IRS

Financial Assistance Policies (FAPs)

Section 501(r)(4) of the Internal Revenue Code (IRC) requires a tax-exempt hospital organization to establish a written financial assistance policy (FAP). This web page is intended to address the financial assistance available to patients and how patients may go about applying for such assistance. Financial assistance includes free or discounted health services provided to persons who meet the organization's criteria for financial assistance and are unable to pay for all or a portion of the services.

IRC Section and Treas. Regulation

IRC Section 501(r)(4)—Financial assistance policy

Treas. Regulation Section1.501(r)-1 -- Definitions

Treas. Regulation Section1.501(r)-4-- Financial assistance policy and emergency medical care policy

Resources (Court Cases, Chief Counsel Advice, Revenue Rulings, Internal Resources)

Section 9007(a) of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148 (124 Stat. 119 (2010)), enacted Section 501(r), which imposes additional requirements on tax-exempt 501(c)(3) organizations operating one or more hospital facilities. Section 501(r) applies to tax years beginning after March 23, 2010.

TD 9708, 79 FR 78954, TD 9708, final regulations that provide guidance regarding the requirements for charitable hospital organizations added by the Patient Protection and Affordable Care Act of 2010. The preamble to the final regulations is an important resource for the interpretation of section 501(r).

Notice 2015-46 – Clarifications to the Requirement in the Treasury Regulations Under Section 501(r)(4) that a Hospital Facility's Financial Assistance Policy Include a List of Providers. This notice clarifies how a charitable hospital organization may comply with the requirement in the final regulations that a hospital facility include a provider list in its financial assistance policy (FAP).

Internal Revenue Service, Requirements for 501(c)(3) Hospitals Under the Affordable Care Act – Section 501(r).

Internal Revenue Service, Tax Exempt Hospitals: The Community Benefit Standard and Affordable Care Act under IRC Section 501(r), Training 62791-002 (06-2016), Catalog Number 68952P. See Exhibit 12-3, Form 4564 (Rev. 9-06), Information Document Request, IRC Section 501(r)(4)(A): Financial Assistance Policy.

Analysis

Background

A hospital organization must meet the requirements of Section 501(r) to be exempt under Section 501(c)(3).

For purposes of this Snapshot, we will be addressing some of the Financial Assistance Policy (FAP) requirements under Section 501(r)(4). Other requirements are addressed in separate Snapshots and the final version of the Treasury Regulations should be referenced when reviewing whether a facility meets the requirements of Section501(r)(4).

Treas. Reg. Section1.501(r)-4(a) provides that a hospital organization meets the requirements of Section 501(r)(4) with respect to a hospital facility it operates only if the hospital organization establishes, in part, a written FAP for that hospital facility and also that a hospital's FAP applies to, at a minimum, all emergency and medically necessary care provided by the hospital and substantially related entities that meets certain requirements.

FAP Minimum Requirements

The final regulations under Section 501(r) became effective on December 29, 2015. Accordingly, for years beginning on or after that date, a hospital facility must establish a FAP that satisfies the regulatory requirements. Treas. Reg. Section1.501(r)-4 specifies that a hospital facility's FAP must:

1. Apply to all emergency and other medically necessary care provided by the hospital facility, including all such care provided in the hospital facility by a substantially-related entity;
2. Be widely publicized; and
3. Include--

- The 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;
- In the case of a hospital facility that does not have a separate billing and collections policy, the actions that may be taken in the event of nonpayment, including, but not limited to, any extraordinary collections actions (ECAs); the process and timeframes used in taking these actions; and the office, department, committee, or other body with the final authority or responsibility for determining that the hospital facility has made reasonable efforts to determine whether an individual is FAP-eligible and may therefore engage in ECAs against the individual;

- If applicable, any information obtained from sources other than an individual seeking financial assistance that the hospital facility uses, and whether and under what circumstances it uses prior FAP-eligibility determinations, to presumptively determine that the individual is FAP-eligible; and
- A list of any providers, other than the hospital facility itself, delivering emergency or other medically necessary care in the hospital facility that specifies which providers are covered by the hospital facility's FAP and which are not.

Widely publicizing the FAP

Under the regulations, a hospital facility must take four steps to widely publicize the FAP.

- First, the hospital facility must make the FAP, FAP application form, and plain language summary of the FAP (together, "FAP documents") widely available on a Web site.
- Second, the hospital facility must make paper copies of the FAP documents available upon request and without charge, both by mail and in public locations in the hospital facility, including, at a minimum, in the emergency room (if any) and admissions areas.
- Third, the hospital facility must notify and inform members of the community served by the hospital facility about the FAP in a manner reasonably calculated to reach those members who are most likely to require financial assistance from the hospital facility.
- Fourth, the hospital facility must notify and inform individuals who receive care from the hospital facility about the FAP.

With respect to the fourth step, hospitals must provide notice to individuals in the following three ways: (A) By offering a paper copy of the plain language summary of the FAP to patients as part of the intake or discharge process; (B) By including a conspicuous written notice on billing statements that notifies and informs recipients about the availability of financial assistance under the hospital facility's FAP and includes the telephone number of the hospital facility office or department that can provide information about the FAP and FAP application process and the direct Web site address (or URL) where copies of the FAP documents may be obtained; and (C) By setting up conspicuous public displays (or other measures reasonably calculated to attract patients' attention) that notify and inform patients about the FAP in public locations in the hospital facility, including, at a minimum, the emergency room (if any) and admissions areas.

Translations for Limited English Proficiency Populations

To widely publicize the FAP, a hospital facility must accommodate all significant populations that have limited English proficiency (LEP) by translating the FAP documents into the primary language(s) spoken by such populations. A hospital facility will satisfy this translation requirement in a taxable year if it makes the FAP documents available in the language spoken by each LEP language group that constitutes the lesser of 1,000 individuals or 5 percent of the community served by the hospital facility or the population likely to be served affected or encountered by the hospital facility. A hospital facility may determine the percentage or number of LEP individuals in the hospital's community or likely to be affected or encountered by the hospital facility using any reasonable method.

Issue Indicators or Audit Tips

- Ensure that the organization has established a FAP for the first taxable year beginning after March 23, 2010.
- Pay attention to the year at issue in your case. If the tax year commenced before December 29, 2015, the final regulations do not apply, and the hospital organization may rely on a reasonable, good faith interpretation of the statutory provisions of Section 501(r). For tax years beginning on or after December 29, 2015, the FAP must satisfy the regulatory requirements under Treas. Reg. Section1.501(r)-4.
- An organization's audited financial statements may provide useful information to examiners. A hospital organization that is required to file Form 990, Return of Organization Exempt from Income Tax, must attach a copy of its most recently audited financial statements to its Form 990 for tax years beginning after March 23, 2010. Organizations that file electronically are requested to submit their financial statements in Adobe PDF.
- When examining organizations with multiple hospital facilities, make sure to verify that each hospital facility has a written FAP. For organizations that operate multiple hospital facilities, a single policy may be adopted which applies to all hospital facilities (provided that certain requirements are met); however, the policy must clearly identify each hospital facility to which it applies.
- Keep an eye out for emergency care facilities. FAPs must apply to all emergency and medically necessary care furnished by the hospital and substantially related entities. If emergency and medically necessary care is provided by the hospital facility, the care must be covered under the FAP.
- Check for a Provider List. The final regulations require a hospital facility's FAP to list the providers, other than the hospital facility itself, delivering emergency or other medically necessary care in the hospital facility and to specify which providers are covered by the hospital facility's FAP (and which are not). See Notice 2015-46 for more information.
- Remember that FAPs must be widely publicized. Check the organization's website to ensure the FAP, FAP application, and plain language summary of the FAP are available. If the FAP documents are not available on a website, pay attention to the tax year. If the year precedes December 29, 2015, ask the hospital what steps it took to widely publicize the FAP. For years after December 29, 2015, the FAP documents must be posted on the website.
- Keep in mind that the policies established after December 29, 2015, must be adopted by an authorized body of the hospital facility, such as by the governing body or a committee of, or other party authorized by that governing body. Under the final regulations, the hospital facility must also implement the policy. A hospital facility will be considered to have implemented the FAP if the hospital facility has consistently carried out the policy.
- Another aspect of the "widely publicized" requirement is that hospitals must promote the policy in the communities served by the hospital facility. Under the final regulations, hospital facilities are required to notify and inform members of the community about the FAP in a manner reasonably calculated to reach those who are likely to require financial assistance from the hospital facility.
- Verify that the FAP is appropriately translated. Under the final regulations, if a language is spoken by at least 1,000 individuals or 5% of the community served by the hospital facility (or likely to be affected or encountered by the hospital facility), then the hospital facility must translate all FAP documents into that language.
- When examing the emergency medical care policy of an organization, remember that the final regulations prohibit hospitals from engaging in actions that discourage individuals from seeking emergency medical care. Examples of these actions include requiring patients to pay or make

deposits before receiving treatment for emergency medical conditions or permitting debt collection activities that interfere with the provision of emergency care.

- One source of information for examination is the Form 990, Schedule H. This schedule must be completed by hospital organizations that operate at least one hospital facility at any time during the tax year. Schedule H, Part V, Facility Information, includes Section A, Hospital Facilities, in which a hospital organization must list its hospital facilities (those facilities that at any time during the tax year were required to be licensed, registered, or similarly recognized as a hospital under state law). Form 990, Schedule H, Part I requires the reporting of financial assistance policies.

Page Last Reviewed or Updated: 19-Jan-2023