

IRS PROPOSED REGULATIONS ON NEW REQUIREMENTS FOR CHARITABLE HOSPITALS: PART II - THE FINANCIAL ASSISTANCE POLICY PROVISIONS

This Health Care Tax News article is Part II in a series discussing the Proposed Regulations under Code Section 501(r). The previous installment provided a general overview of the Proposed Regulations and addressed their applicability to "Hospital Organizations" and "Hospital Facilities" and can be accessed by [clicking here](#).

The Patient Protection and Affordable Care Act ("ACA") introduced four broad requirements for Hospital Organizations that seek to attain or maintain exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). An overview of these requirements can be found [here](#). Included among these provisions is the requirement for Hospital Organizations to maintain a written financial assistance policy ("FAP") and a written emergency medical care policy for each Hospital Facility that identify and explain the financial assistance and emergency care available to their patients. The release of the Proposed Regulations on June 22, 2012 from the Internal Revenue Service ("IRS") will likely be welcomed by Hospital Organizations because there has been uncertainty regarding what constitutes compliance with these requirements for written policies.

STATUTORY REQUIREMENTS

The requirements, which are codified as Code Section 501(r)(4), mandate that a Hospital Organization's FAP for each Hospital Facility set forth: (i) eligibility criteria for financial assistance; (ii) the basis for calculating amounts charged to patients; (iii) the method for applying for financial assistance; (iv) in the event a Hospital Facility does not have another policy addressing billing and collections, what actions the Hospital Facility may take in the event of non-payment, including collections action and reporting to credit agencies; and (v) measures a Hospital Facility may take to widely publicize the policy to the community it serves. In addition, Hospital Organizations are required to maintain for each Hospital Facility a written policy requiring the organization to provide, without discrimination, care for emergency medical conditions to individuals regardless of their eligibility under the FAP.

PROPOSED REGULATIONS - FAP PROVISIONS

Proposed Regulation Section 1.501(r)-4 expands upon each of the requirements contained in Code Section 501(r)(4) and contains many specific provisions, as summarized below:

1. *Eligibility criteria.* The FAP must specify all financial assistance available under the policy, including all discount(s) and free care and, if applicable, the amount(s) to which any discount percentages will be applied (e.g., gross charges). In addition, the FAP must specify all of the eligibility criteria that an individual must satisfy to receive each such discount, free care or other level of assistance.
2. *Basis for calculating amounts charged to patients.* For purposes of calculating amounts charged to patients, the FAP must state that, following a determination of FAP eligibility, a FAP-eligible individual will not be charged more for emergency or other medically necessary care than the amounts generally billed to individuals who have insurance covering such care ("AGB"). The FAP must also describe the basis for determining AGB or otherwise explain how members of the public may readily obtain this information in writing and free of charge.
3. *Method for applying for financial assistance.* The FAP must describe how an individual applies for financial assistance under the FAP. In addition, either the FAP or application form (including accompanying instructions) must describe the information and documentation that may be required from an individual to submit as part of his or her FAP application. Furthermore, financial assistance may not be denied under the FAP based on an applicant's failure to provide information or documentation that the FAP or FAP application form does not require an individual to submit as part of a FAP application.
4. *Actions that may be taken in the event of non-payment.* The FAP must describe: (i) any actions that may be taken relating to obtaining payment of a bill for medical care, including, but not limited to, any extraordinary collection actions; (ii) the process and time frames for taking the actions described above, including, but not limited to, the reasonable efforts that will be taken to determine whether an individual is FAP-eligible before engaging in any extraordinary collection actions; and (iii) the office, department, committee or other

body with the final authority or responsibility for determining that reasonable efforts were taken to determine whether an individual is FAP-eligible. The Proposed Regulations also indicate that these provisions can be described in a separate written billing and collections policy established by the Hospital Organization (or a facility thereof) so long as the FAP references such policy and explains how members of the public may readily obtain a free copy of this separate policy.

5. *Widely publicizing the FAP.* The FAP must describe the measures taken to make the FAP, FAP application form and a plain language summary of the FAP widely available, either on a website or upon request and without charge, both in public locations in the Hospital Facility and by mail. The description must be in English and in the primary language of any populations with limited proficiency in English that constitute more than 10% of the residents of the community served by the Hospital Facility. The FAP must also inform and notify visitors to the Hospital Facility about the FAP through conspicuous public displays or other measures reasonably calculated to attract visitors' attention, and inform and notify residents of the community served by the Hospital Facility about the FAP in a manner reasonably calculated to reach those members of the community who are most likely to require financial assistance. As an alternative, the FAP may explain how members of the public may readily obtain a free, written description of how the FAP is widely publicized.

Whether one or more measures to widely publicize a FAP are reasonably calculated to inform and notify visitors to a Hospital Facility or residents of a community about the FAP will depend on all of the facts and circumstances, including the primary language(s) spoken by the residents of the community served by the Hospital Facility and other attributes of the community and the Hospital Facility.

PROPOSED REGULATIONS - EMERGENCY MEDICAL CARE PROVISIONS

The policy concerning emergency medical care must require that the applicable Hospital Facility provide, without discrimination, care for emergency medical conditions to individuals regardless of whether they are FAP-eligible. The policy must prohibit the Hospital Facility from engaging in actions that discourage individuals from seeking emergency medical care, such as by demanding that emergency department patients pay before receiving treatment for emergency medical conditions or by permitting debt collection activities in the emergency department or in other areas of the Hospital Facility where such activities could interfere with the provision, without discrimination, of emergency medical care. It is important to note that the Proposed Regulations indicate that compliance with the rules under the Emergency Medical Treatment and Labor Act ("EMTALA") will constitute compliance with the requirements of the Proposed Regulations.

MISCELLANEOUS REQUIREMENTS

Adoption and Implementation. The Proposed Regulations provide that these policies are considered to be established only if an authorized body of the Hospital Organization has adopted the policy for the Hospital Facility and the Hospital Facility has implemented the policy. An authorized body can be the governing body, a committee of the governing body or other parties authorized by the governing body to act on its behalf. A Hospital Facility is considered to have implemented a policy if it has consistently carried out the policy.

Multiple Facilities. A Hospital Organization operating more than one Hospital Facility must separately establish a FAP and emergency medical care policy for each Hospital Facility it operates. Such policies may contain the same operative terms for each facility, but there may be unique attributes of the communities served that may require the use of different information for purposes of calculating the AGB and taking measures to widely publicize the FAP.

CONCLUSION

Most Hospital Organizations maintained a FAP and an emergency medical care policy prior to the enactment of the ACA, and many others likely adopted policies soon thereafter. The detailed nature of the requirements contained in the Proposed Regulations will make it very important for organizations to evaluate the contents of their policies and determine whether any changes are warranted. Hospital Organizations that maintain multiple locations should be especially focused on whether a separate FAP and emergency medical care policy are in place for each Hospital Facility in order to ensure compliance.

Should your organization require assistance in evaluating the Proposed Regulations, please contact Jeffrey L. Carmichael at 317.977.1443 or jcarmichael@hallrender.com, Calvin R. Chambers at 317.977.1459 or cchambers@hallrender.com or your regular Hall Render attorney.