FORVIS

Understanding 501(r) Requirements

Aaron Hershberger | Director

Agenda

- Hospital Requirements Under 501(r)
  - Financial Assistance Policy
  - Limitation on Charges
  - Billing and Collection Activities
  - Community Health Needs Assessment
- IRS Compliance Monitoring
- Risks of Non-Compliance

FORVIS

Hospital Requirements Under 501(r)

FORVIS

IRC Section 501(r) - Overview

- Affordable Care Act (ACA) Section 9007 created new Section 501(r) in 2010
- Final 501(r) Regulations issued in December of 2014
- Sets forth four requirements for hospitals to maintain tax-exempt status

FORVIS

IRC Section 501(r) - Overview

- Four requirements
  - Implement and widely publicize a written financial assistance policy containing specified elements and an emergency medical care policy – 501(r)(4)
  - Limit amounts billed to patients qualifying for financial assistance – 501(r)(5)
  - Comply with specified billing and collection practices – 501(r)(6)
  - Conduct community health needs assessments and an implementation strategy to address identified needs every three years – 501(r)(3)

FORV/S

IRC Section 501(r) - Overview

Applies to hospital organizations operating hospital facilities

- "Hospital organization" determined by 501(c)(3) status
- Applied on a hospital facility-by-facility basis
  - "Hospital facility" determined by state license
- Multiple buildings operated under a single state license are considered a single hospital facility
- Single building that conducts operations under more than one state license is considered a multiple hospital facility
- Applies to government hospitals that have received exempt status under section 501(c)(3)

FORV/S

Polling Question #1

How would you rate you understanding of the 501(r) requirements for hospitals?

- I'm an expert
- I know a little but I'm not an expert
- 501(r)…What's that?

FORVIS

7

FORVIS

8

Financial Assistance Policy

- Hospital facility must establish a written financial assistance policy (FAP) that applies to all emergency and other medically necessary care and must be widely publicized
- FAP must include the following elements:
  - Explain eligibility criteria and whether it includes free/discounted care
  - Basis for calculating amounts charged to patients, methodology for amounts generally billed ("AGB")
  - Method of applying for financial assistance
  - Actions hospital may take in the event of nonpayment (if no separate billing/collections policy) and how to obtain a copy of policy
  - Information obtained from other sources used for determining eligibility
  - Whether prior FAP eligibility is used for presumptive determination
  - List of providers delivering emergency or other medically necessary care in the facility, and which providers are and are not covered by FAP

FORV/S

9

Financial Assistance Policy

Widely Publicized

- FAP, FAP application and a plain language summary must be clearly posted on website
- Paper copies of FAP, FAP application and plain language summary available in public locations in hospital and by mail (without charge)
  - at a minimum in ER and Admission areas
- Inform and notify members of the "community served" about the FAP
- Offer a paper copy of plain language summary as part of intake or discharge

FORV/S

10

Financial Assistance Policy

Widely Publicized (continued)

- Include obvious notice on billing statement (Phone #, contact info, website, etc.)
- Notify visitors about FAP through visible displays in public locations at hospital
- Translating FAP, FAP application and plain language summary in community languages of lesser of 5% or 1,000 people

FORV/S

Financial Assistance Policy

Emergency Medical Care Policy

- Requires written policy stating hospital facility will provide emergency care, without discrimination and regardless of eligibility under FAP
- Requirement met if policy requires the hospital facility to provide for the emergency medical conditions that it is required to provide under existing federal law such as the Emergency Medical Treatment and Labor Act (EMTALA)
- Must prohibit the hospital facility from discouraging individuals from seeking emergency medical care, such as by demanding payment prior to treatment or by permitting debt collection practices that interfere with emergency medical care

FORV/S

Financial Assistance Policy – Take Aways

- The FAP rules are focused on transparency and are **not intended to mandate eligibility or levels of assistance**
- The FAP is closely intertwined with AGB and billing and collection practices and must be updated and re-adopted when changes occur
- Facilities should:
  - Review FAP, plain language summary, and the FAP application for compliance
  - Determine and document:
    - ✓ Limited English proficiency populations requiring FAP translations
    - ✓ How the facility will reach FAP-eligible individuals
    - ✓ How the facility will notify its community about the FAP in a manner calculated to reach those who are FAP-eligible

FORVIS

Polling Question #2

In your opinion which of these is the best holiday movie?

- Elf
- Die Hard
- It's a Wonderful Life
- Gremlins
- Home Alone
- National Lampoon's Christmas Vacation

FORVIS

FORVIS

15

Limitation on Charges

- Must limit amounts charged for emergency or other medically necessary services to FAP eligible individuals to AGB to those with insurance
- Must charge less than gross charges for any other services provided to FAP eligible individuals
- “Charged” means only the amount the individual is personally responsible for paying after all deductions, discounts and insurance reimbursements have been applied

FORVIS

16

Limitation on Charges

- Hospital facility must use one the following two methods to determine AGB:
  - "Look Back" method (12 month look back of managed care, Medicare, etc.)
  - "Prospective Medicare or Medicaid" method (uses the billing and coding system the hospital facility would use if the FAP-eligible individual were a Medicare fee-for-service or Medicaid beneficiary; AGB is set by the amount that Medicare or Medicaid would allow for the care)
- May change AGB method at any time (FAP must be updated first)
- AGB must be calculated on a facility-by-facility basis (cannot calculate at system level)

FORVIS

17

Limitation on Charges

- AGB safe harbor - A hospital facility will be deemed to appropriately limit charges under the AGB limitations even if a charge exceeds AGB if:
  - A charge in excess of AGB was not made as a pre-condition to providing medically necessary care,
  - A FAP-eligible individual has not submitted a complete FAP application or been determined to be FAP-eligible, and
  - The hospital refunds any amount paid in excess of amount responsible for under the FAP (over prescribed de minimis amount) once the individual submits a complete application and qualifies.

FORVIS

18

Limitation on Charges

- **Special rule #1** – Exception for facility-by-facility look-back method
  - May calculate ABG% on a combined basis for all facilities under the same Medicare provider agreement
- **Special rule #2** – Definition of medically-necessary care
  - May define medically-necessary care by state law, community standards, or physician determination

FORV/S

19

Limitation on Charges - Take Aways

- Gross charges – limitation applies to all care under the FAP; AGB can never exceed gross charges.
- AGB
  - Must use either look-back or prospective method and cannot combine methods at a single facility
  - FAP must continuously reflect the current method in use
  - Consider optimal method for each facility, taking into account administrative burden, financial considerations and other factors
  - Private insurance may be taken into account only with look-back method
- Process considerations
  - Incorporate facility AGB method into current system and FAP
  - Identify which services are subject to AGB limitation and which are subject to the “gross charges” limitation
  - Establish a process to assess and demonstrate compliance with the AGB rules

FORV/S

20

Billing and Collection Activities

- Hospital facility cannot engage in “extraordinary collection actions” (ECAs) against patients before having made reasonable efforts to determine if the person qualifies for financial assistance
- ECA rules do not apply to collection actions against insurers
- Requirements apply to the hospital facility and third parties collecting debt on its behalf and to which it sells patient debt
- Preamble confirms that hospital facilities are only required to issue ECA notices for those patients it intends to initiate ECAs against

FORV/S

Billing and Collection Activities

- ECAs can include but are not limited to the following:
  - Sell the debt to another party
  - Report adverse information about the individual to credit reporting agencies
  - Defer or deny, or require a payment before providing, medically necessary care because of nonpayment of previous bills
  - Require legal or judicial process (liens, garnishing wages, foreclose on property)
- Lien to collect proceeds of judgments, settlements, or compromises arising from a patient’s suit against a third party as a result of injuries for which the facility provided care does not constitute an ECA

FORV/S

Billing and Collection Activities

- Reasonable efforts to determine whether an individual is FAP-eligible include:
  - Notifying the individual about the FAP and refraining from initiating any ECAs for at least 120 days from first post-discharge billing statement
  - Following specified procedures for individuals who submit a complete FAP application during application period (240 days)
  - Following specified procedures for individuals who submit an incomplete FAP application during application period (240 days)
  - If hospital sells or refers debt to another party, entering into a legally binding written agreement to ensure that no ECAs are taken until reasonable efforts have been made to determine FAP-eligibility

FORVIS

Billing and Collection Activities

- Notification of FAP – 3 requirements:
  - Written notice that financial assistance is available, identify the ECAs the hospital facility intends to take, and state a date after which ECAs may be taken that is no less than 30 days after the date such notice is provided;
  - Provide plain language summary of FAP; and
  - Make a reasonable effort to orally notify the individual about the FAP and how the individual may obtain assistance with FAP application process

FORVIS

Billing and Collection Activities

- Processing of complete FAP applications
  - Notify individual of eligibility determination and basis for determination
  - If eligible for other than free care, provide billing statement for amount owed, how determined, and information on AGB
  - Refund any amount paid by individual in excess of amount responsible for (unless less than prescribed de minimis amount)
  - Take reasonable measures to reverse any ECAs taken

FORV/S

25

Billing and Collection Activities – Take Aways

- ECAs may be the most sensitive and publicly-scrutinized 501(r) violation
- Hospital facilities need to evaluate the benefits of engaging in ECAs versus the costs of compliance with reasonable efforts requirements
- Hospital facilities only required to issue notifications for those patients it intends to initiate ECAs against
- If individual qualifies for free care under FAP, preamble confirms hospital is not required to issue billing statement showing nothing owed

FORV/S

26

Billing and Collection Activities – Take Aways

- Must keep adequate books and records to demonstrate reasonable efforts compliance but need not keep every notification sent to individuals
- Any agreements for the referral or sale of patient accounts need to be reviewed (and potentially amended) and hospitals need to ensure procedures are in place to monitor and enforce such agreements

FORV/S

Community Health Needs Assessment

- Section 501(r)(3)(A) requires a hospital organization to conduct a community health needs assessment (CHNA) every three years and to adopt an implementation strategy to meet the community health needs identified through the CHNA.
- Section 501(r)(3)(B) provides that the CHNA must:
  - Take into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health, and
  - Be made widely available to the public.
- A hospital organization meets the requirements of Section 501(r)(3) with respect to a hospital facility it operates:
  - If the hospital facility has conducted a CHNA in the taxable year or in either of the two immediately preceding taxable years, and
  - An authorized body of the hospital facility has adopted an implementation strategy to meet the community health needs identified through the CHNA on or before the 15th day of the fifth month after the end of such taxable year.

FORV/S

Community Health Needs Assessment

Conducting a CHNA

- To conduct a CHNA, a hospital facility must complete the following steps:
  1. Define the community it serves
  2. Assess the health needs of that community
  3. In assessing the community's health needs, solicit and take into account input received from persons who represent the broad interests of that community, including those with special knowledge of or expertise in public health
  4. Document the CHNA in a written report (CHNA report) that is adopted for the hospital facility by an authorized body of the hospital facility
  5. Make the CHNA report widely available to the public
- A hospital facility is considered to have conducted a CHNA on the date it has completed all of these steps

FORV/S

29

Community Health Needs Assessment

Community Served

- A hospital facility may take into account all the relevant facts and circumstances in defining the community it serves. This includes:
  - The geographic area served by the hospital facility,
  - Target populations served, such as children, women, or the aged, and
  - Principal functions, such as a focus on a particular specialty area or targeted disease.
- A hospital facility may not define its community in a way that excludes medically underserved, low-income, or minority populations who live in the geographic areas from which it draws its patients.

FORV/S

30

Community Health Needs Assessment

Community Served (continued)

- Medically underserved populations include:
  - Populations experiencing health disparities or that are at risk of not receiving adequate medical care because of being uninsured or underinsured, or due to geographic, language, financial, or other barriers
    - Populations with language barriers include those with limited English proficiency
    - Other barriers may include cost of services, transportation difficulties, or stigma
- A hospital facility must take into account all patients without regard to whether (or how much) they or their insurers pay for the care received or whether they are eligible for assistance under the hospital facility's financial assistance policy
- If a hospital facility consists of multiple buildings that operate under a single state license and serve different geographic areas or populations, the community served by the hospital facility is the aggregate of these areas or populations

FORV/S

31

Community Health Needs Assessment

Assessing Community Health Needs

- A hospital facility must:
  - Identify the significant health needs of the community
  - Prioritize those health needs
  - Identify resources potentially available to address significant health needs
    - Resources can include organizations, facilities, and programs in the community, including those of the hospital facility, potentially available to address those health needs.

FORV/S

32

Community Health Needs Assessment

Assessing Community Health Needs

- The health needs of a community include requisites for the improvement or maintenance of health status both in the community at large and in particular parts of the community, such as particular neighborhoods or populations experiencing health disparities. Needs may include, for example, the need to:
  - Address financial and other barriers to accessing care
  - Prevent illness
  - Ensure adequate nutrition, or
  - Address social, behavioral, and environmental factors that influence health in the community

FORVIS

33

Community Health Needs Assessment

Assessing Community Health Needs

- A hospital facility may determine whether a health need is significant based on all the facts and circumstances present in the community it serves
- A hospital facility may use any criteria to prioritize the significant health needs it identifies, including, but not limited to the:
  - Burden, scope, severity, or urgency of the health need
  - Estimated feasibility and effectiveness of possible interventions
  - Health disparities associated with the need, or
  - Importance the community places on addressing the need

FORVIS

34

Community Health Needs Assessment

Input Representing the Broad Interests of the Community

- A hospital must both solicit and take into account input received from all of the following sources in identifying and prioritizing significant health needs and in identifying resources potentially available to address those health needs
  - At least one state, local, tribal, or regional governmental public health department
  - Members of medically underserved, low-income, and minority populations in the community served by the hospital facility, or individuals or organizations serving or representing the interests of these populations
  - Written comments received on the hospital facility's most recently conducted CHNA and most recently adopted implementation strategy

FORV/S

35

Community Health Needs Assessment

Additional Sources of Input

- In addition to soliciting input from the three required sources, a hospital facility may solicit and take into account input received from a broad range of persons located in or serving its community. This includes, but is not limited to:
  - Health care consumers and consumer advocates
  - Nonprofit and community-based organizations
  - Academic experts
  - Local government officials
  - Local school districts
  - Health care providers and community health centers
  - Health insurance and managed care organizations, Private businesses, and
  - Labor and workforce representatives

FORV/S

36

Community Health Needs Assessment

Documentation of a CHNA

- A hospital facility must document its CHNA in a report that is adopted by an authorized body of the hospital facility. The CHNA report must include the following items.
  - A definition of the community served by the hospital facility and a description of how the community was determined
  - A description of the process and methods used to conduct the CHNA
  - A description of how the hospital facility solicited and took into account input received from persons who represent the broad interests of the community it serves
  - A prioritized description of the significant health needs of the community identified through the CHNA
  - A description of the process and criteria used in identifying certain health needs as significant and prioritizing those significant health needs
  - A description of resources potentially available to address the significant health needs identified through the CHNA
  - An evaluation of the impact of any actions that were taken to address the significant health needs identified in the immediately preceding CHNA

FORV/S

37

Community Health Needs Assessment

Documentation of a CHNA

- A CHNA report will be considered to describe the process and methods used to conduct the CHNA report if it:
  - Describes the data and other information used in the assessment
  - Describes the methods of collecting and analyzing this data and information
  - Identifies any parties with whom the hospital facility collaborated or contracted for assistance in conducting the CHNA
- A hospital facility may rely on (and the CHNA report may describe) external source material in conducting its CHNA. In such cases, the hospital facility may simply cite the source material rather than describe the methods of collecting the data

FORV/S

38

Community Health Needs Assessment

Documentation of a CHNA

- A hospital facility's CHNA report must describe how the hospital facility took into account input received from persons who represent the broad interests of the community it serves. The CHNA report should:
  - Summarize the input provided by such persons
  - Describe how and over what time period such input was provided Provide the names of any organizations providing input and summarizes the nature and extent of the organization's input
  - Describe the medically underserved, low-income, or minority populations being represented by organizations or individuals that provided input
- A CHNA report does not need to name or otherwise individually identify any individuals providing input on the CHNA

FORV/S

Community Health Needs Assessment

Collaboration on CHNA Reports

- A hospital facility is permitted to conduct its CHNA in collaboration with other organizations and facilities. This includes related and unrelated hospital organizations and facilities, for-profit and government hospitals, governmental departments, and nonprofit organizations.

FORV/S

Community Health Needs Assessment

CHNA Report: Widely Available

- A hospital facility must make its CHNA report widely available to the public.
  - Make the CHNA report widely available on a Web site
  - Make a paper copy of the CHNA report available for public inspection upon request and without charge at the hospital facility
  - Prior CHNA reports must remain widely available to the public, both on a Web site and in paper, until the hospital facility has made two subsequent CHNA reports widely available to the public

FORV/S

41

Community Health Needs Assessment

Implementation Strategy

- A hospital facility's implementation strategy must be a written plan that, for each significant health need identified, either:
  - Describes how the hospital facility plans to address the health need, or
  - Identifies the health need as one the hospital facility does not intend to address and explains why it does not intend to address the health need
- An implementation strategy must consider all of the significant health needs identified through a hospital facility's CHNA
- The implementation strategy is not limited to considering only those health needs identified in the CHNA and may describe activities to address health needs that the hospital facility identifies in other ways

FORV/S

42

Community Health Needs Assessment

Addressing a Significant Health Need

- In describing how a hospital facility plans to address a significant health need identified through the CHNA, the implementation strategy must:
  - Describe the actions the hospital facility intends to take to address the health need and the anticipated impact of these actions
  - Identify the resources the hospital facility plans to commit to address the health need, and
  - Describe any planned collaboration between the hospital facility and other facilities or organizations in addressing the health need

FORV/S

Community Health Needs Assessment

Not Addressing a Significant Health Need

- If the hospital facility does not intend to address a significant health need, providing a brief explanation of its reason for not addressing the health need is sufficient
- Reasons for not addressing a significant health need may include, but are not limited to:
  - Resource constraints
  - Other facilities or organizations in the community are addressing the need
  - Relative lack of expertise or competencies to effectively address the need
  - A relatively low priority assigned to the need, and/or
  - A lack of identified effective interventions to address the need

FORV/S

Community Health Needs Assessment

Adoption of Implementation Strategy

- An authorized body of the hospital facility must adopt the implementation strategy
- This must be done on or before the 15th day of the fifth month after the end of the taxable year in which the hospital facility finishes conducting the CHNA
  - This is the same due date (without extensions) of the Form 990

FORVIS

45

Community Health Needs Assessment – Take Aways

- Understand how the Community Health Needs Assessment interacts and guides the hospital facility's strategic plan
- Coordinate with other healthcare providers in your community understand if the identified health needs are being addressed
- Ensure your hospital leadership is engaged in the Community Health Needs Assessment process

FORVIS

46

Polling Question #3

Are you involved with your hospital's community health needs assessment?

- Yes
- No

FORV/S

47

FORV/S

48

Operational Checklist – FAP & Emergency Medical Care Policy

- Check
  - Whether the policies list each hospital facility to which they apply
  - Whether contact information in FAP, plain language summary and FAP application has changed
  - Whether application methods or criteria have changed
  - Whether required documents have been made widely available
  - Whether there may be new or growing limited English proficiency populations that require translations

FORVIS

Operational Checklist – FAP & Emergency Medical Care Policy

- Update
  - AGB information
  - Provider list information (at least quarterly)
- Document
  - Approval by authorized body of new versions
  - Availability of documents

FORVIS

Operational Checklist – Limitations on charges and Billing & Collections

- Recalculate IRC Section 501(r) - Limitations on charges and Billing & Collections AGB percentage (if using look-back method) or review billing and coding process (if using prospective method)
- Implement new AGB limits, based on recalculation/review
- Check required prepayments and deposits for medically necessary care against updated AGB information

FORV/S

Operational Checklist – Limitations on charges and Billing & Collections

- Check a sample of FAP-eligible patients to determine if both amounts charged and amounts paid were below AGB
- Check whether new types of ECAs are being conducted
- Check whether new collection agencies are being used and, if so, if contracts with those agencies include the required language

FORV/S

Operational Checklist – Community Health Needs Assessment

- Confirm the timing of the required refresh of your Community Health Needs Assessment.
- Confirm board approval of the Community Health Needs Assessment and Implementation Strategy. Ensure the approval is documented in the board minutes.
- Ensure the current Community Health Needs Assessment and two subsequent Community Health Needs Assessments are posted to the hospital facility's website as required.

FORV/S

53

IRS Compliance Monitoring

FORV/S

54

IRS Compliance Monitoring

- The IRS verifies 501(r) compliance using various methods, including the following:
  - The IRS reviews a hospital's Form 990 once every three years
  - Visiting a hospital's website to see if the required reports and policies, including the Financial Assistance Policy and Community Health Needs Assessment, are readily available
  - Checking Schedule H of a hospital's Form 990 to verify compliance and compare with documents on the hospital's website
  - Sending agents into the field to verify hard copies of a hospital's reports and policies are readily available

FORVIS

Risks of Non-Compliance

FORVIS

Risks of Not Complying with 501(r)

- Maintaining tax-exempt status under Section 501(c)(3)
  - Revocation of tax-exempt status if hospital organizations fail to comply with the requirements of section 501(r)
  - In a multiple-facility hospital organization, a Section 501(r) failure by one or more of the hospital facilities within the system may result in the taxation of each noncompliant facility's income, in lieu of revocation of the hospital organization's tax-exempt status
  - A hospital organization's exempt status will not be affected by minor omissions and errors that are either inadvertent or due to reasonable cause or excusable failures that are neither willful nor egregious
  - Failures to meet the CHNA and implementation strategy requirements under Section 501(r)(3) in any tax year will result in a $50,000 excise tax being imposed with respect to each noncompliant hospital facility within the hospital organization under Section 4959
  - IRS examination referrals
  - Reputational risks for non-compliance

FORVIS

Polling Question #4

Would you rather fight 10 duck-sized horses, or 1 horse-sized duck?

- 10 duck-sized horses
- 1 horse-sized duck

FORVIS

FORVIS

Questions

FORVIS

Contact Information

Aaron Hershberger
Director
aaron.hershberger@forvis.com

forvis.com

FORVIS

Assurance / Tax / Advisory