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IRS Targets 501(r) Noncompliance:

Is Your Hospital's Tax-Exempt Status at Risk?

Mitigating risk while helping patients

A reliable, accurate and efficient assessment of all patients' financial situations is critically important for not-for-profit hospitals concerned about regulatory compliance, collection efforts and patient engagement. This paper will examine the issues and challenges relating to 501(r) and other charity care reporting requirements. It also will provide guidance on best practices to mitigate risks, including the use of third-party data to verify income, household size and estimate Federal Poverty Level (FPL). This can help providers rapidly identify which patients qualify for financial assistance to help providers prepare their year-end 990 Schedule H tax filings.

Lastly, the paper will cover the attributes hospitals should be looking for in their third-party data providers as critical success factors for compliance with 501(r) and other regulations, including:

- Assessment solutions that leverage community-based data to provide the most comprehensive assessment of a patient's financial health
- The information, tools and services that enable hospitals to act now to review patient account files for year-end filing deadlines
- The ability to reliably determine FPL percentage for 100% of your patients

Enforcement activities heat up for 501(r) and other charity care regulations

When the 501(r) regulations for tax-exempt hospitals went into effect in 2016, compliance officers and revenue cycle management executives likely weren't too concerned.

A lot has changed since then. According to Gary Young, director of Northeastern University's Center for Health Policy and Healthcare Research, enforcement actions by the Internal Revenue Service (IRS) may be sending "chills down the spines of some hospital managers."[1]

Consider these recent examples:

- In August 2017, the IRS announced that it had revoked the tax-exempt status of a yet-to-be-identified hospital for the first time since the requirements went into effect.[2]
- A hospital in New Jersey and another in Texas were cited for noncompliance with 501(r); both cases had clear violations related to lack of documentation and policy inconsistencies. The rulings involved fines and civil penalties, as well as irrevocable reputational damage in their communities.[3,4]
- The most recent IRS report of 2,482 compliance reviews of charitable hospitals completed between 2014 and 2016 cited 163 (nearly 7%) as potentially non-compliant and are under further examination.[5]
- According to a Fierce Health article, the IRS is "ratcheting up surveillance of non-profit hospitals regarding their levels of community benefits and patient financial assistance," and this increased scrutiny is specific to 501(r) requirements.[6]

And it's not just non-profit hospitals that should be worried about their "charitable" behavior. In the state of Washington, for example, ***all*** hospitals must provide charity care to those who are near or below the Federal Poverty Level (FPL). The state's Attorney General recently filed a lawsuit alleging that a for-profit hospital violated the state's Consumer Protection Act through aggressive collection tactics that caused charity care to be withheld from low-income patients.[7]

Clearly, the IRS is serious about enforcing 501(r), and non-compliant hospitals are at risk of an audit and the loss of their tax-exempt status. Such actions may not only irreparably damage a hospital's reputation within its community, but also lead to scrutiny of unrelated business income and other unwanted discoveries.

> Approximately 40% of hospitals reviewed by the IRS for 501(r) compliance have received follow up requests for information.[8]

10 red flags for hospitals

1. Outdated Financial Assistance Policy (FAP)
2. Outdated Community Health Needs Assessment (CHNA)
3. Large self-pay bad debt
4. Large charity determinations without documentation, especially within the Electronic Health Records (EHR)
5. Charity policy not aligned with the policies of employed referring physicians or contracted collection agencies
6. Outdated billing statements that fail to outline charity assistance offering
7. Lack of a Plain Language Summary
8. Charity policy not widely distributed (should be accessible with two clicks on the website and included on signage in admissions areas)
9. Lack of Emergency Medical Treatment Plan (EMTP) for charity patients
10. Unclear or no delineation of FAP scope for types of services or coverage included/excluded

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501(r) in a nutshell

While many hospital executives believe their organizations are already well prepared to provide excellent charity care to those in need, few are fully aware of the scope and specifics of the 501(r) regulations.[9] To maintain their tax-exempt status, hospitals must meet these four requirements:

1. **501(r)(3):** Conduct a periodic community health needs assessment (CHNA) at least once every three years and adopt a strategy to meet these needs
2. **501(r)(4):** Establish a widely publicized financial assistance policy (FAP) that identifies eligibility criteria for financial assistance and a policy for providing emergency medical treatment, regardless of an individual's eligibility for financial assistance
3. **501(r)(5):** Establish limitations on charges for emergency or medically necessary care rendered to individuals eligible for financial assistance pursuant to a provider's FAP
4. **501(r)(6):** Cease engaging in extraordinary collections actions (ECAs) before making reasonable efforts to determine if individuals are FAP-eligible

Systemic risks and challenges

Although hospitals' major concern with 501(r) is the potential loss of their tax-exempt status, efforts to comply with these regulations will also greatly impact their revenue cycle, financial assistance programs and collections. When properly planned and executed, a 501(r) compliance initiative can positively affect all three areas.

The foundation for success in 501(r) compliance is the development and administration of a comprehensive FAP, which can be extremely labor-intensive, costly and challenging. To create and manage their FAPs, some hospitals must hire new employees or consultants, and most fall short in their efforts to capture and assess financial data for all patients. The 501(r) regulations[9] specify that the FAP must include:

- The eligibility criteria for financial assistance for uninsured and underinsured patients
- The methods for applying financial assistance and calculating amounts for charity care discounting
- Actions the hospital can take for nonpayment

Another formidable challenge that heightens risks is rule 501(r)(3), which requires hospitals to conduct a proper CHNA and make it widely available to the public. In fact, the IRS cited this section in revoking the tax-exempt status of the aforementioned unnamed hospital.[10]

5 things you may not know about the 501(r) rules

1. 501(r) can apply to any patient who owes money, not just uninsured and charity patients
2. If a hospital doesn't request any documentation from patients, it cannot deny coverage based upon a lack of documentation
3. 501(r) compliance not only improves patient relations, but it also improves a hospital's overall market value and attractiveness as a candidate for a merger
4. Documenting the compliance process can demonstrate a good-faith effort, which, under 501(r), can exempt hospitals from official censure
5. Once IRS agents start auditing for 501(r) compliance, the aftershocks can spread beyond issues relating to federal exemption, such as back property taxes

501(r) compliance best practices

At the core of the 501(r) regulations and successful FAPs is the need to implement methods that can accurately and efficiently determine the status of patients' financial health. Fortunately, the rules allow for presumptive eligibility, which enables healthcare providers to use third-party information to determine charity care eligibility for patients who do not provide documented proof of their financial status. This unbiased data helps hospitals identify patients eligible for financial assistance whose accounts might otherwise have been sent to collections or bad debt.

10 compliance goals

- Ensure the hospital's FAP covers all the requirements prescribed by 501(r)(4) and that the necessary actions consistently occur
- Document charity care determinations, dates, correspondences and all actions relating to your FAP in a place that is easily available for internal and external review
- Use third-party data to streamline eligibility processes and support credible and defensible decisions
- Notify patients of their financial assistance options in plain, easily understood language available in all languages commonly spoken by patients
- Direct low-income patients to financial assistance navigators early in the process
- Run year-end batch reviews of patient account files to validate that all patients eligible for financial assistance receive it
- Achieve a 100% success rate in screening patients for FPL thresholds that meet FAP criteria
- Before pursuing third-party collection actions, ensure that you have exhausted "reasonable efforts" to determine a patient's eligibility for financial assistance
- Continually review and reassess the FAP, especially for hospitals that have a higher population of underinsured and uninsured patients
- Afford presumptive charity determinations as allowed by states for disengaged patients to accelerate charity placement and reduce unneeded collection expenses and efforts

5 questions to help gauge your hospital's financial assessment program as it relates to 501(r)

1. Are you confident that all personnel are aware of your organization's CHNA and that it can be easily obtained by any individual at any time?
2. Does your revenue cycle staff have thorough knowledge of your FAPs and have they implemented processes to ensure compliance is being monitored?
3. Is your hospital consistently educating all patients about financial assistance programs before providing care or after discharge?
4. Do you have an efficient, automated process in place to identify eligible patients at multiple points during the episode of care and after discharge?
5. What efforts do you make to ensure that ECAs are avoided until appropriate, and who determines when to initiate ECAs?

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Trust TransUnion Healthcare to leave no patient behind

Clearly, the IRS is serious about 501(r) enforcement. But hospitals shouldn't wait for an audit to discover that some of their patients did not receive the financial assistance they needed. By running a batch file review of all their patient accounts–based on both community and credit information–hospitals can mitigate their risks on unpleasant surprises, now and in the future.

1. Community-based (good)

- → Uses non-credit data, including public records
- → Determines estimated FPL% for patients with thin or no credit history
- → Provides estimate for 100% of patients
- → Beneficial add-on to credit data

1+2. Hybrid (best)

- → Uses both proprietary credit and non-credit data, including public records
- → Provides estimate for 100% of patients

2. Credit-based (good)

- → Uses credit report data
- → More reliable for credit-active adults, but higher no hits

For more than a decade, TransUnion Healthcare has provided both not-for-profit and for-profit hospitals with the information and tools they need to administer their charity programs, and the data to assist them in meeting their regulatory requirements.

Our charity screening is based on both credit- and community-based models that leverage our substantial data assets. Our solution cascades, so if a credit-based model doesn't find all the information, we can include our community-based model. We want you to be confident that patients will be appropriately placed into the hospital's bad debt segmentation categories.

In fact, our Charity solution can deliver household size and income estimates on 100% of your patient population subs.

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How TransUnion Healthcare can help

We offer a multi-tiered approach to help providers determine charity care or other financial aid eligibility. Our solutions address two 501(r) rules specifically:

-501(r)(4): Our Charity solution automates the process to determine if a patient is eligible for charity care or other financial assistance. It works in tandem with our Financial Aid solution to allow financial counselors to pursue multiple financial assistance opportunities concurrently, including Medicaid, charity and county programs.

-501(r)(6): Our Financial Aid solutions give your team the data they need to identify which self-pay accounts can be segmented for payment and collections, and which can be presumptively qualified for charity care.

Our key differentiators include:

→ Using our mass consumer-data repository to analyze a patient's financial situation as it pertains to her or his ability to afford projected healthcare expenses

→ Using our community-based model, our Charity solution can deliver household size and income estimates on 100% of your patient population–even patients who do not have a credit history

→ Charity-screening can be based on both credit- and community-based models

These solutions easily integrate with solutions from Epic and are also used by for-profit hospitals for their charity programs to help ensure patients are appropriately placed into the hospital's bad-debt segmentation categories.

Our products and tools that help your hospital address 501(r) rules and other regulatory requirements include:

- A 501(r) toolkit that includes a checklist, workflow model and a sample policy covering financial assistance and patient payment responsibilities.
- The Financial Aid solution that identifies patients eligible for financial assistance and charity care and automates financial clearance. This powerful tool can be used to:
    - → Quickly determine a patient's likelihood to qualify for financial assistance based on metrics such as percent of FPL, which enables front-line staff to triage those accounts into the appropriate workflows.
    - → Support hospital documentation for reporting requirements and assist with year-end 990 Schedule H tax filings by running a Transunion Healthcare Batch Review of patient account files.
- Revenue Manager is a web-based, HFMA peer-reviewed solution that uses both credit and non-credit data sources to determine a patient's likelihood to qualify for Medicaid, charity care or other assistance programs. Financial counselors follow an objective, standardized interview process to quickly qualify uninsured and underinsured patients for financial assistance.

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An unwavering commitment to protecting information

DATA STEWARDSHIP

We think about information as a tool to help people accomplish their goals. As a result of our work, we drive opportunity for businesses, economies and people around the world. To ensure that we remain vigilant stewards of data, we act with care and responsibility with the data we source, analyze and protect.

INFORMATION SECURITY

Information security and data protection are a top priority. Our compliance, information security and investigation teams work together to protect customers and consumers that put their trust in us. Threats are monitored and evaluated to ensure internal controls are adjusted as needed to remain effective in a rapidly changing threat environment.

GOVERNANCE

Data quality is central to our culture. As TransUnion acquires new data sets and develops new technology and analytical capabilities, information management is critical to ensuring this data is accurate, relevant, timely, complete and securely available across services and platforms.

How all hospitals can benefit from TransUnion Healthcare solutions

- We streamline financial counseling by screening patients' likelihood to qualify for financial assistance
- We help reduce bad debt by identifying charity care-eligible patients upfront
- We help apply consistent, impartial methods to your patient base to assist with documentation related to financial assistance policies and 501(r) reporting requirements
- We help lower your cost to collect by classifying past due accounts into the appropriate workflow based on a patient's unique financial situation
- We help your hospital realize increased and accelerated cash flow
- We help increase patient satisfaction by:

— → Evaluating each patient's financial situation against potential resources

— → Ensuring that those needing charity receive it

— → Directing low-income patients to financial assistance navigators early in the process

— → Helping providers set up payment plans based on the patient's unique financial situation

— → Improving staff productivity with automated patient segmentation and workflow

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Case study

Midwestern hospital benefits from TransUnion Healthcare's Financial Aid solution

- **Challenge:** A not-for-profit hospital was struggling to provide charity care to patients they believed were eligible.
- **Solution:** The hospital implemented TransUnion Healthcare's Financial Aid solution to verify income levels, as well as percentage of FPL and other key patient financial data.
- **Results:** A 92% year-over-year increase in financial assistance; $8 million in charity care provided the first month after implementing TransUnion Healthcare's Financial Aid solution.[11]

The IRS is coming for a 501(r) audit: Time to get your house in order

The 501(r) rules specify that each tax-exempt healthcare system should be audited at least once every three years regarding compliance with these regulations. As the IRS and state officials amp up 501(r) enforcement activities and other efforts targeting charity programs, TransUnion Healthcare can help your hospital mitigate the risk of closer scrutiny by:

- Running a year-end batch review of patient account files to provide documentation support for 501(r) reporting requirements and to assist with your 990 Schedule H tax filing
- Helping you implement the Financial Aid solutions your organization needs to proactively identify and resolve issues in determining patients' ability to pay

To run batch and implement these solutions now, contact **888-217-8928** or visit

transunion.com/product/charity-financial-aid-screening

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11 Source: TransUnion Healthcare proprietary data.

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