Crowe Healthcare Summit
Emerging Topics and Compliance Updates

Panel Discussion: Effective and Efficient Implementation of Section 501(r) – Having a Game Plan to Tackle the Final Regulations
The information provided herein is educational in nature and is based on authorities that are subject to change. You should contact your tax adviser regarding application of the information provided to your specific facts and circumstances.
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Evolution of 501(r)

- Patient Protection and Affordable Care Act
  - March 23, 2010
- Proposed Regulations issued (Financial Assistance Policies)
  - June 26, 2012
- Proposed Regulations issued (CHNAs)
  - April 3, 2013
- Final Regulations issued
  - December 29, 2014
- Effective for tax years beginning after December 29, 2015
The Patient Protection and Affordable Care Act (March 23, 2010) added 501(r) to the Internal Revenue Code:

1. Conduct a CHNA every 3 years
2. Establish financial assistance and emergency medical care policies
3. Limitations on charges for emergency or other medically necessary care to FAP-eligible individuals
4. No ECAs before making reasonable efforts to determine whether an individual is FAP-eligible
Final Regulations

Final Regulations were issued December 29, 2014

Effective for tax years beginning after December 29, 2015

Before the regulations are effective, organizations may rely on a reasonable, good faith interpretation of 501(r)
Timeline for 501r Implementation and Compliance

- Review, Update and Finalize Policies
- Educate Staff, Management Board
- Compliance Assessment / Mock Audit
Challenges of Operational Compliance with Section 501r –

1. Operational review
2. Analyze results of review
3. Educate leadership and staff
4. Draft / revise policies
5. Determine changes to be made
Challenges of Operational Compliance with Section 501r –

- Compliance is ongoing – not just a point in time
- Compliance is multidisciplinary – an institution-wide effort
- Compliance is difficult – someone needs to “own” the process
- Compliance is dependent upon education and good communication – everyone must understand their role and how it fits in the big picture
- COMPLIANCE DOESN’T JUST HAPPEN—IT TAKES WORK!
Importance of Operational Review and Compliance

- Avoidance of penalties (including loss of exemption)
- Form 990, Schedule H reporting
- Potential impact on property and sales tax exemption
- Attorney General scrutiny
- Media scrutiny
- Public perception
- Other
Covered Under Section 501(r)

- Financial Assistance Policies
- Emergency Medical Care Policies
- Calculation of Amounts Generally Billed
- Billing and Collection Policies
- Community Health Needs Assessments
- Implementation Strategies
Financial Assistance Policies

- A Financial Assistance Policy (FAP) must include:
  - Eligibility criteria for financial assistance
  - Basis for calculating amounts charged to patients
  - Method for applying for financial assistance
  - Actions the hospital may take in the event of nonpayment
  - Presumptive eligibility criteria and information sources used
  - List of any providers delivering emergency or other medically necessary care in the hospital (specifying which providers are covered by the FAP and which are not)

- Hospitals must make FAP, FAP application form, and plain language summary of FAP “widely available”
Financial Assistance Policies – Provider Listing

- List of any providers delivering emergency or other medically necessary care in the hospital (specifying which providers are covered by the FAP and which are not)

- Perspectives:
  - IRS – why not?
  - Hospital community – no way!
  - Patient/consumer advocates – patients want to know who/what is covered.
Financial Assistance Policies – Provider Listing Clarification

- IRS Notice 2015-46
- Provides clarification to the requirement under section 501(r)(4) that a hospital facility’s financial assistance policy include a list of providers
- A hospital may list the names of individual doctors, practice groups, or any other entities that are providing emergency or medically necessary care in the hospital facility by the name used either to contract with the hospital or to bill patients for care provided
- The list may be maintained in a document separate from the FAP, and must include the date on which it was created or last updated
- If the only change a hospital facility makes to its FAP is to update the provider list, the FAP does not need to be adopted by an authorized body again
- List must be updated at least quarterly
Emergency Medical Care Policies

- Hospitals must provide, without discrimination, care for emergency medical conditions to individuals regardless of whether they are FAP-eligible.
- Hospitals are prohibited from engaging in actions that discourage individuals from seeking emergency medical care, such as by demanding that ER patients pay before receiving treatment or by permitting debt collection activities that interfere with the provision of care.
- Final regulations do not prevent an emergency medical care policy from being included within the same document as the FAP or from being added to an already existing document (EMTALA policy).
Calculation of Amounts Generally Billed (AGB)

- Hospitals must limit the amount charged to FAP-eligible individuals, in the case of emergency or other medically necessary care, to not more than AGB

- **Look-Back Method**
  - Hospital must calculate AGB % at least annually by dividing the sum of the amounts of all its claims for emergency and other medically necessary care that have been allowed by health insurers during a prior 12-month period by the sum of the associated gross charges for those claims
    - Medicare fee-for-service;
    - Medicare fee-for-service and all private health insurers; or
    - Medicaid, either alone or in combination with the above
  - Begin applying AGB % by 120th day after end of 12-month period used

- **Prospective Medicare or Medicaid Method**
  - Determine AGB by using the billing and coding process the hospital would use if the FAP-eligible individual were a Medicare fee-for-service or Medicaid beneficiary
Billing and Collection Policies

- Hospital may not engage in extraordinary collection actions (ECAs) against an individual before making reasonable efforts to determine whether the individual is eligible for assistance under its FAP.
- ECAs include reporting adverse information about the individual to consumer credit reporting agencies or credit bureaus.
- Reasonable efforts to determine whether an individual is FAP-eligible include:
  - Refraining from initiating any ECAs for at least 120 days from first post-discharge billing statement.
  - 240-day application period.
Operational Impact of 501(r)

Once policies are implemented, are operations consistent with those policies? Relevant items include, but are not limited to:

- Policies and procedures
- Hospital website
- Patient admission/discharge communications
- Billing statements and patient correspondence forms
- Hospital signage
- Oral communications with patients about their bill
- Timing of collection actions
- Vendor agreement provisions
Operational Compliance – Examples

- **Requirement**: FAP must specify the eligibility criteria that an individual must satisfy to receive each discount, free care, or other level of assistance available under the FAP.

- **Assessing Compliance**:
  - Review FAP
  - Review FAP application
  - Interview patient financial services personnel to inquire whether eligibility criteria not stated on the application is ever considered when granting financial assistance.
Operational Compliance – Examples

- **Requirement:** If an individual submits an incomplete FAP application during the application period, the hospital must suspend any ECAs to obtain payment and provide the individual with a written notice that describes the additional information required.

- **Assessing Compliance:**
  - Review the billing and collection policy
  - Request information for a sample of patients who submitted incomplete FAP applications during the application period to ascertain whether they received proper written notice and whether ECAs were suspended.
Operational Compliance – Examples

- **Requirement**: A hospital must make the FAP, FAP application form, and plain language summary of the FAP widely available on a website

- **Assessing Compliance**:
  - Review the hospital website
  - Interview patient financial services personnel responsible for updating the website—or providing content for website updates—to ascertain whether FAP information is kept current