Legal Alert

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Chris L. Hering
chering@gblaw.com
602-256-4445

How the Affordable Care Act Affects Hospital Financial Assistance Policies

Most of the headlines generated by the Patient Protection and Affordable Care Act ("ACA") have been about the various lawsuits argued to the U.S. Supreme Court. But a lesser-known provision has a major impact on nonprofit, charitable hospitals.

The ACA added new Section 501(r) to the Internal Revenue Code (the "IRC"), which imposes additional requirements on charitable hospitals that seek to maintain their nonprofit status under IRC § 501(c)(3). On December 31, 2014, the Treasury Department issued final regulations implementing this law.

Among many other things, Section 501(r) requires all charitable hospitals to establish a written financial assistance policy ("FAP") that sets forth "eligibility criteria for financial assistance, and whether such assistance includes free or discounted care." IRC § 501(r)(4)(A)(i). The law does not mandate any particular eligibility criteria, giving hospitals flexibility to structure their FAP to best meet the needs of the populations they serve.

Many of Section 501(r)'s requirements are tied to the FAP—charitable hospitals must observe certain rules with regard to patients who are eligible for assistance under an FAP, or "FAP-eligible individuals." Three rules are of particular note.

First, a charitable hospital must widely publicize its FAP. Among other things, the hospital must publish its FAP, a plain-language summary of the FAP, and its application for financial assistance on a website and make paper copies of these documents available at the hospital's public locations, including the emergency room and admissions areas. The hospital must offer patients a copy of the plain-language summary during the admissions process, erect displays in the hospital's public areas notifying patients about the FAP, and include a written notice on billing statements that informs patients about the FAP.

Second, charitable hospitals must observe certain billing practices with regard to FAP-eligible individuals. For emergency and medically-necessary care, charitable hospitals may not charge an FAP-eligible individual more than the amounts generally billed ("AGB") to patients who have insurance coverage for the same care. The regulations describe, in detail, how a hospital must

compute the AGB for particular care. For all other care, charitable hospitals may not bill FAP-eligible individuals using gross charges.

Finally, a charitable hospital may not engage in "extraordinary collection actions" ("ECAs") against a patient before making reasonable efforts to determine whether that patient is eligible for financial assistance under the criteria in the FAP. The regulations set forth a highly-technical set of rules for determining what constitutes "reasonable efforts," which, in turn, depend upon whether a patient has applied for financial assistance.

An ECA is an action undertaken to obtain payment for care covered by a hospital's FAP that requires a legal or judicial process. Neither Section 501(r) nor its regulations define "legal or judicial process." The regulations, however, give some examples: placing a lien on a patient's property, foreclosing on a patient's real property, filing a lawsuit against a patient, attaching a patient's bank account, or garnishing a patient's wages. Notably, the regulations specifically exempt health care provider liens from the definition of ECA.

A charitable hospital that fails to comply with Section 501(r) and its regulations may have its nonprofit status revoked by the IRS and owe income tax. Thus, charitable hospitals must ensure that they comply with Section 501(r) in all respects, including the regulations governing FAPs. Please contact us if you would like assistance in structuring an FAP or ensuring compliance with Section 501(r).