

About Hall Render

Hall, Render, Killian, Heath & Lyman is a full service health law firm with offices in Indiana, Kentucky, Michigan and Wisconsin. Since the firm was founded by William S. Hall in 1967, Hall Render has focused its practice primarily in the area of health law and is now recognized as one of the nation's preeminent health law firms serving clients in 40 states. For more information visit www.HallRender.com.

Office Locations

Indiana Offices

Downtown
One American Square
Suite 2000
Indianapolis, IN 46282
(317) 633-4884

North Office

8402 Harcourt Road
Suite 820
Indianapolis, IN 46260
(317)871-6222

Kentucky Office

614 West Main Street
Suite 4000
Louisville, KY 40202
(502) 568-1890

Michigan Office

Columbia Center, Suite 315
201 West Big Beaver Road
Troy, MI 48084
(248) 740-7505

Wisconsin Office

411 E. Wisconsin Avenue
Suite 900
Milwaukee, WI 53202
(414) 721-0442

Contact Us

hallrender@hallrender.com

Charity Care

Susan D. Bizzell
Kristine S. Pyzyrna

Executive Summary

Congressional hearings, media attention and class action lawsuits challenging hospital's charity care performance and collection activities have created a political climate where many predict Congress will impose some type of mandatory charity care requirement in order to maintain tax exempt status. In order to help safeguard their tax exempt status, hospitals that have not yet enacted a charity care policy should consider doing so. Hospitals that enacted already have a charity care should consider reviewing it. Guidelines issued by the Department of Health and Human Services ("DHHS"), Office of Inspector General "(OIG") provides assistance in navigating the Fraud and Abuse implications of Charity Care. Key elements of Charity Care policies include: Discount Type; Service Discounted Types, Collection Activities and Communications Regarding the Policy.

Discussion

I. IRS Position on Charity Care

Initially, hospitals were required to provide free or below cost health care to indigents in order to qualify for tax exemptions. With the advent of Medicare, the IRS softened this charity care requirement and to date has regarded the promotion of health for the benefit of the community to be a charitable purpose qualifying for tax exemption. This community benefit standard requires that a hospital be organized and operated exclusively for charitable purposes; that it promote the health of a class of persons broad enough to benefit the community as a whole; and that it be governed by a community board. A hospital must also have an open medical staff; accept Medicare and Medicaid, and have an Emergency Room open to all without regard to ability to pay. Surplus funds must be used to provide additional services or facilities. While charity care is a community benefit, a Charity Care Policy alone will not automatically enable a hospital to satisfy the community benefit standard. The hospital must be able to demonstrate that in addition to having a Charity Care Policy, it actually provides significant health care services to the indigent.

II. Could There Be a Charity Care Requirement in the Future?

Hospital billing and collection practices have come under intense scrutiny over the past several years. This includes Congressional hearings, media attention and class action law suits challenging hospital's charity care performance and collection activities. Developments in Illinois including the revocation of a hospital's state property tax exemption currently on appeal, and the recent introduction of the proposed Tax-Exempt Hospital Responsibility Act and Hospital Fair Billing and Collection Practices Act in Illinois have received nation-wide attention. If enacted, the Illinois Tax-Exempt Hospital Responsibility Act would require Illinois hospitals to furnish aggregate annual charity care in an amount equal to at least 8% of the hospital's total operating costs.

In light of the current unsettled political climate for tax exempt organizations, many are predicting that Congress will impose some type of mandatory charity care requirement, in order to maintain tax exemption in the future.

III. What Can Hospitals Do To Help Protect Their Tax Exempt Status?

If your hospital does not have a Charity Care Policy, now is the time to consider adopting one. If your hospital has a Charity Care Policy, now is a good time to review it.

IV. Fraud and Abuse Implications With Charity Care

Charity Care implicates Fraud and Abuse laws including the Civil Money Penalties Law which prohibits inducements to beneficiaries and the Anti-Kickback Statue which prohibits kickbacks to patients for self referrals. Guidelines issued by the Department of Health and Human Services ("DHHS"), Office of Inspector General ("OIG") provides that discounts to uninsured patients who are unable to pay their hospital bills are permissible as long as the discounts are not linked to the furnishing of items paid for by Medicare or Medicaid. In addition, providers may waive Medicare co-pays and deductibles if: The waiver of copay is not offered as part of any advertisement or solicitations; the provider does not routinely waive coinsurance or deductible amounts; and the hospital establishes reasonable financial guidelines based on objective criteria appropriate for the applicable locality and applies them uniformly to Medicare and non-Medicare patients. Hospitals may consider local cost of living, a patient's income, assets and expenses, family size and the scope and extent of a patient's medical bills.

Federal law permits OIG to exclude from Medicare (and any other federal health care program) any hospital that submits bills or requests for payment to Medicare for amounts that are substantially in excess of the hospital's usual charges. On September 15, 2003, the OIG issued a proposed rule that would define key terms such as substantially in excess and usual charges. Apparently mindful of the current criticism of hospitals for not discounting charges for uninsured and underinsured patients more generously, the OIG promises that, until such time as the proposed rule becomes final or is withdrawn, it will continue to be the OIG's enforcement policy that, when calculating usual charges, hospitals do not need to need to consider free or substantially reduced charges to uninsured patients or underinsured patients who are self-paying patients for the items or services furnished. In other words, discounts to uninsured or underinsured patients will not skew downward the calculation of a hospital's usual charges for purposes of

determining whether the hospital has submitted bills or requests for payment to Medicare that are substantially in excess of the hospital's usual charges.

V. Medicare Cost Apportionment

Offering discounts to uninsured patients need not impact a hospital's Medicare cost apportionment. Just like courtesy allowances and third-party payer allowances, hospitals' cost reports should reflect full uniform charges for discounted charges afforded to uninsured patients. In addition, hospitals need not obtain prior approval from CMS or their fiscal intermediaries before they begin reporting full charges for their discounts to uninsured patients. However, CMS recommends that hospitals make their fiscal intermediaries aware that they are reporting full charges for such discounts.

VI. Key Elements of a Charity Care Policy

Charity Care policies should generally address the following areas.

1. Types of Discounts Offered. These include:

- **Uninsured Discount:** This discount gives a flat discount for any uninsured patient based on the Medicare rate or most favorable managed care rate. Discounts of this type counter the common complaint that the uninsured are forced to pay inflated rates. On the other hand, it is possible that some patients who are not indigent could qualify for the uninsured discount. To address this concern, hospitals should consider asset/means testing and/or income caps.
- **Financially Indigent Discount:** Most Charity Care policies tie discounts to a determination of household income usually using Federal Poverty Levels (FPL). For example, households at 200% of the FPL would receive a 100% discount while hospitals at 400% of the FPL would receive a 25% discount.
- **Prompt Payment Discount and Payment Plans:** These plans require special consideration regarding Medicare copays and Federal Credit and Collection requirements. Hospitals can also consider a cap on annual payments, based on the patient's household income.
- **Courtesy Allowances:** Courtesy allowances are typically considered to be reductions in charges afforded to physicians, clergy, etc. However, the Provider Reimbursement Manual clearly provides that courtesy allowances can be afforded to any patients "as approved by the governing body" of the hospital. There are no other restrictions on the types of patients eligible for these allowances. Unlike indigency criteria, the application of a hospital's courtesy allowance criteria to all patients is not required. This represents a safer approach for discounting charges to uninsured patients who are not in financial need, rather than applying the hospital's indigency policy. For cost reporting purposes, a hospital should report full uniform charges for such courtesy allowances.

2. Types of Services that are Discounted: Policies vary in this respect but coverage could be limited to medically necessary, non-elective, emergency, urgent, inpatient/outpatient.

3. Collection Activities: Aggressive collection activities have come under increased scrutinizing and criticism. The hospital's Charity Care Policy should address collection activities that are acceptable and what is prohibited. The policy should expressly prohibit abusive collection techniques.

4. Communication Regarding the Policy: To be effective, the policy should be communicated and all hospital staff should be knowledgeable about the policy. While advertisements may be prohibited, generally informing all hospital patients of the existence of the hospital's Charity Care program and how to apply is recommended. Patient communication may include signs, information provided on admission, statements information included with bills and information provided by social services, discharge planners, chaplains and other patient advocates.



For further information, please contact your local counsel or Susan Bizzell or Kristine Pyzyna at Hall Render, Killian, Heath & Lyman, P.C., at 317/633-4884.

This publication is intended for general information purposes only and does not and is not intended to constitute legal advice. The reader must consult with legal counsel to determine how laws or decisions discussed herein apply to the reader's specific circumstances.