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## The IRS Is Checking Hospitals for Compliance with Section 501(r)

The IRS is hard at work reviewing hospitals for compliance with new requirements imposed by section 501(r) of the Internal Revenue Code. A recently released [work plan](#) of the IRS Tax Exempt and Government Entities Division reveals that as of June 30, 2016, the IRS had completed 692 reviews and referred 166 hospitals for field examination and that the agency will continue its section 501(r) compliance checks throughout the 2017 fiscal year. The issues for which exam referral have been made include failure to meet the requirements related to:

- Community health needs assessment under section 501(r)(3).
- Financial assistance or emergency medical care policies under section 501(r)(4).
- Billing and collection under section 501(r)(6).

The final regulations implementing the section 501(r) requirements apply to a charitable hospital's first taxable year beginning in 2016, meaning that hospitals have yet to complete a taxable year in which they are required to comply with these regulations. Nonetheless, the questions in the Information Document Requests (IDRs) that tax-exempt hospitals have been receiving from the IRS have been fairly granular in nature and appear to implicate the regulatory requirements. For example, with respect to financial assistance policies (FAPs), the IDRs have requested, among other items of information:

- An on-site tour of all signage and publications that are present in all hospital facilities regarding the FAP.
- A representative billing statement provided to a patient after discharge (which is presumably being checked for notifications about the FAP).
- A copy of any translated FAP documents and a description of the methodology used to ensure that any limited English proficiency populations served by the hospital organization have access to these translated documents.

The regulations under section 501(r) are very detailed, which means compliance “foot faults” can easily occur. Fortunately, the regulations allow hospitals to self-correct minor errors and omissions, and a hospital that

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promptly self-corrects is treated as never having failed to comply with section 501(r) at all. Hospitals that have identified and self-corrected compliance issues before receiving an IDR from the IRS are in a much better position to avoid an exam referral.

[Preston Quesenberry](#), the author of the section 501(r) regulations, is an attorney with Loeb & Loeb and is available to help your hospital with its section 501(r) compliance needs. The following is a compliance checklist that Mr. Quesenberry has prepared summarizing the requirements related to the FAP and emergency medical care policy requirements under section 501(r)(4). If you have any questions related to your hospital's section 501(r) compliance needs, please contact Mr. Quesenberry at [pquesenberry@loeb.com](mailto:pquesenberry@loeb.com) or 202-524-8470.

## Compliance Checklist

### 1. Financial Assistance Policies (FAPs)

- ☐ Does your hospital have a written financial assistance policy (FAP)?
- ☐ Has your hospital's FAP been adopted by the hospital's board, a committee of that board or a hospital official (or other party) authorized by the board?
- ☐ Does your hospital's FAP cover all emergency and other medically necessary care provided by the hospital?
- ☐ Does your hospital's FAP specify all discounts and free care available under the FAP and the eligibility criteria associated with each of these discounts and free care?
- ☐ If your hospital's FAP expresses discounts in terms of percentages, does it specify the amounts (for example, gross charges) to which these percentages will be applied?
- ☐ Does your hospital's FAP specify the method the hospital uses to determine the amounts generally billed to individuals who have insurance covering emergency or other medically necessary care (AGB)?
- ☐ If the hospital uses the "look-back" method to determine AGB, does your hospital's FAP state the percentage(s) that the hospital uses to determine AGB and describe how the hospital calculated such percentage(s)?
  - ☐ If not, does the FAP explain how members of the public may readily obtain such percentage(s) (and accompanying description) in writing and free of charge on the hospital's website, by mail and in public locations in the hospital, including, at a minimum, the emergency room (if any) and admissions areas?
- ☐ Does your hospital's FAP contain a list of providers, other than the hospital itself, delivering emergency or other medically necessary care in the hospital and does that list specify which providers are covered by the FAP and which are not?

- ☐ If applicable, does your hospital's FAP describe any information obtained from outside sources (that is, sources other than the patient applying for assistance) that the hospital uses to determine that a patient is eligible for financial assistance (FAP-eligible)?
- ☐ If applicable, does your hospital's FAP describe whether and under what circumstances it uses prior FAP-eligibility determinations to determine that a patient is FAP-eligible?
- ☐ Does your hospital's FAP describe how an individual may apply for financial assistance under the FAP and does it (or your hospital's FAP application form) describe all information and documentation the hospital may require an individual to provide as part of his or her FAP application?
- ☐ Does your hospital's FAP or FAP application form contain the contact information, including telephone number and physical location, of the hospital office or department that will provide information about the FAP and of either
  - ☐ The hospital office or department that can provide assistance with the FAP application process, or
  - ☐ If the hospital doesn't provide assistance with the FAP application process, at least one nonprofit organization or government agency that the hospital has identified as an available source of assistance with FAP applications?
- ☐ Has your hospital prepared a plain language summary of your hospital's FAP that contains the contact information described in the preceding question, as well as the following information in language that is clear, concise and easy to understand?
  - ☐ 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 locations 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.
  - ☐ A statement of the availability of translations of the FAP, the FAP application form and a plain language summary of the FAP in other languages, if applicable.
  - ☐ A statement that a FAP-eligible individual may not be charged more than AGB for emergency or other medically necessary care.

- ☐ Does either your hospital's FAP or a separate billing and collection policy of your hospital describe the following?
  - ☐ Any actions that the hospital (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).
  - ☐ The process and time frames the hospital (or other authorized party) uses in taking the actions to obtain payment, including, but not limited to, the reasonable efforts it will make to determine whether an individual is FAP-eligible before engaging in any ECAs.
  - ☐ The office, department, committee or other body with the final authority or responsibility for determining that the hospital has made reasonable efforts to determine whether an individual is FAP-eligible and may therefore engage in ECAs against the individual.
- ☐ If your hospital has a separate billing and collection policy (as opposed to including this information in its FAP), does the hospital's FAP state that the actions the hospital may take in the event of nonpayment are described in a separate billing and collections policy and explain how members of the public may obtain this policy in writing and free of charge on the hospital's website, by mail and in public locations in the hospital, including, at a minimum, the emergency room (if any) and admissions areas?
- ☐ Does your hospital conspicuously post a complete and current copy of its FAP, FAP application form and plain language summary of the FAP on its website? Is it available on the website free of charge and without requiring the reader to create an account or provide personally identifiable information?
- ☐ Does your hospital make paper copies of the FAP, FAP application form and plain language summary of the FAP available upon request and without charge, both by mail and in public locations in the hospital, including, at a minimum, in the emergency room (if any) and admissions areas?
- ☐ Does your hospital notify and inform members of the community it serves about its FAP in a manner reasonably calculated to reach those members who are most likely to require financial assistance from the hospital?
- ☐ Does your hospital offer a paper copy of the plain language summary of the FAP to its patients as part of its intake or discharge process?
- ☐ Does your hospital include a conspicuous written notice on its billing statements that notifies and informs recipients about the availability of financial assistance under the hospital's FAP and includes the telephone number of the hospital office or department that can provide information about the FAP and FAP application process and the direct website address (or URL) where copies of the FAP, FAP application form and plain language summary of the FAP may be obtained?
- ☐ Have you set up conspicuous public displays that notify and inform patients about the FAP in public locations in the hospital, including, at a minimum, the emergency room (if any) and admissions areas?

- ☐ Has your hospital translated its FAP, FAP application form and plain language summary of the FAP (and, if applicable, separate billing and collection policy and separate statement regarding AGB percentages) into the primary language(s) spoken by each language group with limited English proficiency that constitutes the lesser of 1,000 individuals or 5 percent of the community served by the hospital or of the population the hospital is likely to encounter?
- ☐ Is your hospital consistently carrying out the provisions provided for in its FAP?

## **2. Emergency Medical Care Policies**

- ☐ Does your hospital have a written policy that requires it to provide, without discrimination, care for emergency medical conditions to individuals regardless of whether they are FAP-eligible (for example, requiring the hospital to comply with the Emergency Medical Treatment and Labor Act)?
- ☐ Does your hospital's emergency medical care policy prohibit the hospital 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 that interfere with the provision of emergency medical care?
- ☐ Has your hospital's emergency medical care policy been adopted by the hospital's board, a committee of that board or a hospital official (or other party) authorized by the board?
- ☐ Is your hospital consistently carrying out the provisions of its emergency medical care policy?

## **3. Substantially-related Entities**

- ☐ Does your hospital own a capital or profits interest in an entity treated as a partnership for federal tax purposes that provides emergency or medically necessary care in the hospital? Or is your hospital the sole member or owner of an entity that is disregarded for federal tax purposes and provides emergency or medically necessary care in the hospital? If the answer to both questions is no, you may skip the remainder of this section 3.
- ☐ If your hospital does own an interest in such a partnership or disregarded entity, does it treat the entity's provision of medical care as an unrelated trade or business such that the profits the hospital earns from the entity are treated as unrelated business taxable income (UBTI)? If yes, you may skip the remainder of this section 3.
- ☐ If your hospital does own an interest in such a partnership or disregarded entity that does not generate UBTI for the hospital, does the hospital's FAP cover all emergency or other medically necessary care provided by the partnership or disregarded entity in the hospital?