September 24, 2012

Douglas Shulman, Commissioner, Internal Revenue Service
Internal Revenue Service
CC:PA:LPD:PR (Reg-130266-11), Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice of Proposed Rulemaking, "Additional Requirements for Charitable Hospitals," 26 Code of Federal Regulations Part 1, [REG-130266-11]

Dear Commissioner Shulman:

The undersigned consumer, civil rights and advocacy groups respectfully submit the following comments to the Department of the Treasury, Internal Revenue Service (IRS) in response to the Notice of Proposed Rulemaking, REG-130266-11; Additional Requirements for Charitable Hospitals (the Notice).

Aggressive collection efforts used by hospitals and third-party debt collectors can create significant financial hardships for patients and prevent equitable access to care. Thus, we commend the IRS and Treasury for issuing proposed rules that will more fully implement the protections found in the Affordable Care Act (ACA), thereby promoting patient access to care and protecting families from medical debt. The following comments suggest ways to further strengthen patient protections in the final rules.

Establishing and Publicizing Hospital Financial Assistance Policies

Under the ACA, non-profit hospitals must establish a written financial assistance policy that clearly outlines what kind of help is available, who is eligible, and how to apply. They require non-profit hospitals must make sure the policy is widely publicized in the communities they serve.

In general, we strongly support the new standards for transparency and disclosure outlined in the proposed rule. We are particularly pleased that the proposal explicitly defines the steps non-profit hospitals must take to "widely publicize" their financial assistance policies, such as the proposed requirement that non-profit hospitals make free copies of the policy, application form, and a plain language summary available upon request and on the Web. However, we have a few recommendations. The IRS should:

- Raise the threshold requiring publicizing financial assistance policies to limited English proficiency to 500 LEP individuals or 5 percent of the population, consistent with regulations or guidance from Department of Labor, Justice, and Health and Human Services.
- Add language to ensure that the lack of documentation is not a barrier to financial assistance (an affidavit signed by the applicant should be sufficient if no other documentation is reasonably available)

- Prohibit hospitals from requiring applicants to provide a Social Security Number
- Allow hospitals to use patient-friendly methods to "presumptively" qualify patients for financial assistance other than through a formal application process (e.g., checking enrollment in means-tested public programs such as Medicaid, food stamps, or reduced or free school lunch programs)

We appreciate that the Notice prohibits debt collection activities from occurring in the emergency department or other hospital venues where such activities could interfere with the treatment of emergency medical conditions, and we support the inclusion of this provision in the final rules.

The Prohibition on Charging Gross Charges Should be Extended to All Patients

The ACA prohibits nonprofit hospitals from using "gross charges," known colloquially as the rack rate or chargemaster rates, which are several times higher than the rates paid by private insurers, Medicare, and state Medicaid programs. One unintended consequence of this system is that uninsured and underinsured patients are often charged several times more than these third-party payers. To make pricing more equitable, the ACA prohibits gross charges and requires non-profit hospitals to limit charges to patients who qualify for financial assistance to the "amounts generally billed" to insured patients. We were disappointed that the proposal restricts the limitation on gross charges only to individuals who are found eligible for financial assistance. We believe this approach to be inconsistent with the plain language of the statute.

Hospital Debt Collection

Under the Affordable Care Act, non-profit hospitals are required to make "reasonable efforts" to determine whether a patient qualifies for financial assistance under its policy before engaging in "extraordinary collection actions."

We support the non-exhaustive list of Extraordinary Collection Actions (ECAs) as defined in the proposal and strongly recommend their inclusion in the final rules. The impact of these collection actions, which include reporting medical debts to credit bureaus, can follow patients for years after a debt is resolved. Therefore, they should be used rarely, after all other options have been exhausted. To ensure patients are well-protected from medical debt, we recommend the following be incorporated into final rules:

- Add charging interest on patient bills to the list of ECAs;
- Retain the provisions that hold hospitals accountable for the billing and collection actions of third-party contractors and debt buyers;
- Exempt patients who are eligible for hospital financial assistance, means-tested public programs or subsidies from further collection action.

We generally support the inclusion of requirements to notify individual patients—in addition to the community at large, as discussed above—about financial assistance.

We appreciate and support the inclusion of timelines for hospitals to engage in ECAs and the process they have to follow to notify, qualify, and discuss the outcome of eligibility determinations with patients who apply for financial assistance. These are necessary to give patients a base level of protection from being sent to collections too quickly after a hospital visit.

However, we also strongly urge the IRS to permit patients to raise their eligibility for financial assistance at any time—not just within the 240-day application period—as an affirmative defense if they are subject to an extraordinary collection action. We also recommend that the final rules expressly state that nothing in this section precludes an individual who is the subject of an extraordinary collection action by a hospital or a debt collector after the application period from submitting, at that point, an application for financial assistance. If the individual is found to be eligible for financial assistance, the hospital need not provide the individual with assistance but must suspend any extraordinary collection actions once the determination is made.

Conclusion

On the whole, we find that the Notice strikes a good balance between the need to increase transparency and strengthen patient protections against particularly harmful collections activity with hospitals' needs to maintain efficient, fair billing and collections cycles. We appreciate your consideration of the above comments and would be happy to discuss them further with you. Please feel free to Chi Chi Wu at cwu@nclc.org or 617-542-8010 if you have any questions.

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