices Act's 30-day notice for validation of debt should be applied after the provider turns an account over to a third-party collection agency. Additional notification periods are unnecessary.

**Issue:**

Emergency Medical Care Policy (EMCP) requirements both duplicate and conflict with federal Emergency Medical Treatment and Labor Act Requirements (EMTALA).

**Propose Solution:**

EMTALA should continue to be the controlling federal guidance for a hospital's interactions with patients in the emergency department.

**Issue:**

Requirements to demonstrate "reasonable efforts" are unnecessarily burdensome and will increase costs without increasing access to care or benefiting the patient.

**Proposed Solution:**

If hospitals document the steps taken to verify eligibility but have not had the cooperation of the patient, or are unable to establish presumptive charity from other records that should satisfy the requirement of "seeking to determine whether an individual is financial assistance policy (FAP)-eligible".

**Issue:**

The regulations appear to require that financial assistance for the insured may be provided only if the Amounts Generally Billed (AGB) is applied, which could limit access to assistance for the underinsured. The intent for the limitation on charges was to provide the uninsured the benefit of rates paid by the insured. Requiring that assistance for the insured is provided at the same level as the uninsured would create confusion and misapplication of the standard.

**Proposed Solution:**

The final regulations should confirm that hospitals may continue to offer assistance to the insured, at their discretion, though their financial assistance policies and clarify that the AGB does not apply to assistance for the insured.

**RECOMMENDATION:**

AAHAM urges Congress to request the U.S. Department of Treasury hold off issuing any final rule until issues above and others identified by industry are addressed. We would urge Congress to put off any final rule until there is a better understanding how any final rule will impact requirements included in the Affordable Care Act.

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