

501(C)(3) HOSPITALS: FINANCIAL ASSISTANCE AND COLLECTIONS POLICIES

This installment of Hall Render's Health Law Broadcast series on health care reform is designed to provide you with the insight, analysis and practical suggestions with respect to the various reform initiatives that will affect your organization.

Under the Patient Protection and Affordable Care Act ("PPACA"), charitable hospitals are required to implement specified financial assistance and collections policies in order to maintain their tax-exempt statuses under Internal Revenue Code § 501(c)(3). These requirements (as promulgated under Internal Revenue Code §501(r)) took effect for tax years beginning after March 23, 2010. The IRS released a revised Schedule H (with corresponding instructions) on February 11, 2011. Unfortunately, a number of key terms contained in this provision are not defined in PPACA. And while Schedule H provides some insight as to how the IRS will interpret and enforce §501(r), we still anxiously await regulatory guidance to clarify the terms of these provisions.

§ 501(R) FINANCIAL ASSISTANCE AND COLLECTIONS REQUIREMENTS

In order to maintain tax-exempt status under §501(c)(3), an organization that operates a facility that is required to be licensed, registered or similarly recognized by a state as a hospital must ensure that each hospital facility within the organization complies with the following requirements.

Financial Assistance Policy

Each hospital must implement and "widely publicize" a written financial assistance policy that includes:

- Eligibility criteria for financial assistance;
- Whether such assistance includes free and/or discounted care;
- The basis for calculating the amounts that will be billed to patients;
- How to apply for such assistance; and
- If the hospital does not have a separate billing and collections policy, the actions the hospital may take in the event of non-payment (i.e., collections actions, credit agency reporting).

Emergency Care Policy

Each hospital is required to adopt and implement a separate written policy requiring the provision of emergency medical care on a non-discriminatory basis, without regard to the hospital's financial assistance policy.

Limitation on Charges

Each hospital must limit the amount charged for emergency and other medically necessary care provided to individuals eligible for financial assistance to "not more than the amounts generally billed to individuals who have insurance covering such care" and may not bill such patients based upon "gross charges" (e.g., charge master rates). According to the legislative history, hospitals may compute the "amounts generally billed" by using the lowest negotiated commercial rate, the average of the three lowest commercial rates or the Medicare rate.

Billing and Collection Requirements

Hospitals are prohibited from engaging in "extraordinary collection actions" before making "reasonable efforts" to determine whether an individual is eligible for financial assistance. Legislative history indicates that:

- "Extraordinary collections actions" include lawsuits, liens on residences, arrests, body attachments, reporting to credit agencies or other similar collection processes. Caveat - failure to retain adequate control and oversight over an outside collection agency could potentially jeopardize the hospital's tax-exempt status.

- "Reasonable efforts" include notification by the hospital of its financial assistance policy upon admission and in written and oral communications with the patient regarding the patient's bill, including invoices and telephone calls, before collection action or reporting to credit agencies is initiated.

Hall Render will provide an update as regulations and additional interpretive guidelines become available. In the meantime, should you have any questions, please do not hesitate to contact Angela M. Smith at 317-977-1448 or asmith@hallrender.com or your regular Hall Render attorney.