Financial Assistance at Washington State Hospitals
State charity care law and federal 501(r) regulations

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Notice

• WSHA requests that only authorized individuals participate in the web cast

• Content provided is not legal advice, but informational only
Objectives

• Educate members on important change in federal law for 501(c)(3) hospitals

• Educate members regarding interplay of state charity care law and federal 501(r) requirements and encourage holistic thinking
  – Highlight changes from current practice, provide concrete examples and practical tips

• Educate members and get buy-in for voluntary development and adoption of model application form and communication plan

• Get ahead of financial assistance issues – proactive work to avoid later legislation and mistakes due to noncompliance
Agenda

• Washington State law on hospital financial assistance

• Federal 501(r) regulations on hospital financial assistance

• Practical interplay of state and federal law

• Developing model documents

• Q&A
Hospital Financial Assistance – Overview of Current Law in Washington
Financial Assistance in Washington Hospitals

• RCW 70.170, WAC 246-453

• Enacted in 1989

• Hospitals must provide charity care – both care without charge and discounted care on a sliding fee scale

• Hospitals cannot have policies that restrict access based on inability to pay or policies which significantly reduce charity care.

• WSHA voluntary pledge expands eligibility (2007)
Financial Assistance in Washington Hospitals

- Charity care is:
  - “Necessary hospital health care”/“appropriate hospital-based medical services”
  - Rendered to “indigent persons”
  - “To the extent that the persons are unable to pay for the care or to pay deductibles or co-insurance amounts required by a third-party payer”
Definitions

• What are “appropriate hospital-based medical services”?
  • Defined in WAC 246-453-010(7)
  • Services that are reasonably calculated to diagnose, correct, cure, alleviate, or prevent worsening of health conditions
    • Very broad definition
  • Applies to all hospital services
    • Not only emergencies
Definitions

• When is someone “indigent”?  
  • Defined in WAC 246-453-010  
  • Exhausted third-party sources of payment  
  • Family income is:  
    • at or below 200% of federal poverty level (300% under the voluntary hospital pledge); or  
    • “otherwise not sufficient to enable them to pay for care...or coinsurance”

• Definition of “family”  
  • Group of two or more persons related by birth, marriage, or adoption who live together.
Definitions

• How to determine if person unable to pay?
  • Determine federal poverty level
  • Based on income and family size
  • Can review income documentation
  • If above 100% FPL, may review income and asset documentation
# Who Qualifies for Charity Care?

<table>
<thead>
<tr>
<th>Family Income Level</th>
<th>Qualifying Patient</th>
<th>Insurance Status</th>
<th>May Consider</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-100% FPL</td>
<td>Law/Pledge: Full write off</td>
<td>Uninsured/Insured</td>
<td>Only income</td>
</tr>
<tr>
<td>101-200% FPL</td>
<td>Law: Sliding scale discount Pledge: Discounts to reflect cost of care</td>
<td>Uninsured/Insured</td>
<td>Income and assets</td>
</tr>
<tr>
<td>201-300% FPL</td>
<td>Pledge: Discounts off of charges to reflect 130% cost of care</td>
<td>Uninsured</td>
<td>Income and assets</td>
</tr>
<tr>
<td>Can provide steeper discounts – many policy go to 400% FPL</td>
<td>Per hospital policy</td>
<td>Uninsured and/or Insured</td>
<td>Income and assets</td>
</tr>
</tbody>
</table>

FYI, 100% FPL (2015): $11,770 (single person), $24,250 (family of four)
Notice of Financial Assistance Availability

• Information must be “publicly available”
  • Prominently displayed in public areas
  • Provided in writing and explained at time hospital asks about third party coverage
  • Translated in languages spoken by >10% of population

• Notification of billings from third parties (RCW 70.41)

• Estimate of costs and notice (RCW 70.01.30, RCW 70.41.450)
Keep In Mind

• Law is silent regarding deadlines for patients to apply for financial assistance

• Hospitals must submit financial assistance policies to DOH *at least 30 days prior to adoption*

• Nonprofit 501(c)(3) hospitals have additional obligations
Frequently Asked Questions

• How do you define income?

• Do indigent persons include those from other countries, from other states, or from other parts of Washington?

• Do indigent persons include those on Medicaid?

• Can a hospital require patients to apply for Medicaid if they may qualify?
Frequently Asked Questions

• When can a hospital consider assets?

• Is there a standard definition of assets?

• Do discounts apply to the entire bill or can they be applied to co-payment amounts?

• To what extent do the requirements apply to the physician component of services and how does it change with employed physicians?
Interplay of Federal and State law
501(r) regulations and Washington charity care
Section 501(r): ACA and 501(c)(3) Hospitals

• Affordable Care Act imposes new requirements on Section 501(c)(3) “hospital organizations” through new Section 501(r)

• A “hospital organization”:
  • Operates one or more facilities required to be licensed as hospitals under state law

• Separate compliance is required for each facility
Section 501(r) Financial Assistance Basics

1. Written financial assistance and emergency care policies
2. “Widely publicize” financial assistance policy
3. Limits on amounts charged to patients eligible for financial assistance
4. Limits on “extraordinary collection actions” against patients

- New reporting obligations on Form 990
- Range of sanctions for violations
- Treasury Regulation §§ 1.501(r)-1 to 1.501(r)-7
Section 501(r) Effective Dates

• Section 501(r) itself was effective for tax years beginning after March 23, 2010, but there was little guidance

• IRS issued final regulations on December 29, 2014, which are effective and binding for tax years beginning after December 29, 2015

• For earlier years, organizations may choose to rely on either the proposed regulations or the final regulations
Financial Assistance Policies

• Under 501(r) financial assistance policies must state:
  • Criteria for awarding assistance
  • Nature of assistance

• Eligibility criteria defined by state law, WSHA pledge, and more generous hospital policies

• Criteria in financial assistance policies determines discounts considered community benefit and reportable on IRS Form 990
  • Be certain to include catastrophic charity care and other eligibility exceptions in financial assistance policy
Financial Assistance Policies

• Under 501(r) financial assistance policies must state:
  • Method of application
  • Basis for calculating charges for patients eligible for financial assistance
  • That patients eligible for financial assistance are charged no more than “amounts generally billed” (as defined in 501(r) regulations)

• Applies to care:
  • provided directly by hospital facility
  • by any partnership or LLC within the facility
Method of Application

- State law establishes:
  - Documents that can be used to determine eligibility
  - Income information for indigence and free care
  - “Existence and availability of family assets” for sliding fee schedule
  - Timing for Hospital review of application and appeal process

- Reliance on patient attestation permitted
Timing of Application

• 501(r) defines application period

• State law is silent on when an application must be filed

• May a time limit on applications now be imposed?
Financial Assistance Policies

• The financial assistance policy must list all nonemployee providers delivering “emergency or other medically necessary care” and state whether each one is covered by the policy.

• New IRS guidance: **Notice 2015-46** (June 2015)
  - May list individuals or entities (e.g., physician groups)
  - May list departments or types of service, if all or no services covered
  - List may be in separate document, but must be both online and on paper
Financial Assistance Policies

• “Widely publicized”
  • Web site
  • Paper: on request in ER, admission, discharge, & by mail
  • Conspicuous public displays within facility
  • Plain language summary (not needed on billing statements)

• Notification of community
  • “In a manner reasonably calculated” to reach community members likely to require financial assistance”

• Translation into foreign languages
  • 5% of the community or at least 1000, whichever is less
Notes on Publicizing Policy

• Hospitals must meet state law requirements too
  • Posted and displayed in public areas
  • Provided in writing and explained when hospitals ask for information regarding third party coverage
  • Translations, but must use 501(r) threshold

• Plus
  • Notification of billings from third parties
  • Notice of availability of estimate of costs
Limitations on Charges

• “AGB” = amount generally billed
  • As a percentage of gross charges

• Financial assistance-eligible patients can be charged:
  • “Emergency or medically necessary” care: No more than AGB
  • Other care: Less than gross charges

• Discounts to non-financial assistance eligible patients do not count as community benefit
Limitations on Charges

• Two methods of calculating amount generally billed
  
  • “Look back” based on past claims paid either:
    1) by Medicare fee-for-service, or
    2) by Medicare FFS + all private health insurers
    • Medicaid may be added to either 1) or 2)

  • “Prospective” based on future Medicare and/or Medicaid reimbursements

• New: A facility may change the method at any time
Billing and collection

“Reasonable efforts” must be made to determine financial assistance eligibility before “extraordinary collection actions” (ECA) may occur
Billing and collection – Extraordinary Collection Activities

**ECAs** include:
- Reporting patients to credit agencies
- Legal or judicial processes (regular liens, attachments, garnishments, foreclosures)
- Selling debt (unless buyer agrees to refrain from ECAs and satisfy other conditions)
- Deferring or denying medically necessary care because of failure to pay for previous care

The following are **not ECAs:**
- Medical liens
- Other collection efforts not listed above
Billing and collection – Reasonable Efforts

“Reasonable efforts” means:

- No extraordinary collection actions (ECAs) for first 120 days after first bill, period
- 30 days’ notice before initiating ECAs
- If a financial assistance application is submitted within 240 days, no ECAs while application is processed
- ECAs initiated between 120 and 240 days must be reversed if a financial assistance application is submitted
Billing and collection

1. Care Provided, FAP period begins
2. First post discharge billing
3. ECA Notice
4. ECA Start
5. Application period?

- 120 Days
  - May not use ECAs

- 30 Days
  - ECA initiation notice

- 240 Days
  - Must suspend ECAs until FAP application processed
State Law Limitations on Collections

• Collections not allowed under state law pending certain application and appeals processes

• Hospitals using medical liens must notify patients in advance

• Hospital pledge:
  • Governing Board receives annual summary of collection actions
  • Written policy as to when and under whose authority an account is sent to collections and when lien is placed
Failures to Satisfy Section 501(r)

- Three kinds of failures:
  1) Minor and inadvertent
     • IRS says: these are not violations if promptly corrected.
     • No disclosure.

  2) “In between”
     • These are violations, but may be excused (except for CHNA) if the facility corrects and discloses (including on Form 990).

  3) Willful or egregious
     • May trigger revocation of tax-exempt status.
Some Practical Tips

• Integrate 501(r), state, and hospital pledge requirements

• Include as many discounts as possible under the financial assistance policy

• Ensure ER operations are consistent with financial assistance policy

• Determine time frame for accepting applications
Next Steps

*Developing financial assistance policies and procedures*
Attention of Legislators, Consumers & State

• Hospitals charity care and bad debt rates declined

• House Bill 1504
  • 2015 Legislative Session
  • Bill proposed to
    – Mandate state developed charity care application form
    – Mandate specific transparency steps

• Active consumer groups
  • Patients and community health care find charity care confusing

• WA Department of Health planning to open charity care rules
WSHA Model Document Workgroup

- HB 1504 did not pass
  - WSHA committed to do the work ourselves

- WSHA Workgroup
  - Make changes voluntarily
  - Develop model charity care application
  - Develop model notification standards and communication plan
  - All compliant with state and federal law

- Goal: Voluntary, universal adoption of model documents
WSHA Guidance on Financial Assistance Policies

• WSHA will develop
  • Guidance documents to develop financial assistance policies
  • Compliant with state charity care law
  • Compliant with federal 501(r) requirements

• Likely a checklist or outline
Future Changes to WA Charity Care Law

- Washington Department of Health
  - Will open charity care regulations in Fall 2015
  - Likely a 12+ month process
  - Will include a variety of stakeholders
  - Likely substantial changes

- Your participation will be crucial

- May be additional legislative action...
Questions?
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Thank You