Charity Care and Your Organization: Compliance Considerations that Shed Light on the Topic

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David Orbuch, EVP Corporate Responsibility and Community Relations
Nancy Payne, Director Regulatory Affairs
Allina Hospitals & Clinics
Minneapolis, MN
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- 63 Clinics
- 11 Hospitals
- 22,000 employees; including 670 physicians
- 2.5 million+ clinic visits
  - 100,000+ inpatient admissions
  - 730,000+ outpatient admissions
- 1,782 staffed beds
- Specialty Operations
Why is this topic important?

• Growing number of uninsured
  – 45 million in 2003
  – Poor and near poor
  – Majority are adults
  – 8.45 million uninsured children
  – 80% uninsured low income working families
  – More than 20% of nation’s African Americans and 1/3 of Latino population
Why is this topic important?

- Poorer health costs $65-130 billion annually
- Increasing pressure on state public programs
- Lack of clear direction in federal law
- Regulators are taking action and will do so with a blunt club
Objectives of this Session

• Review the legal obligations a non-profit tax-exempt hospital has in caring for the uninsured
• Provide an overall framework with practical tools to assist in developing and implementing financial assistance policies that address care and support to the uninsured
Limited Federal Legal Requirements

• IRS requires tax-exempt hospitals to:
  – provide emergency health services, if have an emergency department, to any individual, and
  – provide health care to those individuals able to pay the costs directly or indirectly through third party reimbursement (Rev. Rul. 69-545)

• EMTALA
  – Medicare participating hospitals with emergency departments must provide stabilizing care to patients with an emergency condition, regardless of the patient’s ability to pay
Limited Federal Legal Requirements

• Specific duties of a tax-exempt hospital
  – Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 42 (1976), which also noted that Rev. Rul. 69-545 might even prompt “a hospital to provide fewer services to indigents than it might have under the previous policy.” See id. at 43 n.23. Such a result is therefore likely not in violation of the law.

  – See IRS Field Serv. Adv. 200110030, 2002 WL 234018 (Feb. 5, 2001) (“IRS Field Serv. Adv. 200110030”). Under the current state of the law, so long as a non-profit hospital continues to provide emergency care to all individuals without conditioning admittance upon a patient’s ability to pay; and so long as the hospital treats any patient admitted on a non-emergency basis who is able to pay for the costs of their care directly or indirectly, the hospital will continue to comply with the law.
14 Questions Asked by The IRS

1. Does your non-profit hospital have a specific, written plan or policy to provide free or low-cost health care services to the poor or indigent?

2. Under what circumstances may, or has, the hospital deviated from its stated policies on providing free or low-cost health care services to the poor or indigent?

3. Does the hospital broadcast the terms and conditions of its charity care policy to the public?

4. Does the hospital maintain and operate a full-time emergency department open to all persons regardless of their ability to pay?

5. What directives or instructions does the hospital provide to ambulance services about bringing poor or indigent patients to its emergency department?

6. What inpatient, outpatient, and diagnostic services does the hospital actually provide to the poor or indigent for free or for reduced charges?

7. Under what circumstances does the hospital deny health care services to the poor or indigent?
14 Questions Asked by The IRS

8. Does the hospital operate with the expectation of receiving full payment from all persons to whom it renders services?

9. How and when does the hospital ascertain whether a patient will be able to pay for the hospital’s services?

10. What documents or agreements does the hospital require poor or indigent patients to sign before receiving care?

11. What is the hospital’s policy on admitting poor or indigent patients as inpatients and outpatients?

12. Under what circumstances does the hospital refer poor or indigent individuals who require services to other hospitals in the area that do admit poor or indigent patients?

13. Does the hospital maintain separate and detailed records about the number of times, and circumstances under which, it actually provided free or reduced-cost care to the poor or indigent?

14. Does the hospital maintain a separate account on its books that segregates the costs of providing free or reduced-cost care to the poor or indigent? Does this account include any other items, such as write-offs for care to patients who were not poor or indigent?
Key Elements

- Use your Compliance expertise
  - High-level accountability for the program
  - Appropriate policies and procedures based on an organizational assessment of current practices
  - Effective communication (with appropriate education and training of key employees) of these new policies and procedures
  - A monitoring and auditing program that ensures the program is compliant with the new policies
  - Appropriate response and prevention mechanisms
Developing A Financial Assistance Program

Begin with a mission dialogue with key organizational leaders

Based on our mission, vision and values and the economic value derived by our non-profit status, what is our ethical obligation to the uninsured living in our community?
Take a Comprehensive View

• Charity care (free care)
• Discounted care
  – Uninsured
  – Underinsured
  – Insured non-covered services
• Payment plans
• Credit & loan programs
• Eligibility for public programs
• Financial counseling
Secure High Level Support

• Balance between mission and need for financial viability
  – Top organizational leaders
  – Board of Directors
• Establish charity care targets
• Monitor impact of the financial assistance programs
Develop Policies and Procedures

• Review current policies and actual practices related to charity care, discounts, collections, eligibility for public programs, payment plans, credit and loans, etc.

• Identify strengths, weaknesses and gaps
Charity Care

• Establish a financial threshold for eligibility
  – Assess the economic strength of your community
  – Define financial need
  – Review local, state, and federal regulations regarding qualification for charity care
  – Ascertain the community standard for the qualification threshold
Charity Care

• Develop a process to determine eligibility
  – Identify patients at front end and throughout billing and collections process
  – Facilitate paper work completion
  – Requirements for income validation
  – Frequency of updating financial information
  – Determine how far your policy will go to extend charity care eligibility to those who are insured
  – How will you address special cases?
Discount Program

• Regulatory Clarification
  – OIG 2004 “there is no authority that prohibits discounts to uninsured patients who are unable to pay their hospital bills” [1]
  
  – DHHS Secretary Tommy Thompson, February 2004 “hospitals can provide discounts to uninsured and underinsured patients who cannot afford their hospital bills and to Medicare beneficiaries who cannot afford their Medicare cost-sharing obligations. Nothing in the Medicare program rules or regulations prohibits such discounts” [2]

Establish a Discount Program

• Assess local, state and national political activity
• Need for balance between the organization’s mission and need for financial viability
• Assess the potential revenue impact
  – Bad debt expense
  – Excluded services
  – Anticipate changes in the number of uninsured
Establish a Discount Program

• Look at what portion of revenue comes from those who pay the full bill versus those who struggle to make minimal payments

• Prompt pay discounts may provide an incentive for the uninsured to pay their full balances quickly
  – The percent discount offered for prompt payment must have a relationship to the costs of billing and collections resource utilization
Structuring a Discount Program

• Billed charges
• Flat rate or sliding scale?
• Discount level based upon what?
  – Average discounts to all payers
  – Average of non-government payers
  – Government payers
  – Not tied to current contracts
• Determine scope of patient population
  – Uninsured or include insured non-covered services?
Structuring a Discount Program

• What can your information technology systems support?

• Establish criteria for eligibility
  – All uninsured or those who meet financial threshold?
  – Process to validate income
  – Determine scope of discount regarding types of services
  – Identify excluded services
  – Hospital only or include professional fees and other services such as home care, hospice, DME?
Eligibility for State or Public Programs

• Assist the uninsured to access long-term coverage options (Medicaid, Drug discount programs)
  – Eliminate cultural barriers
  – Role of patient financial counselor
Payment Plans

• How much of a role should your organization play in offering debt financing options?
  – Internal
  – External
  – Watch the interest rates
Collections Policies & Practices

• Early identification of patients needing assistance
• Balanced messages
• Review process and all forms of communication with variety of key stakeholders including finance, community benefits, billing, patient representatives, etc
• Test the letters and other communication tools with cultural groups
Collections Policies & Practices

• Clear guidelines for when legal action will result if non-payment continues
• Policies and procedures should clarify at what point legal action will be taken and what levels of approval are necessary before judgments or liens are instituted or wages garnished
Collections Policies & Practices

• Establish triggers with appropriate levels of approval for actions that may be taken by external contracted collection agencies

• Set up a tracking process for complaints and issues and immediately address any problems directly with the agency
Effective Communication

• Internal communication
  – Ensure that your own employees understand all of the financial assistance policies and practices

• External communication
  – Develop and implement a broad-based communication plan
  – Materials and communication vehicles should be culturally appropriate
  – Written materials should be augmented with information accessible through the Internet
  – Visible posters and brochures
  – Toll-free numbers noted on all bills and collection letters
Achieving Compliance

• Monitor the impact of current and new programs and continually evaluate the need for change
• Establish a Financial Assistance Review Group or process to manage difficult decisions, evaluate consistency of action, and monitor internal and external collections activities
• Accurate and consistent reporting processes for charity care and community benefits should be developed
Achieving Compliance

- Monitor the impact of new programs on charity care in relation to bad debt
- Monitor and report the actual impact of the discount program on revenue from the self-pay population
- Determine the value of tax-exempt status and assess results of financial assistance programs in relation to that value
- Internal audit to assure that policies are consistently applied and actual practice is in compliance
Response and Prevention

• Look retrospectively at issues that have been raised to the policies and determine if modifications need to be made
• Pay close attention to what is taking place on the policy front at local, state and national levels
• Develop a proactive public relations and political advocacy strategy
• Educate law makers about health care financing and become an active participant in health care reform discussions
Questions to Ponder

• What will the regulators do next?
• How will this issue impact the next election?
• How can a hospital demonstrate that it has done enough?
• What is the role of the employer in responding to this issue?
• Should health care debt be treated differently than general consumer debt?
• What can we learn from our neighbors?