American Hospital Association

Special Bulletin

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FINAL 'SECTION 501(R)' REGULATIONS FOR TAX-EXEMPT HOSPITALS RELEASED

On Dec. 29 the Internal Revenue Service (IRS) and the Department of the Treasury issued final regulations (https://www.federalregister.gov/articles/2014/12/31/2014-30525/additional-requirements-for-charitable-hospitals-community-health-needs-assessments-for-charitable) implementing the requirements for charitable hospitals added by the Affordable Care Act. The final regulations largely adopt the provisions of the two proposed regulations issued in 2012 (addressing financial assistance policy (FAP), limitation on charges, and billing and collection) and in 2013 (addressing community health needs assessment and sanctions for noncompliance).

America's hospitals are committed to being more transparent, not only about the price but the quality of care, so that patients can be more involved in and make informed decisions about their health care. The AHA has outlined guidelines (http://www.aha.org/content/12/120505-bill-collec-prac-statement.pdf) that are intended to strengthen the relationship between hospitals and their communities and to reassure patients, regardless of their ability to pay, of hospitals' commitment to caring. To view the guidelines and other resources, visit www.aha.org (http://www.aha.org/advocacy-issues/bcc/index.shtml).

The following are highlights of the changes and clarifications in the final rule. The AHA has invited an official from Treasury to participate in a conference call with members to discuss the rules and answer questions. Watch for an upcoming member advisory with further details.

Billing and Collection

This section makes the most significant changes to the proposed regulations. In summary, the detailed requirements for billing during the 120-day notification period have been largely eliminated; instead, the emphasis is on specific communications that must occur with the individual at least 30 days before certain collection actions, including reporting adverse information to a credit reporting agency and actions that require a legal or judicial process (characterized by the IRS as "extraordinary collection actions,") are initiated. Hospitals urged the IRS to streamline this section and provide greater flexibility for use of appropriate existing hospital processes.

- A waiting period of 120 days is still required before such collection actions may be initiated (now 120 days after the first post-discharge billing statement). However, the final rule eliminates the "notification period" and related billing requirements that were in the proposed rule (e.g., at least three billing statements, summary of FAP with each billing statement). Instead, the hospital must take two additional steps to "widely publicize" the hospital's FAP:

    - Offering a paper copy of the summary of the FAP to patients as part of the intake or discharge process;
    - Conspicuously locating a notice on billing statements of the availability of financial assistance, a phone number at the hospital to contact for more information, and the direct website address where copies of the FAP, application form and summary may be obtained (an approach similar to what hospitals proposed).

- In addition to the 120-day waiting period, hospitals are still required to provide certain communications to the individual at least 30 days in advance of initiating such collection actions. The oral communication requirement has been modified:

    - The hospital must make a reasonable effort to orally notify the individual about the FAP and how the individual may obtain assistance with the application process (instead of requiring discussion of the FAP in every oral communication with the individual).
    - The written communication requirement remains the same. It must include: notice of the availability of financial assistance, a listing of the specific collection action(s) it intends to initiate, and a deadline after which they may be initiated (that is no earlier than 30 days after the date the notice is provided); a summary of the FAP must be included with the notice.

- The permitted use of presumptive eligibility determinations has been expanded to include eligibility for assistance less than the most generous available under the FAP, provided certain conditions are met, including notices and an opportunity for the individual to apply for more generous assistance before a collection action is initiated.

- The list of collection actions subject to the 120-day waiting period and other requirements has been expanded to include: delaying, denying or requiring prepayment for medically necessary care due to an outstanding bill for previously provided services. If any of these actions are taken when the individual has an outstanding bill, the regulations presume it was due to the outstanding bill. In order to proceed, certain written and oral notices must be given and, if an FAP is submitted, it must be processed on an expedited basis. (Requests for emergency medical care continue to be covered by EMTALA and the emergency care policy provisions.)

- As requested by hospitals, any required written communication may be provided electronically; and liens placed on proceeds from a patient's lawsuit against a third-party who caused the patient's injuries are not subject to the rule.

The 240-day application period within which a hospital must accept and process an application for financial assistance (generally beginning with the first post-discharge billing statement) is maintained, as well as the related requirements when an incomplete or completed application is received.

Emergency Medical Care Policy

The final rule clarifies that the prohibition on debt collection activities in the emergency department (ED) is intended to apply only to debt collection activities that could interfere with the provision of emergency care, not all payment activities in the ED (e.g., collection of co-pays after stabilization or upon discharge).

Community Health Needs Assessment (CHNA)

The time period within which the implementation strategy must be adopted has been extended, a change requested by hospitals. Instead of requiring that the implementation strategy be adopted in the same taxable year in which the CHNA is completed, the final rule allows an additional four-and-a-half months (to match the due date, without extensions, of the hospital's Form 990).

Translation of Policies

The threshold for requiring translation of FAP documents into other languages has been lowered. Instead of 10 percent, translation is required if a limited English proficient group constitutes the lesser of 5 percent of the community served, or 1,000 individuals.

Amount Generally Billed (AGB)

As requested by hospitals, they are no longer locked into the method initially chosen for calculating the AGB; a change may not be implemented, however, until incorporated into the FAP. In addition, more time is allowed for implementing the required annual recalculation of the AGB percentage; 120 days is permitted instead of the proposed 45 days.

The final rule clarifies that, for purposes of an insured individual eligible for financial assistance, the AGB limitation is applicable only to the amount the individual is personally responsible for paying after all reimbursement from the insurer has been applied (even if the total amount paid by the individual and the insurer exceeds AGB).

Transition Period for Compliance with Final Regulations

As requested by hospitals, there is a transition period for hospitals to come into compliance with the final regulations. The final rules apply only to taxable years beginning after Dec. 29, 2015. For earlier years, hospitals may rely on a reasonable, good faith interpretation of the statute.