



ACA collection efforts: Requirements for tax-exempt hospitals

April 15, 2014

The Affordable Care Act (ACA), enacted into law on March 23, 2010, added Section 501(r) requirements to the Internal Revenue Code that a 501(c)(3) tax-exempt hospital must satisfy to maintain tax-exempt status. Section 501(r) requires hospitals to establish a written financial assistance policy (FAP) and prohibits hospitals from taking “extraordinary collection actions” prior to making reasonable efforts to determine whether the patient is eligible under the FAP. While the guidance is still not finalized, the statutory requirement is already in effect for tax years beginning after March 23, 2010. Although the Federal Register’s June 26, 2012 guidance is in the form of a proposed rule, hospitals are entitled to rely upon it to fulfill the statutory requirement already in effect.

1. Financial Assistance Policy

FAP Policy Requirements

Hospitals must have a written FAP that includes the following:

- Eligibility criteria for financial assistance and whether such assistance includes free or discounted care;
- The basis for calculating amounts charged to patients;
- The method for applying for financial assistance;
- Actions the hospital may take in the event of nonpayment, including collection action and reporting to collection agencies, if the hospital does not have a separate billing and collections policy; and
- Measures to widely publicize the policy within the community served by the hospital.

Making the FAP Policy Widely Available

In addition, the FAP must include measures the hospital will take to:



Catherine M.

Ballard

Partner
Columbus
614.227.8806
cballard@bricker.com

- Provide paper copies of the FAP, FAP application form and a plain-language summary of the FAP upon request and without charge. Each document must be made available in English and in the primary language of any populations that constitute more than 10 percent of the residents of the community served by the hospital.
- Inform and notify visitors about the FAP through a conspicuous public display or other attention-attracting measures.
- Inform and notify members of the community about the FAP in a manner reasonably calculated to reach those most likely to require financial assistance.
- Make the FAP, FAP application form and a plain-language summary easily available on the hospital's website, in English and in the primary language of any populations that constitute more than 10 percent of the residents of the community served by the hospital.

2. Billing and Collection

To comply with the billing and collection requirement, hospitals may not engage in extraordinary collection actions (ECAs) before making reasonable efforts to determine whether the individual is FAP-eligible.

Extraordinary Collection Actions

According to the proposed regulation, ECAs include, but are not limited to: placing a lien on an individual's property, foreclosing on an individual's real property, attaching or seizing an individual's bank account or other personal property, commencing a civil action against an individual, causing an individual's arrest, causing an individual to be subject to a writ of body attachment, and garnishing an individual's wages.

Reasonable Efforts

Similarly, the proposed regulation provides that a hospital made reasonable efforts to determine whether an individual is FAP-eligible if the hospital:

- Notifies the individual about the FAP;
- Provides an individual who submits an incomplete FAP application with information relevant to completing the application; and
- Makes and documents a determination as to whether an individual is FAP-eligible for an individual who submits a complete FAP application.

As these provisions are already in effect, hospitals should review these proposed regulations in conjunction with their current policies and practices to ensure compliance with the regulations. If relevant, hospitals should determine what new policies or revisions to current policies are needed to be compliant with the

regulations.