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Financial assistance policy and emergency medical care policy – Section 501(r)(4)

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In addition to the general requirements for tax exemption under Section 501(c)(3) and Revenue Ruling 69-545 PDF, hospital organizations must meet the requirements imposed by Section 501(r) on a facility-by-facility basis in order to be treated as an organization described in Section 501(c)(3). These additional requirements are:

1. Community Health Needs Assessment (CHNA) - Section 501(r)(3),
2. Financial Assistance Policy and Emergency Medical Care Policy - Section 501(r)(4),
3. Limitation on Charges - Section 501(r)(5), and
4. Billing and Collections - Section 501(r)(6).

Section 501(r)(4) requires a hospital organization to establish a written financial assistance policy (FAP) and a written emergency medical care policy for a hospital facility it operates.

Financial assistance policy

A 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.

For purposes of Section 501(r), emergency medical care is care provided by a hospital for emergency medical conditions as defined in Section 1867 of the Social Security Act (42 U.S.C. 1395dd). A hospital facility may (but is not required to) define medically necessary care under the laws of the state in which it is licensed, including the Medicaid definition, or a definition that refers to the generally accepted standards of medicine in the community or to an examining physician's determination.

The written FAP must be widely publicized and include:

- Eligibility criteria for financial assistance, and whether such assistance includes free or discounted care
- The basis for calculating amounts charged to patients
- The method for applying for financial assistance
- For a hospital facility which does not have a separate billing and collections policy, the actions that may be taken in the event of nonpayment,
- If applicable, any information obtained from sources other than an individual seeking financial assistance that the hospital facility uses, and whether and under what circumstances it uses prior FAP-eligibility determinations to presumptively determine that the individual is FAP-eligible, and,

- a list of any providers, other than the hospital facility itself, delivering emergency or other medically necessary care in the hospital facility that specifies which providers are covered by the FAP and which are not.

Eligibility criteria for financial assistance and basis for calculating amounts charged

A FAP must specify the eligibility criteria that an individual must satisfy to receive each discount, free care, or other level of assistance available under the FAP.

A FAP must specify all financial assistance available under the FAP, including all discounts and free care, and, if applicable, the amount(s) (for example, gross charges) to which any discount percentages will be applied. Consistent with the limitation on charges requirement described below, a FAP must indicate that, following a determination of FAP-eligibility, a FAP-eligible individual may not be charged more than Amounts Generally Billed (AGB) for emergency or medically necessary care.

A FAP must also specify the method the hospital facility uses to determine AGB. If it uses the look-back method, the FAP must state the AGB percentage(s) that the hospital facility uses to determine AGB and describe how the percentage(s) were calculated. Alternatively, the FAP may explain how members of the public may readily obtain such percentage(s) and accompanying description of the calculation in writing and free of charge. See Limitation on Charges – Section 501(r)(5), for more detail on AGB and the methods used to calculate it.

Not all discounts a hospital facility might offer its patients are properly viewed as financial assistance. Hospital facilities may offer payment discounts or other discounts outside of their FAPs and may charge discounted amounts greater than AGB to individuals that are not FAP-eligible. Therefore, a FAP is only required to describe discounts “available under the FAP” rather than all discounts offered by the hospital facility. Only the discounts specified in a hospital facility’s FAP (and, therefore, subject to the AGB limitation) may be reported as “financial assistance” on the Form 990 Schedule H, Hospitals.

Method for applying for financial assistance

A hospital facility's FAP must describe how an individual applies for financial assistance under the FAP. In addition, either the FAP or FAP application form (including accompanying instructions) must describe the information or documentation an individual may be required to provide as part of their FAP application and must also provide certain contact information.

Financial assistance may not be denied based on the omission of information or documentation if the information or documentation was not specifically required by the FAP or FAP application form. A hospital facility may grant financial assistance under its FAP despite an applicant’s failure to provide information or documentation described in the FAP or FAP application form. For example, a hospital facility may grant financial assistance based on an attestation by the applicant or on other evidence even if it’s not described in a FAP or FAP application form.

Actions that may be taken in the event of nonpayment

Either a hospital facility's FAP or a separate written billing and collections policy established for the hospital facility must describe:

- Any actions that the hospital facility (or other authorized party) may take related to obtaining payment of a bill for medical care, including, but not limited to, any extraordinary collection actions (ECAs) described in Section 501(r)(6) (see section "Billings and Collections – 501(r)(6)" below for more detail on ECAs);
- The process and time frames the hospital facility (or other authorized party) uses in taking the actions described, including, but not limited to, the reasonable efforts it will make to determine whether an individual is FAP-eligible before engaging in any ECAs (as described in "Billings and Collections – 501(r)(6)" below); and
- The office, department, committee, or other body with the final authority or responsibility for determining that the hospital facility has made reasonable efforts to determine whether an individual is FAP-eligible and may therefore engage in ECAs against the individual.

In the case of a hospital facility that has a separate written billing and collection policy, the hospital facility's FAP must state that the actions the hospital facility may take in the event of nonpayment are described in a separate billing and collections policy and explain how the public may readily obtain a free copy of that separate policy.

FAP must be widely publicized

A hospital facility must widely publicize its FAP in the community it serves by:

- Making the FAP, FAP application form, and plain language summary of the FAP (the FAP documents) widely available on a website,
- Making paper copies of the FAP documents available upon request and without charge by mail and in public locations in the hospital facility, including at a minimum in the emergency room (if any) and admissions areas,
- Notifying and informing members 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, and
- Notifying and informing visitors to the hospital facility about the FAP.

Widely available on a website

For the FAP documents to be considered widely available on a Web site, a hospital facility must satisfy three requirements:

- Post complete, current versions of the FAP documents on a Website, normally the hospital facility's Web site. If the hospital facility doesn't have its own Website separate from its hospital organization, it may post the FAP documents on the hospital organization's Website or on a

Website established and maintained by another entity. The Website of the hospital facility or hospital organization (if there is one) must provide a conspicuously-displayed link to the web page on which the document is posted, along with clear instructions for accessing the document on the Website.

- Any individual with Internet access must be able to access, download, view, and print a hard copy of the FAP documents without requiring special computer hardware or software (other than software that is readily available to members of the public without payment of any fee) and without payment of any fee. An individual must be able to access the FAP documents without creating an account or being required to provide personally identifiable information, and
- The hospital facility must provide any individual who asks how to access a copy of the FAP documents with the direct Website address, or URL, of the web page on which these documents are available.

Notifying and informing visitors and members of the community

A measure will notify and inform members of a community or visitors to the hospital (patients) about the hospital facility's FAP if the measure, at a minimum, notifies the reader or listener that the hospital facility offers financial assistance under a FAP and informs him or her about how or where to obtain more information about the FAP and FAP application process and to obtain copies of the FAP documents.

For purposes of notifying and informing visitors to the hospital, the hospital facility must (1) offer a paper copy of the plain language summary of the FAP to patients as part of the intake or discharge process; (2) include a conspicuous written notice on billing statements that notifies and informs recipients about availability of financial assistance under the FAP and includes the telephone number of the hospital facility office or department that can provide information about the FAP and the FAP application process and the direct Web site address (or URL) where copies of the FAP documents may be obtained; and (3) set 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.

A hospital facility may provide electronically (for example, on an electronic screen, by email, or by providing the direct Website address, or URL, of the Web page where the document or information is posted) any document or information that is required under the FAP rules to be provided in paper form to any individual who indicates he or she prefers to receive or access the document or information electronically.

Plain language summary of the fap

The plain language summary of the FAP is a written statement that notifies an individual the hospital facility offers financial assistance under a FAP and that provides additional information in language that is clear, concise, and easy to understand. This must include:

- A brief description of the eligibility requirements and assistance offered under the FAP
- A brief summary of how to apply for assistance under the FAP
- The direct Website address (or URL) and physical location(s) where the individual can obtain copies of the FAP and FAP application form
- Instructions on how the individual can obtain a free copy of the FAP and FAP application form by mail
- The contact information, including telephone number and physical location, of
    - the hospital facility office or department that can provide the individual with information about the FAP application process, and
    - the hospital facility office or department that can provide assistance with the FAP application process, or if none, at least one nonprofit organization or government agency that the hospital facility has identified as an available source of assistance with FAP applications.
- A statement of the availability of translations of the FAP documents, if applicable, and
- A statement that a FAP-eligible individual may not be charged more than AGB for emergency or other medically necessary care.

Translation of FAP documents

To widely publicize its FAP, a hospital facility must accommodate all significant populations that have limited English proficiency (LEP) by translating the FAP documents into the primary language spoken by these populations. It must make the FAP documents available in the language spoken by each LEP language group that constitutes the lesser of 1,000 individuals or 5 percent of the community served by the hospital facility or the population likely to be affected or encountered by the hospital facility. A hospital facility may determine the percentage or number of LEP individuals in the hospital's community or that are likely to be affected or encountered by the hospital facility using any reasonable method.

The FAP translation should be made available in all the same ways the English version is available, for example, the website, distributed to organizations serving the community, and displayed and distributed in the facility.

Provider list requirement

A hospital facility's FAP must include a list of providers, other than the hospital facility itself, delivering emergency or medically necessary care in the hospital facility. It must specify which providers are covered by the hospital facility's FAP and which are not. Notice 2015-46 describes how a hospital facility specifies the providers and care covered by the FAP, updates the FAP, and addresses errors and omissions in the provider list.

Emergency medical care policy

A hospital facility must establish a written policy to provide, without discrimination, care for emergency medical conditions to individuals, regardless of whether they are FAP-eligible. Emergency medical conditions are defined in the Emergency Medical Treatment and Labor Act (EMTALA), Section 1867 of the Social Security Act.

An emergency medical care policy will generally satisfy this standard if it requires the hospital facility to provide the care for any emergency medical condition that the hospital facility is required to provide under Subchapter G of Chapter IV of Title 42 of the Code of Federal Regulations, which is the subchapter regarding the Centers for Medicare and Medicaid Services' (CMS) standards and certification that includes the regulations under the EMTALA.

A hospital facility's emergency medical care policy must prohibit the hospital facility from engaging in actions that discourage individuals from seeking emergency medical care. Such actions include demanding that emergency department patients pay before receiving treatment for emergency medical conditions or 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 regardless of where such activities occur.

Establishing and implementing policies

A hospital organization will have established a FAP, a separate billing & collection policy, or an emergency medical care policy for a hospital facility only if an authorized body of the hospital facility has adopted the policy and the hospital facility has implemented the policy.

An authorized body of a hospital facility is:

- The governing body (that is, the board of directors, board of trustees, or equivalent controlling body) of the hospital organization that operates the facility,
- A committee of the governing body to the extent that the committee is permitted by state law to act on behalf of the governing body,
- Other party authorized by the governing body to the extent that the other party is permitted by state law to act on behalf of the governing body, or
- The governing body (or a committee of or other party authorized by the governing body to the extent permitted under state law to act on behalf of the governing body) of an entity that operates the hospital facility and is disregarded or treated as a partnership for federal tax purposes.

A hospital facility has implemented a policy if it consistently carries out the policy. Whether a policy is consistently carried out is determined based on all the facts and circumstances. However, if the authorized body of a hospital facility adopts a policy and provides reasonable resources for and exercises due diligence regarding its implementation, then the standard should be met.

A hospital organization may establish a FAP, billing and collections policy, and/or emergency medical care policy for a hospital facility that is identical to that of other hospital facilities or a joint policy that is shared with multiple hospital facilities provided that any joint policy clearly identifies each facility to

which it applies. However, hospital facilities that have different AGB percentages or use different methods to determine AGB must include in their FAPs (or in the case of information related to AGB percentages, otherwise make readily obtainable in a separate document) different information regarding AGB to meet the requirement related to the FAP specifying the method used to determine AGB.

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