



# Harney District Hospital

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During its fiscal year ending June 30, 2017, (“FYE 6/30/17”) and for a short period thereafter, Harney District Hospital (the “Hospital”) was arguably not in compliance with the final regulations under section 501(r)(4) through (6) of the Internal Revenue Code (Treas. Reg. § 1.501(r)-4 through -6) in certain respects. Those errors or omissions, as well as the corrections of them, are summarized below.

## **Section 501(r)(4): Financial Assistance Policy**

### *Omissions in the FAP itself*

The Hospital’s financial assistance policy (“FAP”) that was in effect in FYE 6/30/17 and until October 3, 2017, did not contain any mention of the amounts that the Hospital generally billed to individuals who have insurance (“AGB”) and thus did not contain the information required to be included under Treas. Reg. § 1.501(r)-4(b)(2)(i)(C). The FAP also did not—

- Include a list of providers, other than the Hospital itself, delivering emergency or other medically necessary care in the Hospital that specified which providers were covered by the Hospital’s FAP and which were not, as required by Treas. Reg. § 1.501(r)-4(b)(1)(iii)(F); or
- Describe how members of the public may readily obtain a free copy of the Hospital’s billing and collection policy, as required by Treas. Reg. § 1.501(r)-4(b)(4)(ii).

The Hospital FAP in effect as of October 3, 2017, has been amended to include all of these missing items and this amended FAP has been widely publicized as described in the next section.

### *Widely Publicizing the FAP*

In FYE 6/30/17 through the present, the Hospital has been widely publicizing its FAP by:

- Making its FAP widely available on its website (as defined in Treas. Reg. § 1.501(r)-1(b)(29));
- Making paper copies of its FAP and FAP application form available (in both English and Spanish) upon request in its admissions areas and its Patients Financial Services office;
- Mailing copies of its FAP and FAP application form to patients making phone inquiries;
- Publishing print advertisements in the local newspaper, *Burns-Times Herald* (in FYE 6/30/17, on August 16, 2016, November 30, 2016, February 1, 2017, and February 8, 2017) that stated that the Hospital makes financial assistance available and provided a number that patients could call for more information;

- Including a conspicuous written notice on billing statements that notified and informed recipients that they should contact the Hospital's Patient Financial Service office at a provided phone number if they could not pay the entire amount; and
- Prominently posting at the Hospital's admissions desk a notice (in both English and Spanish) that health services would be provided at no or a reduced charge to persons unable to pay for services.

While substantial, these steps to widely publicize the Hospital's FAP arguably did not meet every specific requirement outlined under Treas. Reg. § 1.501(r)-4(b)(5). For example, the Hospital had not prepared or made available a plain language summary of the FAP ("PLS") as appears to be contemplated by the regulations (although the Hospital's FAP document was short and easily distributed and in language that was clear, concise, and easy to understand and nothing in the final regulations under section 501(r) expressly precludes a clear, concise, and easy to understand FAP from also serving as a PLS). In addition, the Hospital did not post its FAP application form on its website until May 2017. Other specific requirements outlined under Treas. Reg. § 1.501(r)-4(b)(5)(i)(D) that the Hospital arguably did not meet in FYE 6/30/17 and for a short period thereafter:

- The Hospital did not offer a paper copy of the PLS to patients as part of its intake or discharge process;
- The conspicuous written notice that the Hospital included on billing statements did not specifically mention financial assistance and did not include a direct website address where copies of the FAP, FAP application form, and plain language summary of the FAP could be obtained; and
- The notice notifying and informing patients that health services would be provided at no or a reduced charge to persons unable to pay for services was only posted in the Patient Financial Services office and not in the emergency room and admissions areas. In addition, this notice did not specifically mention financial services under a FAP or inform the reader about how or where to obtain more information about the FAP and FAP application process and to obtain copies of the FAP, FAP application form, and PLS.

Beginning in September 2017, the Hospital began widely publicizing its FAP in a manner that remedied all of the aforementioned deficiencies. For one, the Hospital prepared a PLS that meets all of the requirements of Treas. Reg. § 1.501(r)-1(b)(24) and began making it available in the following ways:

- As of September 2017, on the Hospital's website [www.harneydh.com](http://www.harneydh.com) in the manner described in Treas. Reg. § 1.501(r)-1(b)(29);
- As of November 14, 2017, upon request and without charge, both by mail and in the publications in the Hospital's emergency room, admissions areas, and Patient Financial Services office; and
- As of November 14, 2017, by offering the PLS to patients as part of the Hospital's intake process.

The Hospital also has or intends to amend its current process for notifying patients and the public about its FAP as follows:

- The conspicuous written notice on billing statements will be amended to state, "If you cannot pay the entire amount, you may be eligible for financial assistance. For more information about Harney District Hospital's financial assistance policy or financial assistance application process, visit <http://www.harneydh.com/services/patient-financial-services/>, call 541-573-8638, or visit the hospital's Patient Financial Services office."

- As of November 15, 2017, the Hospital has created a new notice that contains all of the information contained in the notice on the billing statement and posted this notice in its emergency room, admissions areas, and Patient Financial Services office.
- The Hospital intends to amend the advertisements it runs in the *Burns-Times Herald* to contain all of the information contained in the notice on the billing statement.
- The Hospital intends to distribute the PLS and the FAP application form in English and Spanish to public agencies and nonprofit organizations in the Hospital's community that address the health needs and other issues of low-income populations.

#### **Section 501(r)(5): AGB**

The Hospital has determined its AGB percentage that should have been in effect for FYE 6/30/17 by dividing the sum of all amounts of all of the Hospital's claims for care that were allowed by Medicare in its FYE 6/30/16, by the sum of the associated gross charges for those claims (i.e., using the "look-back" method described in Treas. Reg. §1.501(r)-5(b)(3)). The resulting AGB percentage was 81.25 percent, meaning section 1.501(r)-5 would require that the Hospital not make any FAP-eligible individual personally responsible for paying more for emergency and medically necessary care than 81.25 percent of gross charges for the care. The Hospital's FAP in effect in FYE 6/30/17 provided that patients whose family income was between 241 and 250 percent of Federal Poverty Guidelines would be entitled to a 20% discount on the amount they would otherwise be personally responsible for paying. Applying this discount in full to the amount charged to patients determined to be FAP-eligible would ensure that no such FAP-eligible would have been charged more than AGB after the eligibility determination was made. However, it is theoretically possible that some patients first paid more than AGB for care, were subsequently determined to be FAP-eligible, and then were not provided a refund as contemplated by Treas. Reg. § 1.501(r)-5(d)(3). The Hospital is in the process of determining whether there are any individuals who (1) were determined to be FAP-eligible between the beginning of FYE 6/30/17 and October 3, 2017 (the date the FAP was amended to ensure that no FAP-eligible individual could be made personally responsible for paying more than AGB); (2) who paid more than AGB for any care that the Hospital provided a year prior to the eligibility determination; and (3) who were not provided a refund. If the Hospital determines there were any such individuals, it will provide these individuals with refunds sufficient to ensure that they did not pay more than AGB for the care at issue.

In addition, the Hospital's FAP in effect FYE 6/30/17 provided a "prompt-pay" discount of 10 to 15 percent to all patients that paid in full within 30-45 days. This discount was provided to all individuals who were not otherwise eligible for financial assistance (that is, were at or above 251 percent of Federal Poverty Guidelines) who promptly paid in full and was not intended to be "financial assistance" based on criteria of financial need. Nonetheless, the placement of this prompt pay discount in a chart with discounts based on financial need may have given the mistaken impression that these discounts were financial assistance. To avoid that misimpression, the Hospital has amended its FAP to make clear that the prompt pay discount only applies to individuals who are not FAP-eligible and to separately state this discount in a separate Exhibit to the FAP. The Hospital views this amendment as a clarification and not a correction of an error.

## **Section 501(r)(6): Billing and Collection**

In FYE 6/30/17, the Hospital's collection agency engaged in extraordinary collection actions (ECAs) described in § 1.501(r)-6(b) to obtain payment for care that had been provided by the Hospital. Most of these ECAs were the reporting of adverse information to the three nationwide credit bureaus (Equifax, Experian, TransUnion). The collection agency may also have initiated small claims litigation, placed liens, attached or seized bank accounts or other personal property, or garnished wages.

The collection agency would not have engaged in any of these ECAs until at least 120 days had elapsed after the Hospital had provided the first post-discharge billing statement for the care at issue. In addition, before engaging in any ECAs, the collection agency would have made at least two phone calls (during a "pre-collections" process) during which it would have directed the patients to the Hospital's Patient Financial Services staff, who would notify any patient contacting them about the Hospital's FAP and about how the patient could obtain assistance with the FAP application process. The collection agency would also have sent out an initial notice that would give the debtor 30 days to dispute the debt and, if state law permitted and required it, would notify the debtor that a negative credit report (reflecting on his or her credit record) might be submitted to a credit reporting agency if the debtor failed to meet his or her credit obligations.

While substantial, these steps to notify a patient about the Hospital's FAP before engaging in ECAs did not necessarily meet all of the requirements necessary to qualify as "reasonable efforts" to determine whether the patient was FAP-eligible within the meaning of § 1.501(r)-6(c) in the following respects:

- The written notice that individuals received from the Hospital's collection agency at least 30 days before ECAs were initiated did not include the following elements required by § 1.501(r)-6(c)(4)(i)(A) and (B):
  - It did not indicate that financial assistance was available for eligible individuals;
  - It did not necessarily, in all cases, identify the ECA(s) that the collection agency intended to initiate to obtain payment for the care and/or state a deadline after which ECA(s) might be initiated; and
  - It did not include a PLS.
- While the collection agency would have made at least two phone calls (during a "pre-collections" process) during which it would have directed patients to the Hospital's Patient Financial Services staff, these phone calls did not necessarily include an oral notification about the Hospital's FAP and about how the individual could obtain assistance with the FAP application process.

In addition, the Hospital's agreement with its collection agency did not meet the requirements of § 1.501(r)-6(c)(10).

The Hospital has adopted an amended Billing and Collection Policy effective October 3, 2017, which provides that at least 40 days prior to any ECAs being initiated, a notice will be provided that meets all of the requirements of § 1.501(r)-6(c)(4)(i)(A) and (B). This notice is Exhibit A to the amended Billing and Collection policy. The amended Billing and Collection Policy also provides that at least two phone calls will be made at least 40 days prior to any ECAs being initiated on which the Hospital's pre-collection agency will attempt to orally notify the party responsible for paying the amount due about the Hospital's FAP and about how the individual may obtain assistance with the process for applying for financial assistance from the Hospital's Patient Financial Services office, as required by § 1.501(r)-

6(c)(4)(i)(C). The Hospital's pre-collection agency began following the Hospital's Billing and Collection Policy on October 30, 2017. The Hospital also entered into an agreement with its collection agency that meets the requirements of § 1.501(r)-6(c)(10), effective August 25, 2017.

The Hospital is in the process of identifying any of its patients whose debt was referred to its collection agency and against whom the collection agency initiated ECAs between July 1, 2016 and October 30, 2017, before reasonable efforts were made to determine whether the individual was FAP-eligible pursuant to the process described in the Hospital's amended Billing and Collection Policy. Any ECAs that have been initiated but not completed against such individuals will be suspended. In addition, the Hospital (either directly or through its collection agency) intends to send any such individual a notice that states that the individual may be eligible for financial assistance for the care the delinquent payment for which resulted in the ECA and that includes a PLS and a FAP application form. The notice will also inform the individual that if he or she applies for financial assistance within 120 days of the notice and is determined to be FAP-eligible, the ECAs taken against him or her will be reversed and any amounts paid by the individual in excess of the amount he or she owes after applying the applicable discount will be refunded. The Hospital will then process any applications it receives from these individuals during the stated 120-day period and take the steps outlined in the notice for individuals determined to be FAP-eligible.

#### **Amended Practices and Procedures**

In sum, the Hospital has amended its FAP, Billing and Collection policy, notices, billing statements, and agreement with its collection agency to comply with the requirements under the regulations under section 501(r). The hospital has also trained all patient financial services personnel on the two policies adopted on October 3, 2017, the Billing & Collection Policy and the Financial Assistance Policy. In addition, the hospital has confirmed with the collection agency that all necessary changes have been made to the collection process once accounts have been given to the agency. All of these steps will minimize the likelihood that the failures described above will recur and facilitate the prompt identification and correction of any such future failures that do occur.