Charity Care and 501(r)
Avoiding Attorney General and IRS Trouble

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November 10, 2017
Agenda

• Introductions
• Brief overview
  – State law on financial assistance/charity care
  – Federal 501(r) regulations for tax-exempt hospitals
• State and federal interest
  – Washington State Attorney General
  – Columbia Legal Services
  – IRS 501(r) examinations
• Q&A
Washington State Hospital Association

WSHA Member Hospitals

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Date last revised: 07/2017

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- 8th largest accounting firm in the United States
  - More than 100 locations across the United States
  - More than 5,000 professionals

- Health care clients include:
  - Senior living
  - Hospitals and health systems
  - Physicians and medical groups
  - Home health, hospice, and community-based care
  - Community health centers
  - Life sciences
What do these entities have in common?

Answer:
A deep, abiding, and active interest in hospital finances, particularly charity care, community benefit and tax exempt status
...and the ability to enforce, make, or interpret the law
Report: Washington hospitals stingy with charity care, with language barrier an issue

Originally published September 12, 2017 at 6:00 am

State sues Capital Medical Center, alleging it denied charity care

ACCESS DENIED
Washington’s Charity Care System, its Shortfalls, and the Effect on Low-Income Patients

Lawsuit alleges Deaconess, Valley hospital owner shorted community millions in charity care

Updated: Tue., June 13, 2017, 10:15 a.m.
Washington State Financial Assistance Law

- State law mandates charity care and specific eligibility criteria
  - Enacted in 1989
  - RCW 70.170, WAC 246-453
  - Contains definitions, eligibility, free/reduced care standards
  - Augmented by 2007 voluntary hospital pledge

- All hospitals licensed in WA must provide charity care
  - Free and discounted care on a sliding fee scale.
  - Applies to uninsured and insured.
  - Cannot have policies that restrict access based on inability to pay.

- Must make charity care information **publicly available** and provide **translation/interpretation**.
Federal Law – 501(r)

• Created by the Patient Protection and Affordable Care Act of 2010.

• Applies to all hospitals with 501(c)(3) status.
  – “Hospital” is based on state-issued health license.

• Comprehensive rules for:
  – Financial assistance policy and application and procedures
  – Emergency medical care policy
  – Billing and collection policy and procedures
  – Limitations on charges
  – Community health needs assessments
## Charity Care at All Hospitals

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

100% FPL (2017): $12,060 (single person), $24,750 (family of four)
Publicizing Financial Assistance - State

• Hospitals must:
  – Post and display information on charity care in public areas
  – Provide information in writing and explained when hospital asks for information regarding third party coverage
  – Translate information (languages spoken by 10% of served population)

  *WSHA-developed standard application, communication plan and model signage can help*
Publicizing Financial Assistance - Federal

- Hospitals must:
  - Make the FAP, FAP application, and PLS widely available on a website;
  - Make paper copies available upon request and without charge:
    ◊ By mail,
    ◊ In the emergency room, and
    ◊ In all admissions areas;
  - Notify the community in a manner reasonably calculated to reach those people most likely to need financial aid;
  - Offer a paper copy of the PLS as part of intake or discharge;
  - Include a conspicuous written notice on billing statements; and
  - Set up conspicuously public displays in the emergency room in all admissions areas; and
  - Translate into the primary language of any group with limited English proficiency if greater than the lesser of 1,000 people or 5% of community.
Washington State Attorney General

- Allegations
  - Lack of notice
  - No “screening”
  - Staff inappropriately trained
  - Limited charity care to emergent
  - Burdensome documentation
  - Demand/collect pre-payment
Access for non-English speakers

Website
  – Application available, translated
  – Consistency
  – Current policy on DOH website

Social security number

Billing and collections

Policy consistency
Emerging Issues in the Complaints/Report

• Relying on out of state consultants
  • Make sure you have experts who know Washington State law to develop your program and train your people

• Lack of notice
  • Notice of charity care availability needs to be on your website, posted in your hospital, provided at the time of service, and when bills are sent to patients

• Language access challenges
  • Consult counsel and consider 501(r) requirements
Emerging Issues in the Complaints/Report

- **Limiting charity to emergency services**
  - Charity care is available for any appropriate hospital-based medical services

- **Imposing burdensome documentation requirements**
  - AG asserts only a single document can be requested
  - The law does limit documents requested to a single category

- **Lack of adequate screening for eligibility**
  - The law requires “initial determination” of eligibility before commencing collection efforts
Legislative Action Likely

- Notice/transparency
- Information for non-English/LEP populations
  - Signs, billing statements, collection materials
  - Translator access
- Free/sliding scale thresholds
- Screening/affirmative obligations
- Pre/post judgment interest rates
- TBD...
IRS Examinations for 501(r) Compliance

• The IRS is required to conduct a “desk review” of every applicable hospital’s compliance at least every 3 years.
  – Based primarily on website and/or Form 990, Schedule H.
• Indicators of noncompliance lead to a full examination.

• March 2016 – the IRS announced it had trained 30 agents to conduct 501(r) reviews and exams.
• September 2016 – the IRS announced it had completed reviews of 692 hospitals and recommended full examinations for 166 of them.
  – Examination rate = 24.0%!
• August 2017 – the IRS announced that it had revoked the 501(c)(3) status of a hospital for failure to comply with 501(r).
  – LTR 201731014
State and Federal Law Interplay

• State law mandates specific eligibility criteria.

• Federal law mandates hospitals clearly and completely identify and communicate policies.

• Themes:
  – Communication
  – Transparency
  – Process/procedure
  – Document and publicize
  – Effort!!!
Comments and Questions?
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Further Information

WSHA model signs and forms are available on our website at:
http://washington-state-hospital-association.myshopify.com/