



HEALTH CARE REFORM WORKING GROUP

ALERT

IRS SEEKS COMMENTS FROM TAX-EXEMPT HOSPITALS ON PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA) BILLING/COLLECTION REQUIREMENTS

By Elizabeth Litten

The IRS recently published Notice 2010-39 – “Request for Comments Regarding Additional Requirements for Tax-Exempt Hospitals.” Comments must be submitted to the IRS by July 22, 2010, and may be submitted electronically to notice.comments@irs.counsel.treas.gov.

Tax-exempt hospitals should be reviewing their billing and collection policies and procedures to ensure they are not using “extraordinary collection actions” to collect payment from patients before the hospitals have taken “reasonable efforts” to determine whether the patients are eligible for financial assistance. As explained by the IRS:

Section 501(r)(6) [of PPACA] requires a hospital organization to forego extraordinary collection actions against an individual before the organization has made reasonable efforts to determine whether the individual is eligible for assistance under the hospital organization’s financial assistance policy. The Technical Explanation states that “extraordinary collections include lawsuits, liens on residences, arrests, body attachments, or other similar collection processes.” The Technical Explanation also states

that “[i]t is intended that for this purpose, ‘reasonable efforts’ include notification by the hospital of its financial assistance policy upon admission and in written and oral communications with the patient regarding the patient’s bill, including invoices and telephone calls, before collection action or reporting to credit agencies is initiated.” [Technical Explanation at 82.]

Hospitals that routinely screen patients for charity care or government-sponsored program eligibility may believe they meet (or may, in fact, actually meet) the requirement of 501(r)(6) that they make “reasonable efforts” to determine if patients qualify for financial assistance, but hospitals should evaluate their financial assistance policy to see if patients who do not qualify for government assistance or government-sponsored programs may still be eligible for discounted or free care. If a “reasonable effort” is not made to communicate the parameters of the hospital’s financial assistance policy to each and every patient (for example, if “reasonable efforts” are only made for patients thought to be eligible for government assistance or government-sponsored programs), the hospital should be wary of sending any patient’s account to a collection agency.

Hospitals should also review the amounts charged to patients:

Section 501(r)(5) requires a hospital organization to limit amounts charged for emergency or other medically necessary care that is provided to individuals eligible for assistance under the organization's financial assistance policy to not more than the amounts generally billed to individuals who have insurance covering such care. Section 501(r)(5) also prohibits the use of gross charges.

The Technical Explanation states that “[i]t is intended that amounts billed to those who qualify for financial assistance may be based on either the best, or an average of the three best, negotiated commercial rates, or Medicare rates.” [Technical Explanation at 82.]

Notably, Sections 501(r)(5) and (6) take effect for tax years beginning after March 23, 2010 (the date of enactment of the PPACA).

If you have questions about the new IRS requirements for tax-exempt hospitals under the PPACA, please contact Elizabeth Litten at 609.895.3320 or elitten@foxrothschild.com.

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