



hfma
healthcare financial management association

August 27, 2012

Office of Management and Budget
Attn: Desk Officer for the Department of the Treasury
Office of Information and Regulatory Affairs
Washington, DC 20503

Re: REG-130266-11 -- Proposed Rule: Additional Requirements for Charitable Hospitals

Dear Sir or Madam:

The Healthcare Financial Management Association (HFMA) appreciates this opportunity to comment on the Department of the Treasury and Internal Revenue Service's proposed regulations under Section 501(r)(4)-(6) pertaining to tax-exempt hospitals' financial assistance policies (FAPs), emergency medical care policies (EMCPs), limitation on charges, and billing and collection procedures, as published in the June 26, 2012, *Federal Register*.

HFMA is a professional organization of more than 39,000 individuals involved in various aspects of healthcare financial management. HFMA is committed to helping its members improve management of and compliance with the numerous rules and regulations that govern the industry.

The introduction to the proposed regulations indicates that the collection of information contained in the proposed regulations is subject to the Paperwork Reduction Act (PRA) and directs that comments be sent to the Office of Management and Budget regarding the burden imposed by the collection of information. We certainly appreciate the need to comply with the 501(r) requirements; however we are deeply concerned that the PRA estimates of the burden associated with the proposed collection of information significantly underestimates the full burden charitable hospitals will face.

The proposed rule solicits comments on five specific questions, four of which we address in this letter.

Regarding the question of whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility, we have the following comments:

Although we believe the intention behind the regulation – ensuring that charitable hospitals have a clearly written and communicated FAP and EMCP – is a good one, we are concerned that the proposed regulations will require hospital organizations to make duplicative efforts without any gains in the practical utility of the information provided to the Internal Revenue Service.

First, many hospital organizations already have in place written policies that cover most, if not all, of the section 501(r) requirements. Rather than requiring a rewrite of these policies, the regulations should give hospital organizations the flexibility to incorporate these policies by reference into a consolidating policy.

Second, we believe that requiring separate policies for each organization will be unnecessary and redundant in many instances. Multi-hospital organizations, for example, should be able to adopt system-level policies meeting section 501(r) requirements that qualify as compliant policies for the individual hospitals within the organization.

Section 501(r)(4)(B) also requires a hospital organization to have a written policy requiring the organization to provide, without discrimination, care for emergency conditions to individuals regardless of their eligibility under the financial assistance policy. Hospitals organizations with emergency departments are already required to provide emergency medical care under the Emergency Medical Treatment and Active Labor Act (EMTALA) and therefore, the requirement for a written EMCP seems unnecessary.

Regarding the question of accuracy of the estimated burden associated with the proposed collection of information, we have the following comments:

The proposed regulations indicate estimated annual burden hours per recordkeeper (i.e., hospital organizations subject to the 501(r) requirements) of 11.5 hours. Yet the rules will require hospital organizations to execute numerous actions that will easily exceed this estimate, including (but not limited to):

For Financial Assistance Policy Compliance:

- Determine whether a facility is a “hospital facility” as defined by the Treasury regulations
- Prepare and periodically update FAP documents, requiring:
 - A regulations-compliant FAP
 - A plain-language summary of the FAP
 - An FAP application form
 - FAP application form instructions
 - If necessary, a separate billings and collection policy
- Adopt the FAP by an authorized body of the hospital organization or the hospital facility
- Determine the community that is served by the hospital facility
- Determine whether a language minority constitutes more than 10 percent of the community served, and then translate and publish all of the FAP documents into the language(s) of all such language minority populations (a requirement that will likely have a disproportionate impact on urban and safety net hospitals)
- Take actions to widely publicize the FAP, including:
 - Posting and maintaining the FAP and all FAP-related documents on a website
 - Distributing the FAP and FAP-related documents by mail upon request
 - Creating, posting, and periodically updating public displays regarding the FAP

- Informing and notifying members of the community served by the hospital facility about the FAP

For Emergency Medical Care Policy (EMCP) Compliance:

- Create and periodically update a regulations-compliant EMCP
- Adopt the EMCP by an authorized body of the hospital organization or the hospital facility

For Limitation on Charges Compliance:

- Determine the methodology used, and:
 - If using the look-back method:
 - Determine whether to calculate a single amounts generally billed (AGB) percentage for all emergency and medically necessary care or multiple AGB percentages for separate categories of care
 - Review at least annually all claims for emergency or medically necessary care that have been paid in full in the preceding 12 months
 - Calculate the AGB percentage
 - If using the prospective Medicare method:
 - Determine the amount Medicare and the Medicare beneficiary together would be expected to pay for the care

For Billing and Collection Compliance:

- Create, revise, or otherwise establish regulations-compliant billing and collection practices
- Notify patients about the FAP, by taking at least each of the following actions:
 - Providing the plain-language FAP summary before discharge
 - Attaching the plain language FAP summary to at least three billing statements
 - Informing the patient about the FAP in all oral communications regarding amounts due
 - Preparing a notice warning of extraordinary collections actions (ECAs) that may be taken in the event an FAP application is not submitted within 120 days after the first billing statement was sent
- Process incomplete FAP applications by taking each of the following actions:
 - Notifying individuals of additional information required to complete the FAP application
 - Preparing a notice warning of ECAs that may be taken in the event a complete FAP is not submitted, at the earliest, within 240 days after the first billing statement was sent
- Process complete FAP applications by taking each of the following actions:
 - Establishing or authorizing a decision-making body to render determinations regarding FAP eligibility
 - Making and documenting determinations regarding FAP eligibility
 - Notifying patients in writing regarding a determination of FAP eligibility
 - With respect to an FAP-eligible individual, if applicable, sending a revised billing statement, processing any refunds, and taking measures to reverse any ECAs already taken

- If applicable, rendering and processing a determination of FAP eligibility based on sources other than the FAP-applicable form
- Draft and negotiate agreements with debt collection agencies related to ECAs that an agency may take

Based upon HFMA's review of the actions required by proposed regulations, solicitation of our members for comments, and discussions with our members of their current policies and procedures, HFMA estimates that hospital organizations will have to expend between 120 to 2700 hours annually to comply with the Section 501(r) requirements, **a burden that exceeds the estimate in the proposed regulations by a multiplier of 10, at the minimum.**

Regarding the question of how the quality, utility, and clarity of the information to be collected may be enhanced, we have the following comments:

As noted earlier, we believe the regulations should clarify that, for hospitals organizations with existing written policies, they may incorporate these existing policies by reference in a consolidating policy instead of rewriting their existing policies.

We also believe that the regulations should clarify how—or if—the requirements of section 501(r) exceed EMTALA requirements in order to avoid unintentional violations of the regulations.

Finally, regarding the question of how the burden of complying with the proposed collection of information may be minimized, including through forms of information technology, we have the following comments:

Hospitals do not wish to pursue or take ECAs against patients who have no ability to pay. Such actions simply waste valuable resources and do not result in payment. But hospitals must determine whether a patient is indigent before they can know whether some form of financial assistance is appropriate or whether collection efforts should be pursued. Making this determination is an expensive effort. If patients refuse to apply for financial assistance and do not pay for the services rendered, hospitals must assume that they have financial resources available.

Given these considerations, we request that the Treasury make income verification (Adjusted Gross Income) as reported by IRS more readily available to hospital organizations through an automated, online process, such as an EDI 270/271 transaction, to assist hospital organizations in determining patient eligibility for financial assistance. Hospital organizations can get this information today by faxing a Form 4506-T to the IRS or calling for verification. Streamlining that process for healthcare organizations through an automated process would both minimize the burdens of determining eligibility and provide administrative simplification, one of the original goals of PPACA.

Given the fact that FAPs can be several pages long, we also recommend that a+ hospital organization should be deemed to have met the community and patient notification requirements of section 501(r) through the use of summaries, which may fit on a single page or an informational pamphlet.

Finally, we are concerned that the proposed regulations' requirement that a paper plain-language summary of the FAP be included with all (and at least three) billing statements during the 120 day

notification period will add significantly to the cost of mailing the billing statements and be a waste of paper. Instead, we recommend that a paper plain language summary be included in the first statement only, with a direct website address or URL for the plain language summary of the FAP on subsequent statements. We would also suggest that other forms of mobile delivery, SMS text, or email delivery be considered sufficient methods of notification in instances where patients have access to these forms of communication.

HFMA looks forward to any opportunity to provide assistance or comments to support the effort to create a simplified, standardized, and non-duplicative program. As an organization, we take pride in our long history of providing balanced, objective financial technical expertise to Congress, CMS, OMB, and advisory groups.

We are at your service to help gain a balanced perspective on this complex issue. If you have additional questions, you may reach me in Washington DC or Todd Nelson, Technical Director for Senior Financial Executives/Accounting in our Westchester office at (708) 492-3353. The Association and I look forward to working with you.

Sincerely,



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cc: Internal Revenue Service
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About HFMA

The Healthcare Financial Management Association (HFMA) provides the resources healthcare organizations need to achieve sound fiscal health in order to provide excellent patient care. With more than 39,000 members, HFMA is the nation's leading membership organization of healthcare finance executives and leaders. HFMA helps its members achieve results by providing education, analysis, and guidance, and creating practical tools and solutions that optimize financial management. The organization is a respected and innovative thought leader on top trends and challenges facing the healthcare finance industry. From addressing capital access to improved patient care to technology advancement, HFMA is an indispensable resource on healthcare finance issues.