Section 501 r Final Regulations: Financial Assistance, Billing & Collection
OR
How I Learned To Love My Federal Tax Exemption

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Disclosure

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About the Presenter

Mark Rukavina, principal of Community Health Advisors, LLC, has more than 25 years of experience working on health policy issues. Community Health Advisors, LLC offers customized service to hospitals to ensure compliance with regulatory mandates and protection of federal tax exempt status.

He is recognized for his policy expertise on healthcare affordability, community benefits, & community health improvement. Mark recently testified before the Consumer Financial Protection Bureau and has testified before House & Senate Congressional committees.

He recently served on the Healthcare Financial Management Association/ACA International Medical Debt Task Force and HFMA’s Price Transparency Task Force. He currently advises HFMA on their Dollars and Sense Initiative.

Prior to founding CHA, he served as executive director of The Access Project, a national non-profit and also served as Program Director for a partnership under a national demonstration program sponsored by AHA’s Health Research and Educational Trust.

He holds an MBA from Babson College & a BS from of the University of Massachusetts in Amherst.

TODAY’S AGENDA

• Overview of major clarifications and changes for financial assistance, billing & collection, and limitation on charges in final regulations
• Leading practices to ensure hospitals meet transparency requirements
• Actions of the Consumer Financial Protection Bureau
• Discussion of compliance steps to be taken in 2015
• Questions and discussion
IRS and Treasury Issue
Final Regulations on Section 501r

- December 29, 2014 – Final Regulations issued with transition period.
- Final regulations apply to tax years beginning after December 29, 2015.
- For earlier years (today), hospitals may rely on a reasonable, good faith interpretation of the statute.

Do not delay - take action and implement these regs!

Transparency

Regulations make reference to the statute’s objective of promoting transparency of a hospital’s CHNA, FAP, and of providing protections to FAP-eligible patients with respect to charges and collections.

- Be Accountable
- Be Clear
- Be Consistent
Financial Assistance Policy (FAP)

- Applies to all emergency and other medically necessary care provided by hospital
- Requirements of what is to be included in an FAP

One Major Change: Policy must list any providers delivering emergency or medically necessary care and specify which are and which are not covered under FAP.

Emergency Medical Care Policy

- Requires hospital to provide, without discrimination, care for emergency conditions regardless of whether individual is FAP-eligible.
Widely Publicize

- FAP, FAP application, plain language summary widely available on web.
- Meet requirements to make available upon request.
- Inform community in manner reasonably calculated to reach those most likely to require assistance

Notify and Inform Patients

- Offer paper copy of plain language summary, as required.
- Conspicuous written notice on billing statement contains required information
- Conspicuous public displays, at minimum in ED (if any) and admission areas
Accessibility for Limited English Proficient Individuals

- Translate for limited English proficient populations for each language group constituting lesser of 1,000 or 5% of community served by hospital

Applying for Assistance

- Describe how to apply and meet information/documentation requirements
Limitations on Charges

• FAP-eligible individuals charged not more for emergency or other medically necessary care, than the *amounts generally billed* those who have insurance coverage.
• If other medical care covered under FAP, must charge less than gross charges for such care.
• *Charged* applies to only amount an individual is personally responsible to pay.

Amounts Generally Billed

• Look-back method for claims allowed by specific programs or insurers.
• Prospective Payment Method.
Changing AGB Method

- The final rules do allow hospitals to change the method at any time but only after updating the FAP describing the method to be used prior to implementing the change.

Safe Harbor

- If hospital charges more than AGB for emergency or medically necessary care to FAP-eligible individual, there is a safe harbor providing hospital meets certain requirements.
  - Charge in excess of AGB was not made or requested as pre-condition of receiving care
  - At time of charge, individual had not submitted complete application or had not been determined FAP-eligible
  - If individual applies and is subsequently determined eligible, hospital refunds any amount in excess of amount determined to be responsible for under FAP (unless less than $5)
Billing and Collection Policy

• Describe collection actions that may be utilized in the event of nonpayment including extraordinary collection actions (ECAs)
• Reasonable efforts made to determine whether someone is FAP-eligible before engaging in ECAs
• Provide information to ensure that reasonable efforts were made prior to initiating ECAs.
• Process and time frame before initiating actions

Extraordinary Collection Actions

• Stipulate which collection actions hospital has been authorized to utilize in event of non-payment.
Responsible Parties - ECAs

• The final regulations hold a hospital accountable for the ECAs of all third parties collecting debt on its behalf and to which it sells debt.

Deferring or Denying Care

• Final regulations include deferring or denying care as an ECA if hospital delays care or requires payment before providing care to an individual with outstanding balance, unless hospital can demonstrate that it is based on other factors, not nonpayment of past bills.
**Notification**

- Final regulations significantly change what was included in the notice of proposed rulemaking under application and notification periods.
- Waiting period of 120 days from date of first post-discharge billing statement if no FA determination has been made.
- Written notice must be provided at least 30 days in advance of initiating specific ECAs and meet informational requirements.

**Application Period**

- Hospital must accept and process an application for financial assistance for 240 days after the first post-discharge billing statement.
- If hospital chooses, it may extend this period.
Determining Medicaid Eligibility

- If hospital believes has received a complete application from an individual from whom it believes may qualify for Medicaid, it may postpone making FA determination until Medicaid application is completed, submitted, and a Medicaid eligibility determination made.

Presumptive FAP-Eligibility

- Hospital will have made reasonable effort to determine eligibility if it utilizes information other than that provided by individual or based on prior FAP-eligibility determination.
- Presumptive eligibility must be described in FAP
Presumptive Eligibility for Less Than Most Generous Assistance

Must meet the following conditions:

• Notify individual regarding the basis for PE determination.
• Provide information on how to apply for more generous assistance and allow reasonable time prior to initiating ECAs
• Process complete application by end of application period or within reasonable time period

Ineligibility Based on PE

• The final regulations do NOT treat as a reasonable effort a presumptive determination that an individual is NOT FAP-eligible.
• You can’t use the presumptive method to deny financial assistance!
Anti-Abuse Rule

• Hospital will NOT have made reasonable effort if makes determination based on information hospital has reason to believe is unreliable, incorrect, or obtained under duress or thru coercive practices
• Delaying or denying emergency medical care until individual provides requested info is considered a coercive practice

Waiver NOT a Reasonable Effort

A signed waiver stating that an individual does not wish to apply for, or receive information on, assistance, will not constitute a determination that the individual is not FAP-eligibility and will not satisfy the requirement of reasonable efforts to determine whether a patient is FAP-eligible before engaging in ECAs.
Establishing Policies

Financial assistance and billing & collection policies are established only after adopted by authorized body.

Failure to Satisfy Section 501 r

• A hospital failing to meet one or more of the Section 501 requirement may have its 501 (c )(3) status revoked as of first day of the taxable year in which failure occurs.
• Facts and circumstances approach
Minor Errors and Omissions

• Not considered failure if following satisfied:
  – Due to inadvertent or reasonable cause
  – Hospital corrects as promptly after discovery as is reasonable, given nature
  – If multiple omissions or errors, only if minor in aggregate

Taxation of Non-Complaint Hospitals

• Income derived from non-compliant hospital during that taxable year, will be subject to tax
• For organizations operating more than one hospital, only non-compliant hospital taxed
• Non-compliance may not affect the tax-exempt status of bonds issued to finance the non-compliant hospital
Leading Practices

• Provide easy access to FAP and application
  – Develop *Financial Assistance* section on Website
  – Partner with community groups to promote FAP

• Streamline/simplify application process

• Utilize predictive modeling for presumptive eligibility reasonable efforts

• Train internal and external staff

• Monitor complaints

Consumer Financial Protection Bureau

[Image of the Consumer Financial Protection Bureau logo with the words 'Educate', 'Enforce', and 'Study']
CFPB May 2014 Study: Americans Unfairly Penalized by Medical Debt

Data point: Medical debt and credit scores

May 2014

CFPB Study Finds Medical Debt Overly Penalizes Consumer Credit Scores

MAY 23 2014

WASHINGTON, D.C. — Today the Consumer Financial Protection Bureau (CFPB) released a research report that found consumer credit scores may be overly penalized for medical debt that goes into collections and stays on their credit report. According to the study, credit scoring models may underestimate the creditworthiness of consumers who own medical debt in collections. The scoring models also may not be crediting consumers who repay medical debt that has gone to collections.

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CFPB Action Against CareCredit

The CFPB alleged that staff in healthcare provider offices marketed the credit card without proper training or a full understanding of the cards’ terms and conditions. As a result, many patients did not understand the interest charges and accrued substantial interest, as a result. CareCredit settled with the CFPB by agreeing to set up $34.1 million reimbursement fund for affected consumers and to improve its sales and marketing practices.

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CFPB December 2014 Study
Credit Reports & Medical Collections

CFPB issues report finding:
• 43 million Americans have medical collection on credit report
• Half of all overdue debt on credit reports is from medical debt
• One out of five credit reports contains overdue medical debt
• 15 million consumers have only medical debt on their credit reports
• Average reported medical debt is $579
• CFPB Director Richard Cordray: “The CFPB is taking action to improve credit report accuracy. Getting medical care should not make your credit report sick.”

CFPB Consumer Complaints

• A large number of collection complaints involved medical debt.
• A majority of these complaints focused on the consumer’s belief that the insurance should have or already paid off the account being collected.
• Consumers report that their ability to get an accurate accounting of the amount owed and the amount already paid from the debt collector is a common problem.

Debt Collection Complaints, Received in January and February of 2015
• Sharp increase in collection complaints related to medical bills.
• In January, medical debt collection complaints made up 15.7 percent of all complaints, 14.2 percent in February.
• These figures were far above the 11.5 percent of complaints attributed to medical bills for all of 2014.
How to Protect Hospital Federal Tax Exemption

• If hospitals may rely on reasonable, good faith interpretation of the statute, look at the statute!

Steps To Be Taken During Calendar Year 2015

• Audit and revise policies and procedures
• Secure policy approval from authorized body
• Widely publicize policies
• Train hospital staff and staff of vendors to ensure adherence to policy
Questions

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