



DECEMBER 2016

Compliance Checklist

1. Prospective Medicare of Medicaid Method

- ☐ Does your hospital determine AGB for emergency or other medically necessary care by determining the total amount that would be reimbursed by Medicare or Medicaid for the care, plus the amount the Medicare or Medicaid beneficiary would be personally responsible for paying in the form of co-payments, co-insurance, or deductibles? If no, skip to section 2. If yes, complete this section 1 and then skip to section 3.
- ☐ After applying all FAP and other discounts and insurance reimbursements (if any), is the amount each FAP-eligible individual is personally responsible for paying for emergency or medically necessary care not more than the total amount the hospital determines would be reimbursed by Medicare or Medicaid for the care, plus the amount the Medicare or Medicaid beneficiary would be personally responsible for paying?

2. Look-back Method

- ☐ Does your hospital determine AGB by multiplying the hospital's gross charges for emergency or other medically necessary care by one or more percentages of gross charges (AGB percentages), calculated by dividing—
 - ☐ The sum of amounts of all of its claims for emergency and other medically necessary care (or, alternatively, all medical care) that have been allowed over a prior 12-month period by (i) Medicare, (ii) Medicare together with all private insurers paying claims to the hospital, or (iii) Medicaid, either alone or in combination with (i) and (ii), by
 - ☐ The sum of the associated gross charges for those claims?
- ☐ If your hospital calculates multiple AGB percentages for separate categories of care or for separate items or services, does the hospital calculate AGB percentages for all emergency and other medically necessary care provided by the hospital?

This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.

- ☐ After applying all FAP and other discounts and insurance reimbursements (if any), is the amount each FAP-eligible individual is personally responsible for paying for emergency or other medically necessary care not more than the amount determined by multiplying the hospital facility's gross charges for the care by the applicable AGB percentage(s)?
- ☐ Does your hospital began applying the AGB percentage(s) it has calculated by the 120th day after the end of the 12-month period used in calculating the AGB percentage(s)?
- ☐ Does your hospital calculate its AGB percentage(s) at least annually?

3. Other

- ☐ Is no patient of your hospital who is determined to be FAP-eligible personally responsible for paying gross charges for any medical care covered under the FAP (including care covered by the FAP other than emergency or other medically necessary care)?
- ☐ If your hospital requires any individual to pay an amount upfront as a precondition for receiving medically necessary care, will such an amount always be equal to or less than the AGB for the care?
 - ☐ If not, has no individual charged such an upfront fee ever been determined to be FAP-eligible?
- ☐ If an individual personally pays your hospital more than AGB for emergency or other medically necessary care (or gross charges for any other medical care covered under the FAP) and then subsequently submits an application for financial assistance and if your hospital determines the individual to be FAP-eligible for the care, does the hospital refund any amount the individual has paid for the care that exceeds the amount he or she is determined to be personally responsible for paying as a FAP-eligible individual, if such excess amount is \$5 or more?

4. 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 that 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 4.
- ☐ If your hospital does own an interest in such a partnership or disregarded entity, does it consider the entity's provision of medical care to be an unrelated trade or business such that the income the hospital earns from the entity is treated as unrelated business taxable income (UBTI)? If yes, you may skip the remainder of this section 4.

- ☐ If your hospital does own an interest in such a partnership or disregarded entity that does not generate UBTI for the hospital, does the partnership or disregarded entity charge no FAP-eligible individual more than AGB for emergency or other medically necessary care? (See sections 1 through 3 for a checklist on complying with the AGB requirements).