Section 501(r):
The New Challenge

Cheri S. Kane, PwC
Lindsay A. Joseph, PwC

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The $3.2 trillion healthcare industry is at a crossroads

Past

Future

Present

?
Six forces shaping the healthcare landscape in the New Health Economy

1. **Regulatory changes**
   - CON laws, ACA, 501(r), Price Transparency,

2. **Demographics**
   - Aging society
   - Increased ethnic diversity

3. **Consumer empowerment**
   - Consumers take on greater responsibility
   - Purchasers demand value

4. **Employer**
   - Employers move more health cost to employees

5. **New Entrants**
   - Non-traditional players disrupt status quo

6. **Care Anywhere**
   - Accessible healthcare through mobile, retail

S.M.A.C.
- Social, mobile, analytics and cloud merge
Introduction to 501(r)
Federal Regulation
Affordable Care Act¹

Regulation details:

• Requires hospitals to issue a list of standard charges for frequently provided items and services

• Does not specify implementation guidance - hospitals have flexibility as to how they implement this regulation

• This allows for a spectrum of solutions ranging from posting charge description master to personalized price quotes

Overview

- Final regulations make numerous changes to the proposed regulations but overall follow the same general approach
- Preamble provides significant commentary and analysis
- Requirements cut across various aspects of a facility’s operations
- Compliance with state law ≠ compliance with 501(r)
- Generally, effective for taxable years beginning after December 29, 2015
- Pre-2016 years can rely on reasonable, good faith interpretation of the statute
  - May rely on proposed regulations, final regulations, or any reasonable good-faith interpretation.
- Failure to comply with the requirements of 501(r) could result in significant taxes and penalties and/or the loss of the organization’s tax exempt status
What, Who, and When?

- Section 501(r) was enacted as part of the Patient Protection and Affordable Care Act (ACA). New regulations were established for charitable tax-exempt 501(c)(3) hospital organizations operating hospital facilities.

- Section 501(r) consists of new regulations which impose requirements relating to:
  - Reporting
  - Policy and procedures
  - Charge and collection limitations

- Health systems will need to be Section 501(r) compliant by January 1st, 2016 or by the beginning of the system’s 2016 taxable year. The timing is dependent on whether the system is calendar year or fiscal year respectively.
Scope

Applies to hospital organizations operating hospital facilities

- “Hospital organization” keys off of 501(c)(3) status
- Applied on a hospital facility-by-facility basis
- “Hospital facility” keys off of 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 501(c)(3)
Special rules for facilities conducted through partnerships and disregarded entities

• Considered to operate a hospital facility if own a capital or profits interest in a partnership or LLC that operates the facility
• Sole owner considered to operate a facility in disregarded LLC
• Ultimate 501(c)(3) partner in tiered partnerships is responsible for compliance
• Exception for compliance with 501(r) for owners in partnerships in 2 cases:
  – Treat all income from partnership as an unrelated trade or business or
  – Have owned ≤ 35% interest as a limited partner or non-managing member prior to March 23, 2010 and lack control over hospital operations ("grandfather" rule)
Revenue Cycle Implications:

- Standardizing procedures and utilizing new technologies will allow for your organization to manage 501(r)’s impact on patient experience and financial health.
- 501(r)’s impact on your organization will require aligning your organization’s culture with the new policies and procedures required through 501(r).

Reimbursement Implications:

- Policy changes made for 501(r) compliance can impact your organization’s reimbursement.
- Understanding how tax compliance, revenue cycle operations, and collections policies come together will be critical in order to increase your organization’s reimbursement.

Tax Implications:

- Failure to comply with 501(r) requirements could result in the loss of your tax exemption.
- Compliance with the requirements of 501(r) will be reported, in detail, on your organization’s Form 990 and Schedule H, which is available to the public.
Requirements of 501(r)
What is required in order to be compliant with Section 501(r)?

1. **Financial Assistance Policy**
   - Cornerstone to the entire 501(r) framework

2. **Charge Limitations**
   - Restrictions on the amounts charged for emergency or medically necessary care

3. **Billing & Collection Policies**
   - Restrictions relating to obtaining payments for care covered by the Financial Assistance Policy

4. **Community Health Needs Assessment**
   - Triennial assessment and strategy to address community health needs
• Stand-alone requirement and a key element of other provisions
• Each facility must adopt and implement a “current” written FAP and FAP Plain Language Summary (PLS)
• Must apply to all emergency and other “medically necessary” care
• A separate Emergency Medical Care Policy and Billing Collections Policy must be created if they are not included in the FAP
• Must be able to demonstrate due diligence in implementing the FAP requirements
Key points to take away

• The FAP rules are transparency focused 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 readopted when changes occur
• Facilities should:
  – Begin reviewing existing FAP, plain language summary, and the FAP application
  – Create a timeline for implementation and adoption
  – Reconsider discounts offered in the FAP to maximize charity care expense on Schedule H
  – 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
02 - Limits on Charges and Amounts Generally Billed (AGB)

- FAP eligible individuals and patients cannot be charged more for emergency or other medically necessary care than AGB to individuals who have insurance covering such care.
- FAP eligible individuals must be charged less than gross charges for any medical care covered under the FAP.
- Method for calculating AGB must be included in FAP.
- “Look-back” or “Prospective” Methods for AGB calculation.
- Methodology can be changed at anytime, but FAP must be modified and readopted.
- “Safe harbor” rules can apply for the hospital if certain conditions are met.
Key points to take away

**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.
FAP eligibility requirements apply to third parties collecting debt on behalf of the hospital and to whom the hospital sells patient debt.

These parties are required to issue ECA notices to the patients the hospital intends to initiate ECAs against.

ECA notice timing and quantity requirements must be met before initiating ECA.

ECAs may be the most sensitive and publicly-scrutinized 501(r) violation.
Key points to take away

- 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
- 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
- Effective date and getting started now
An assessment of the health needs of the community served by the facility with emphasis on low income, minority, and medically-underserved populations

Community input regarding those needs and available resources must be taken into account

CHNA must be conducted an adopted at least once every three years

Adoption of an implementation strategy to meet the significant needs identified through the CHNA

Joint CHNA and implementation strategy
Key points to take away

• Facilities have already conducted the first CHNA. Next required CHNA, generally, must be completed by the end of the 2016 tax year and comply with the final regulations
• CHNA violations can result in a $50,000 excise tax, in addition to correction, disclosure, possible facility-level excise taxes, and ultimately loss of exempt status for the facility or the organization
• Some next steps –
  – Facility should review current CHNA and implementation strategy to identify areas requiring change
  – Consider definition of community served, particularly low income, minority, and medically-underserved populations
  – Consider opportunities to conduct joint CHNA and implementation strategy (whether related or not)
  – Establish a system to obtain, review and incorporate public comments regarding the CHNA
Non-Compliance: Violations and Penalties
Consequences of Non-Compliance

- Errors and omissions that are minor and either inadvertent or due to reasonable cause do not result in “failure” or require disclosure if corrected.
- Other errors that are neither willful nor egregious can be excused – correction and disclosure required (CHNA excise tax not excused).
- Could be subject to financial penalties:
  - $50,000 excise tax for CHNA failure (even if corrected and disclosed).
  - Facility-level excise tax on income for non-compliant facility of multi-facility organizations.
- Imposition of facility-level tax is not presumptive UBI or private business use for tax-exempt bond purposes.
- Revocation of 501(c)(3) status will be based on all relevant facts and circumstances.
- Disclosure itself is a form of sanction and required in many instances.
Schedule H Implications

- Reporting noncompliance
  - Must report all “failures” on Schedule H
  - Failure to disclose may suggest willfulness
  - Content of the disclosure reserved for Revenue Procedure

- Notice 2014-3 disclosure standards (not yet adopted)
  - Description of the failure, including type, facility involved, date, number of occurrences, cause of failure, practices and procedures in place prior to occurrence to detect or prevent the type of failure
  - Number of persons affected and dollar amounts if AGB/ECA
  - Description of discovery, including how and when
  - Description of correction, including method, date, and whether affected persons were restored to prior position
  - Description of any revised or newly-established corrective procedures
501(r) Challenges and Opportunities
**501(r) Challenges**

- Dramatic increase in complexity
- Resources for new obligations
- No violation too small
- Cross-section Organization Teamwork
501(r) Opportunities

- Community
- Patient Experience
- Services
- Charity Care
- Collaboration
- Workflow & Systems

501(r)
Upcoming PwC Webcast

Please join PwC for a "Year End Review and 2016 Outlook" on Tuesday, December 15, 2015 at 12:00pm ET. Our tax specialists discuss key areas impacting healthcare providers including academic medical centers, universities, and other tax-exempt organizations.

Our discussion will include the following topics:

• Affordable Care Act reporting obligations for 2015 and what lies ahead including the Cadillac Tax

• Mergers and acquisitions - Changes in the landscape for healthcare providers including academic medical centers and hospital systems

• IRC Section 501(r) - Challenges tax-exempt hospitals face as implementation deadlines approach.

For information about this webcast, please contact Gwen Lane at gwendolyn.lane@pwc.com.
Thank You.

Today's Speaker

Cheri S. Kane, MSA, FHFMA, FACMPE, PMP

PwC, Managing Director
Office: 678-419-1507 | Mobile: 937-367-6590
Email: cheri.s.kane@pwc.com

Lindsay A. Joseph, CPA

PwC, Experienced Associate
Office: 617-530-4307 | Mobile: 313-212-5378
Email: lindsay.a.joseph@pwc.com