A DISCUSSION WITH MAINE HFMA ON THE 501(r) TREASURY REGULATIONS

Janet Hodgdon, Director, CPA, CPC, CRC

January 13, 2017
TODAY’S AGENDA

• 501(r) Background
• Financial Assistance Policies
• Limitations on Charges and Amounts Generally Billed
• Extraordinary Collection Activities
• Final Thoughts
• Your Questions
DID YOU KNOW?

• According to AHC Media website in 2016:
  – Only 42% of hospitals currently comply with charity care rules
  – Only 94% have the rules
  – Only 29% have begun charging amounts generally billed (AGB) appropriately
  – 4 out of 5 hospitals have stopped the use of extraordinary collection activities
OVERVIEW

• Final rules released on December 29, 2014
• Compliance with these rules may not mean compliance with state laws
• Effective for taxable years beginning after December 29, 2015
  – Pre 2016 years can rely on reasonable good faith interpretations
• Four key areas outlined in the final rules
  – Community Health Needs Assessments (CHNA)
  – Financial Assistance Policies (FAP)
  – Limitation on Charges and Amounts Generally Billed (AGB)
  – Extraordinary Collection Activities (ECA)
WHAT ORGANIZATIONS DOES IT APPLY TO?

Hospital organizations operating one or more hospital facilities

– 501(c)(3)
– Facility by facility basis
– Multiple buildings under a single license are considered a single hospital facility
– Single building under more than one state license is considered a multiple hospital facility
– Applies to government hospitals, as well, if exempt under 501(c)(3)
– Note that there are nuances to physicians and others
  ▪ Disregarded entities still applies
  ▪ Incorporation as a separate 501(c)(3) does not need to comply
WHAT DOESN’T IT APPLY TO?

• Hospitals that are not 501(c)(3)
• Activities that are treated as unrelated trade or business activities of the hospital
FINANCIAL ASSISTANCE POLICIES
FINANCIAL ASSISTANCE POLICIES

This section is integral to the entire regulation

– Must be in writing
– Must apply to all emergency and “medically necessary” care
  ▪ Can be defined by state law
  ▪ Can be the Medicaid definition
  ▪ Generally accepted standards of medicine in the community
  ▪ The examining physician’s determination
– No mandates for eligibility or minimum financial assistance
– Widely publicized with specific information included
– Exercise due diligence in adoption
  ▪ Adopted by an authorized party
  ▪ Policy consistently followed in practice
EMERGENCY AND MEDICALLY NECESSARY CARE

As part of written policies:

– Must provide care for emergencies without discrimination and regardless of FAP-eligibility
  ▪ Your EMTALA policy may cover this

– This includes care provided by
  ▪ A substantially related entity
  ▪ Partnership owned in part by the hospital facility
  ▪ A disregarded entity, and
  ▪ The organization operating the facility to the extent the income is not unrelated business income
FINANCIAL ASSISTANCE POLICIES

• Multiple hospital facilities may have identical FAPs, billing and collection policies and/or emergency care policies or even share one joint policy, as long as:
  – Information is accurate for all facilities, and
  – Any joint policy clearly states that it is applicable to each facility
FINANCIAL ASSISTANCE POLICIES

Written Policies

- Eligibility criteria for financial assistance
- Whether it includes free or discounted care
- Basis for calculating amounts charged to patients
- Method for applying for financial assistance
- Collection actions in the event of non-payment
- Measures to widely publicize to the community
IN ADDITION………

Must include as part of policies

– Non-discriminatory emergency care regardless of eligibility under FAP
– Plain language summary (PLS) of the FAP at the appropriate level
– Information used for presumptive eligibility (if applicable)
  ▪ Any third party sources
  ▪ If prior FAP eligibility is used, must describe when
  ▪ Can be by phone or interview
– Translation of FAP, the FAP application form and plain language summary into the primary language of any population with limited English that constitutes >5% of community residents or 1,000 individuals, whichever is less
  ▪ If fewer than 50 persons triggers 5% threshold, may provide written notice in the primary language of the population of the right to receive competent oral interpretation of those written materials, free of charge.
  ▪ These need to be as readily available as the English versions
FINANCIAL ASSISTANCE APPLICATION

FAP, FAP Application and/or FAP application instructions must include:

• Information and documentation an individual may be required to provide

• Phone number and physical location of a hospital department (or office) that can provide more information

• Phone number and physical location where help with application process can be obtained
  – An office or department in hospital
  – An outside nonprofit or government agency that offers assistance
FINANCIAL ASSISTANCE POLICIES

*Must describe discounts available under the FAP*

This means:

- Discounts may be offered outside the FAP (self pay, state-mandated, etc.)
  - Would not be subject to AGB limitations
  - Would not be considered community benefit activities for purposes of the ACA
  - Would not be reportable on Form 990, Schedule H
FINANCIAL ASSISTANCE POLICIES

Must be widely publicized

- FAP, FAP application and PLS posted on website and easily found
- Paper copies available upon request, and without charge, by mail and in public locations
- Community informed in a way expected to reach the most likely members
- Notify and inform patients about the FAP
  - PLS at admission or discharge
  - Conspicuous written notice on statements
  - Conspicuous public displays (ED and other access points)
What is plain language?

Dictionary definition

Clear, direct, and 'honest' expression in speech and writing. Plain language is free from jargon and rarely used words and terms, and comes straight to the point being addressed.

Federal Government Definition

Plain language is communication your audience can understand the first time they read or hear it. Language that is plain to one set of readers may not be plain to others. Written material is in plain language if your audience can:

• Find what they need;
• Understand what they find; and 
• Use what they find to meet their needs.
WHAT IS PLAIN LANGUAGE?

Should individuals find that a preponderance of their current financial situation may be construed as providing or contributing to an undue financial hardship, then and only then should such individuals follow the instructions provided to determine any potential financial assistance or other payment terms that may be available.

*versus*

Need help paying your bills? Click here.
WHAT ISN’T PLAIN LANGUAGE?

Thank you for choosing ABC Hospital for your care. It is our goal to make your experience with us as pleasant as possible.

We share this Plain Language Summary with you as we have been notified that you may require financial assistance for services rendered by the Hospital. We offer a Free Care program and a sliding-fee discount for which you may qualify. Free Care is for persons or households with income below 200% of poverty who have either no insurance or have out of pocket expenses following insurance approved services and/or payments...
Brief descriptions/statements of:

- Eligibility requirements
- Assistance offered
- How to apply
- Website location where FAP and application are available
- Physical location where FAP and application are available
- How to get FAP and application free of charge by mail
- Availability of translations into other languages
- Phone number and physical location of someone who can help
- Amounts generally billed (AGB) limits on charges for FAP-eligible individuals
Final Regulations

– The plain language summary does not need to go into a post-discharge mailing as long as there is “conspicuous written notice” in every bill in the 120 day post-discharge period

– This summary must include:
  - Availability of financial assistance
  - A phone #
  - A website address to download the FAP documents
FINANCIAL ASSISTANCE POLICIES

MUST List in the FAP

ALL providers other than the hospital delivering emergency or other medically necessary care

AND

Specify which of those providers are covered by the FAP and which are not.
IRS NOTICE 2015-46

2015-46 was issued as “Clarifications to the Requirement in the Treasury Regulations under 501(r)(4) that a Hospital Facility’s Financial Assistance Policy Include a List of Providers”

– Includes language that allows the Board to authorize another body (like the Finance Committee) or individual to approve changes to FAP
– Clarifies requirements related to the provider list
The Public Outcry was heard from AHA, AMA and others, primarily related to the provider list

- Breaks down the requirement that under the final regulations a FAP must apply to all emergency and medically necessary care provided in the hospital only to the extent the care is provided by the hospital facility itself or a substantially related entity

- The provider list can be maintained in a separate document from the main FAP provided that the document includes the date on which it was created or last updated

  - Providers can be listed by department instead of individual name or practice group, if all members in the department are covered by the FAP or not
CLARIFICATIONS UNDER 2015-46

Biggest one is related to **Errors and Omissions** on the provider listing:

- Minor omissions or errors that are inadvertent or due to reasonable cause are not considered failures to comply if promptly corrected (and these do not require disclosure)
ERRORS AND OMISSIONS IN THE PROVIDER LIST

“Omissions or errors in a hospital facility’s provider list, including a failure to include a provider in that list or to identify a service covered by the FAP, will be considered minor and either inadvertent or due to reasonable cause if the hospital facility takes reasonable steps to ensure that its list of providers is accurate. A hospital facility that updates its list of providers by adding new or missing information, correcting erroneous information and deleting obsolete information at least quarterly will be considered to have taken reasonable steps to ensure that its list is accurate and will be considered to have corrected any minor omissions or errors in the list for purposes of section 1.501®-2(b).”
AS A PRACTICAL MATTER…..

• Include the required provider list as an attachment so it can more “easily” be updated/revised
• The clarification in 2015-46 indicates quarterly updating is sufficient
LIMITATIONS ON CHARGES AND AMOUNTS GENERALLY BILLED
LIMITATIONS ON CHARGES

Eligible patients under FAPs must have discounted charges

Must pay no more than amounts generally billed (AGB) to insured patients for emergency and other medically necessary care

Must pay less than gross charges for other medical care covered under the FAP

A FAP-eligible individual can be insured or uninsured but is considered to be “charged” only the amount the person is personally responsible for paying, taking into account any insurance payments, as well as other deductions or discounts
AMOUNTS GENERALLY BILLED (AGB)

• AGB represents the maximum amount hospital facilities can charge FAP-eligible individuals. They can charge less than the AGB (provide a more generous discount under the FAP)

• If an individual has insurance, it’s OK for overall payments to exceed AGB as long as individual isn’t personally responsible for more than AGB

• Limitation applies if another individual assumes the debt

• Limitation doesn’t apply to government agencies, nonprofits or businesses that assume an individual’s debt
AMOUNTS GENERALLY BILLED

• Hospital facilities can change the methodology used to calculate AGB at any time
  – Can only use one methodology at a time
  – Must first update its FAP in advance of implementation, however
AMOUNTS GENERALLY BILLED (AGB)

Options to Calculate AGB

- Assume the patient is a Medicare beneficiary and estimate the amount received in payment
  Medicare Prospective Method

- Review claims for all private health insurers and Medicare, or just Medicare alone, for the prior twelve months
  Look-back Method

- Base AGB on Medicaid rates, either alone or in combination with Medicare data noted from other methods
  Medicaid Method
LOOK BACK METHOD

AGB = All Allowed Claims/Gross Charges for Claims

Can Include:

• Medicare fee-for-service
• Medicare fee-for-service and all private health insurers
• Medicare fee-for-service, Medicaid and all private health insurers
• Medicaid alone
• Medicaid and Medicare fee-for-service
LOOK BACK METHOD

Things to think about

• Include all allowed (approved) claims and all payments owed by the individual, including deductibles, co-pays, etc., regardless if they have been paid

• Calculation can include only emergency and medically necessary care or all medical care
LOOK BACK METHOD

Further consideration:
Will you use one AGB% or multiple ones?

Think about your categories of care
• Inpatient vs. Outpatient
• By Department or Cost Center
• By Individual Line Item
PROSPECTIVE METHOD

• Use the process covered by Medicare fee-for-service or Medicaid
  – Take last year’s data and update for payment under the “new rates” in effect
• Limit the charges to the amounts Medicare/Medicaid will allow
  – Include copays, coinsurance and deductibles
TIMEFRAME TO IMPLEMENT AGB PERCENTAGES

- Up to 120 days at the end of each 12 month period, but must also implement within that timeframe

- FAPs or related materials will also need to be updated to reflect revised AGBs as they change

- If not included in FAP, which is ok, hospital must explain how individuals can get the AGB and provide a free, written description of the calculation
LIMITATION ON CHARGES

• Things to Note
  – Billing statements can indicate gross charges to show how the ultimate liability is calculated as long as the individual isn’t required to pay the gross charge amount
  – Charging more than AGB to FAP-eligible individual is ok if:
    ▪ Excess charge not a pre-condition for medically necessary care
    ▪ Individual hadn’t completed an application at time of the charge
    ▪ At time of charge, individual wasn’t deemed FAP-eligible
AGB PERCENTAGES

• Note that the IRS has included language that allows them to add additional methodologies in the future
  – Think of evolving payment models
    ▪ Value Based
    ▪ Bundled Payment
    ▪ ACO
SAFE HARBOR PROVISIONS

– If a complete FAP application is submitted and patient is determined to be FAP eligible, the hospital must refund any amount paid that exceeds the amount for which the patient is personally responsible (unless less than $5)

– BUT….If a hospital facility requires an upfront payment for medically necessary care that exceeds the AGB for that care and the individual turns out to be FAP eligible, the hospital will have failed to meet this section of the regulation
BILLING, COLLECTIONS AND EXTRAORDINARY COLLECTION ACTIVITIES
EXTRAORDINARY COLLECTION ACTIONS (ECAS)

- Charitable hospitals can engage in ECAs to protect the use of its charitable assets, but first must use “reasonable effort” to determine FAP eligibility.
WHAT IS AN ECA?

Any collection action taken that requires a legal or judicial process or involves selling an individual’s debt to another party

Examples:

- Reporting to a credit bureau/agency
- Liens and/or foreclosures
- Arrests or civil action against an individual
- Certain deferred or denied care because of prior nonpayment
- Wage garnishment
- Sale of the debt (in general)
WHAT IS NOT AN ECA?

- Writing off an account to bad debt
- Placing a lien on a third party that caused a patient’s injury
- Charging interest on a debt
- Filing a claim in a bankruptcy proceeding

Sale of the debt, if purchasers of the debt:
- Don’t engage in ECAs,
- Apply IRS-established interest rates,
- Return or recall debt to the hospital if FAP eligibility determined, and
- Adhere to FAP requirements themselves
PROCESS FOR USING ECAS

Reasonable effort to collect a debt includes the following in advance of an ECA.

**Formerly called the notification period**
- Patients must be notified about the hospital’s FAP (and potential ECAs)
- Begins on date first “post-discharge” billing statement mailed and ends 120 days later

**Application period**
- Patients are eligible to submit a FAP application up to 240 days after the first post-discharge billing statement.
NOTIFICATION REQUIREMENTS

ORAL

• Reasonable effort must be made to orally notify an individual about the FAP availability and about how to obtain assistance with the FAP application process at least 30 days in advance of ECA initiation

WRITTEN

• Written notification must be made of the actions the hospital actually intends to take as opposed to requiring a description of every action it “may” take
Hospitals must create ECA Initiation Notices and provide them to patients against whom ECAs might be engaged, whether or not a FAP application has been received.

The ECA notice must:

- Describe specific ECAs intended to be initiated or resumed
- Provide the deadline for when the hospital intends to begin such action (and it can’t be sooner than 30 days after the ECA initiation notice sent by mail or electronically)
- Include a plain-language summary of the FAP
THINGS TO THINK ABOUT

If a FAP application is received after ECAs instituted, do the following:

- Stop ECA activity immediately
- Assess FAP eligibility
- Timely inform the patient

If patient ends up qualifying for financial assistance:

- Reverse ECAs taken
- Refund excess payments made
- Provide a billing statement indicating amount owed with FAP discount

If application incomplete:

- Stop ECA activity immediately
- Provide patient a written notice that if sufficient information is not provided to determine FAP-eligibility within 30 days, ECA actions can be resumed
THINGS TO THINK ABOUT

What if you NEVER intend to use an ECA?

• Forget about the reasonable effort requirements as they don’t apply.
• Think about small balance situations, etc.
2015 FORM 990
SCHEDULE H
### Part V Facility Information (continued)

#### Financial Assistance Policy (FAP)

<table>
<thead>
<tr>
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Did the hospital facility have in place during the tax year a written financial assistance policy that:

13 Explained eligibility criteria for financial assistance, and whether such assistance included free or discounted care?
   If "Yes," indicate the eligibility criteria explained in the FAP:
   a ☐ Federal poverty guidelines (FPG), with FPG family income limit for eligibility for free care of ___ ___ %
   b ☐ Income level other than FPG (describe in Section C)
   c ☐ Asset level
   d ☐ Medical indigency
   e ☐ Insurance status
   f ☐ Underinsurance status
   g ☐ Residency
   h ☐ Other (describe in Section C)

14 Explained the basis for calculating amounts charged to patients?

15 Explained the method for applying for financial assistance?
   If "Yes," indicate how the hospital facility's FAP or FAP application form (including accompanying instructions) explained the method for applying for financial assistance (check all that apply):
   a ☐ Described the information the hospital facility may require an individual to provide as part of his or her application
   b ☐ Described the supporting documentation the hospital facility may require an individual to submit as part of his or her application
   c ☐ Provided the contact information of hospital facility staff who can provide an individual with information about the FAP and FAP application process
   d ☐ Provided the contact information of nonprofit organizations or government agencies that may be sources of assistance with FAP applications
   e ☐ Other (describe in Section C)
16 Included measures to publicize the policy within the community served by the hospital facility?  
   If “Yes,” indicate how the hospital facility publicized the policy (check all that apply):
   a  [ ] The FAP was widely available on a website (list url):
   b  [ ] The FAP application form was widely available on a website (list url):
   c  [ ] A plain language summary of the FAP was widely available on a website (list url):
   d  [ ] The FAP was available upon request and without charge (in public locations in the hospital facility and by mail)
   e  [ ] The FAP application form was available upon request and without charge (in public locations in the hospital facility and by mail)
   f  [ ] A plain language summary of the FAP was available upon request and without charge (in public locations in the hospital facility and by mail)
   g  [ ] Notice of availability of the FAP was conspicuously displayed throughout the hospital facility
   h  [ ] Notified members of the community who are most likely to require financial assistance about availability of the FAP
   i  [ ] Other (describe in Section C)

Billing and Collections

17 Did the hospital facility have in place during the tax year a separate billing and collections policy, or a written financial assistance policy (FAP) that explained all of the actions the hospital facility or other authorized party may take upon non-payment?

18 Check all of the following actions against an individual that were permitted under the hospital facility’s policies during the tax year before making reasonable efforts to determine the individual’s eligibility under the facility’s FAP:
   a  [ ] Reporting to credit agency(ies)
   b  [ ] Selling an individual’s debt to another party
   c  [ ] Actions that require a legal or judicial process
   d  [ ] Other similar actions (describe in Section C)
   e  [ ] None of these actions or other similar actions were permitted
### Facility Information (continued)

**Name of hospital facility or letter of facility reporting group**

19. Did the hospital facility or other authorized party perform any of the following actions during the tax year before making reasonable efforts to determine the individual’s eligibility under the facility’s FAP?  
   ![No decision]

   If “Yes,” check all actions in which the hospital facility or a third party engaged:
   - [ ] Reporting to credit agency(ies)
   - [ ] Selling an individual’s debt to another party
   - [ ] Actions that require a legal or judicial process
   - [ ] Other similar actions (describe in Section C)

20. Indicate which efforts the hospital facility or other authorized party made before initiating any of the actions listed (whether or not checked) in line 19 (check all that apply):
   - [ ] Notified individuals of the financial assistance policy on admission
   - [ ] Notified individuals of the financial assistance policy prior to discharge
   - [ ] Notified individuals of the financial assistance policy in communications with the individuals regarding the individuals’ bills
   - [ ] Documented its determination of whether individuals were eligible for financial assistance under the hospital facility’s financial assistance policy
   - [ ] Other (describe in Section C)
   - [ ] None of these efforts were made

#### Policy Relating to Emergency Medical Care

21. Did the hospital facility have in place during the tax year a written policy relating to emergency medical care that required the hospital facility to provide, without discrimination, care for emergency medical conditions to individuals regardless of their eligibility under the hospital facility’s financial assistance policy?  
   ![No decision]

   If “No,” indicate why:
   - [ ] The hospital facility did not provide care for any emergency medical conditions
   - [ ] The hospital facility’s policy was not in writing
   - [ ] The hospital facility limited who was eligible to receive care for emergency medical conditions (describe in Section C)
   - [ ] Other (describe in Section C)

#### Charges to Individuals Eligible for Assistance Under the FAP (FAP-Eligible Individuals)

22. Indicate how the hospital facility determined, during the tax year, the maximum amounts that can be charged to FAP-eligible individuals for emergency or other medically necessary care.
   - [ ] The hospital facility used its lowest negotiated commercial insurance rate when calculating the maximum amounts that can be charged
   - [ ] The hospital facility used the average of its three lowest negotiated commercial insurance rates when calculating the maximum amounts that can be charged
   - [ ] The hospital facility used the Medicare rates when calculating the maximum amounts that can be charged
   - [ ] Other (describe in Section C)

23. During the tax year, did the hospital facility charge any FAP-eligible individual to whom the hospital facility provided emergency or other medically necessary services more than the amounts generally billed to individuals who had insurance covering such care?  
   ![No decision]

   If “Yes,” explain in Section C.

24. During the tax year, did the hospital facility charge any FAP-eligible individual an amount equal to the gross charge for any service provided to that individual?  
   ![No decision]

   If “Yes,” explain in Section C.
2016 FORM 990
SCHEDULE H
### Part V Facility Information (continued)

#### Financial Assistance Policy (FAP)

<table>
<thead>
<tr>
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<td>Did the hospital facility have in place during the tax year a written financial assistance policy that:</td>
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<td><strong>Explain eligibility criteria for financial assistance, and whether such assistance included free or discounted care?</strong></td>
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<td>If “Yes,” indicate the eligibility criteria explained in the FAP:</td>
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<td>a) Federal poverty guidelines (FPG), with FPG family income limit for eligibility for free care of ___% and FPG family income limit for eligibility for discounted care of ___%</td>
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<td>If “Yes,” indicate how the hospital facility publicized the policy (check all that apply):</td>
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<td>a) The FAP was widely available on a website (list url):</td>
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<td>c) A plain language summary of the FAP was widely available on a website (list url):</td>
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<td>g) Individuals were notified about the FAP by being offered a paper copy of the plain language summary of the FAP, by receiving a conspicuous written notice about the FAP on their billing statements, and via conspicuous public displays or other measures reasonably calculated to attract patients’ attention</td>
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<td>h) Notified members of the community who are most likely to require financial assistance about availability of the FAP</td>
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<td>i) The FAP, FAP application form, and plain language summary of the FAP were translated into the primary language(s) spoken by LEP populations</td>
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### Part V Facility Information (continued)

#### Billing and Collections

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<td></td>
<td></td>
</tr>
<tr>
<td>f None of these actions or other similar actions were permitted</td>
<td></td>
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</tr>
<tr>
<td>19 Did the hospital facility or other authorized party perform any of the following actions during the tax year before making reasonable efforts to determine the individual's eligibility under the facility's FAP? If &quot;Yes,&quot; check all actions in which the hospital facility or a third party engaged:</td>
<td></td>
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<tr>
<td>a Reporting to credit agency(ies)</td>
<td></td>
<td></td>
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<tr>
<td>b Selling an individual's debt to another party</td>
<td></td>
<td></td>
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<tr>
<td>c Deferring, denying, or requiring a payment before providing medically necessary care due to nonpayment of a previous bill for care covered under the hospital facility's FAP</td>
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<tr>
<td>d Actions that require a legal or judicial process</td>
<td></td>
<td></td>
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<tr>
<td>e Other similar actions (describe in Section C)</td>
<td></td>
<td></td>
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<tr>
<td>20 Indicate which efforts the hospital facility or other authorized party made before initiating any of the actions listed (whether or not checked) in line 19 (check all that apply):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a Provided a written notice about upcoming ECAs (Extraordinary Collection Action) and a plain language summary of the FAP at least 30 days before initiating those ECAs</td>
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<tr>
<td>b Made a reasonable effort to orally notify individuals about the FAP and FAP application process</td>
<td></td>
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<tr>
<td>c Processed incomplete and complete FAP applications</td>
<td></td>
<td></td>
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<tr>
<td>d Made presumptive eligibility determinations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e Other (describe in Section C)</td>
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<td></td>
</tr>
<tr>
<td>f None of these efforts were made</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Policy Relating to Emergency Medical Care

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 Did the hospital facility have in place during the tax year a written policy relating to emergency medical care that required the hospital facility to provide, without discrimination, care for emergency medical conditions to individuals regardless of their eligibility under the hospital facility's financial assistance policy?</td>
<td></td>
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<tr>
<td>If &quot;No,&quot; indicate why:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a The hospital facility did not provide care for any emergency medical conditions</td>
<td></td>
<td></td>
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<tr>
<td>b The hospital facility's policy was not in writing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c The hospital facility limited who was eligible to receive care for emergency medical conditions (describe in Section C)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d Other (describe in Section C)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Part V Facility Information (continued)

#### Charges to Individuals Eligible for Assistance Under the FAP (FAP-Eligible Individuals)

<table>
<thead>
<tr>
<th>Name of hospital facility or letter of facility reporting group</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

22. Indicate how the hospital facility determined, during the tax year, the maximum amounts that can be charged to FAP-eligible individuals for emergency or other medically necessary care.

   a. [ ] The hospital facility used a look-back method based on claims allowed by Medicare fee-for-service during a prior 12-month period

   b. [ ] The hospital facility used a look-back method based on claims allowed by Medicare fee-for-service and all private health insurers that pay claims to the hospital facility during a prior 12-month period

   c. [ ] The hospital facility used a look-back method based on claims allowed by Medicaid, either alone or in combination with Medicare fee-for-service and all private health insurers that pay claims to the hospital facility during a prior 12-month period

   d. [ ] The hospital facility used a prospective Medicare or Medicaid method

23. During the tax year, did the hospital facility charge any FAP-eligible individual to whom the hospital facility provided emergency or other medically necessary services more than the amounts generally billed to individuals who had insurance covering such care? *Note:* If “Yes,” explain in Section C.

   - [ ] Yes
   - [ ] No

24. During the tax year, did the hospital facility charge any FAP-eligible individual an amount equal to the gross charge for any service provided to that individual? *Note:* If “Yes,” explain in Section C.

   - [ ] Yes
   - [ ] No
FINAL THOUGHTS
POTENTIAL PENALTIES FOR NON-COMPLIANCE

- Requirement to correct and disclose deficiencies
- $50,000 excise tax
- Possible facility level excise taxes
- Loss of tax-exempt status
SOMETHING TO THINK ABOUT

• February 26, 2016…IRS Tax Exempt/Governmental Entities Joint Council Meeting confirmed:
  – Tax-exempt hospitals will likely be targets of stepped up compliance checks and examinations as required by the ACA
  – Currently performing about 1,000 compliance reviews annually but this is to increase
  – 30 IRS agents have been redeployed to facilitate this function
  – Most stepped-up reviews will be on a non-contact basis
  – Discovery of compliance lapses or need for clarification may initiate direct contact or an actual examination
  – Examination of compliance with 501(r) could potentially lead to examination of other unrelated issues
• TE/GE group is working with the IRS Research Analytics and Applied Statistics Division to develop algorithms to select Forms 990 for audit.

The system is expected to go live on April 1, 2017, after the IRS agents have completed their training on the new Information Document Request (IDR) procedures.

TE/GE Commissioner Sunita Lough stated that:

-- 400 returns have been selected for audit based on private benefit and private inurement concerns and

-- 100 private foundation returns have been selected based on data analytics alone

-- **311 field audits on § 501(r)**
QUESTIONS?
THANK YOU.

www.bnnncpa.com

For more information:
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jhodgdon@bnnncpa.com