

July 2015

## IRS Issues Guidance for Hospital Facilities Concerning the Section 501(r) Financial Assistance Policy Requirement

On June 26, 2015, the Internal Revenue Service (IRS) issued [Notice 2015-46](#), which provides guidance on compliance with Section 501(r) of the Internal Revenue Code (Code). As described in a January 2015 edition of the [Health Law Pulse](#), Section 501(r) imposes additional requirements for hospital organizations organized under 501(c)(3) of the Code. It requires a hospital organization to establish a written financial assistance policy (FAP) for each hospital facility it operates. Pursuant to the final regulations, a hospital facility's FAP must apply to all emergency and medically necessary care provided in the hospital facility to the extent the hospital facility itself or a substantially related entity provides the care. The final regulations also require a hospital facility's FAP to include a list of providers that deliver emergency or medically necessary care in the hospital facility and to specify which providers are covered by the hospital facility's FAP and which are not (FAP Provider List). Notice 2015-46 clarifies how a hospital facility may comply with the FAP Provider List requirement.

To satisfy the FAP Provider List requirement, a hospital facility may include on the FAP Provider List the names of individual doctors, practice groups, departments, or any other entities that provide emergency or medically necessary care in the hospital facility as long as the reference makes clear which services and providers the FAP covers. If, for example, the FAP covers all providers in a particular department, the FAP Provider List may include the department. If, however, the FAP does not cover certain physician members of a private practice that contracts with the hospital facility, the FAP Provider List should not include the name of that private practice. If a hospital facility's FAP covers a provider in some circumstances but not in others, the FAP Provider List must describe these circumstances to clarify when emergency or medically necessary care that the provider delivers will or will not be covered by the FAP. While an FAP Provider List must indicate whether the hospital facility's FAP covers the services of a particular provider, it is not required that the FAP Provider List indicate whether *another* entity's financial assistance policy or program covers that provider's services.

The FAP Provider List may be maintained in a document separate from the FAP, provided the document includes the date it was created or last updated and the FAP explains that the provider list is maintained in a separate document that it is accessible free of charge, online, and on paper. While an FAP is "established" after an authorized body of the hospital facility has adopted the policy, an authorized body does not need to adopt updates to the FAP Provider List. Omissions or errors in a hospital facility's FAP Provider List will not be considered failures to meet the requirements of Section 501(r) if the hospital facility updates its FAP Provider List by adding new or missing information, correcting erroneous information, and deleting obsolete information at least quarterly.

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If you have any questions, please contact a member of Robinson+Cole's [Health Law Group](#):

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