

## § 1.501(r)-1

## 26 CFR Ch. I (4-1-21 Edition)

(8) Suspending ECAs while a FAP application is pending.

(9) Waiver does not constitute reasonable efforts.

(10) Agreements with other parties.

(11) Clear and conspicuous placement.

(12) Providing documents electronically.

### § 1.501(r)-7 Effective/applicability date.

(a) Effective/applicability date.

(b) Reasonable interpretation for taxable years beginning on or before December 29, 2015.

[T.D. 9708, 79 FR 78997, Dec. 31, 2014; 80 FR 12762, Mar. 11, 2015]

### § 1.501(r)-1 Definitions.

(a) *Application*. The definitions set forth in this section apply to §§ 1.501(r)-2 through 1.501(r)-7.

(b) *Definitions*—(1) *Amounts generally billed (AGB)* means the amounts generally billed for emergency or other medically necessary care to individuals who have insurance covering such care, determined in accordance with § 1.501(r)-5(b).

(2) *AGB percentage* means a percentage of gross charges that a hospital facility uses under § 1.501(r)-5(b)(3) to determine the AGB for any emergency or other medically necessary care it provides to an individual who is eligible for assistance under its financial assistance policy (FAP).

(3) *Application period* means the period during which a hospital facility must accept and process an application for financial assistance under its FAP submitted by an individual in order to have made reasonable efforts to determine whether the individual is FAP-eligible under § 1.501(r)-6(c). A hospital facility may accept and process an individual's FAP application submitted outside of the application period. With respect to any care provided by a hospital facility to an individual, the application period begins on the date the care is provided and ends on the later of the 240th day after the date that the first post-discharge billing statement for the care is provided or either—

(i) In the case of an individual who the hospital facility is notifying as described in § 1.501(r)-6(c)(4), the deadline specified by a written notice described in § 1.501(r)-6(c)(4); or

(ii) In the case of an individual who the hospital facility has presumptively

determined to be eligible for less than the most generous assistance available under the FAP as described in § 1.501(r)-6(c)(2), the end of the reasonable period of time described in § 1.501(r)-6(c)(2)(i)(B).

(4) *Authorized body of a hospital facility* means—

(i) The governing body (that is, the board of directors, board of trustees, or equivalent controlling body) of the hospital organization that operates the hospital facility or a committee of, or other party authorized by, that governing body to the extent such committee or other party is permitted under state law to act on behalf of the governing body; or

(ii) The governing body of an entity that is disregarded or treated as a partnership for federal tax purposes that operates the hospital facility or a committee of, or other party authorized by, that governing body to the extent such committee or other party is permitted under state law to act on behalf of the governing body.

(5) *Billing and collections policy* means a written policy that includes all of the elements described in § 1.501(r)-4(b)(4)(i).

(6) *Date provided* means, in the case of any billing statement, written notice, or other written communication that is mailed, the date of mailing. The date that a billing statement, written notice, or other written communication is provided can also be the date such communication is sent electronically or delivered by hand.

(7) *Discharge* means to release from a hospital facility after the care at issue has been provided, regardless of whether that care has been provided on an inpatient or outpatient basis. Thus, a billing statement for care is considered “post-discharge” if it is provided to an individual after the care has been provided and the individual has left the hospital facility.

(8) *Disregarded entity* means an entity that is generally disregarded as separate from its owner for federal tax purposes under § 301.7701-3 of this chapter. One example of a disregarded entity is a domestic single member limited liability company that does not elect to be classified as an association taxable

as a corporation for federal tax purposes.

(9) *Emergency medical care* means care provided by a hospital facility for emergency medical conditions.

(10) *Emergency medical conditions* means emergency medical conditions as defined in section 1867 of the Social Security Act (42 U.S.C. 1395dd).

(11) *Extraordinary collection action (ECA)* means an action described in § 1.501(r)-6(b)(1).

(12) *Financial assistance policy (FAP)* means a written policy that meets the requirements described in § 1.501(r)-4(b).

(13) *FAP application* means the information and accompanying documentation that an individual submits to apply for financial assistance under a hospital facility's FAP. An individual is considered to have submitted a complete FAP application if he or she provides information and documentation sufficient for the hospital facility to determine whether the individual is FAP-eligible and an incomplete FAP application if he or she provides some, but not sufficient, information and documentation to determine FAP-eligibility. The term "FAP application" does not refer only to written submissions, and a hospital facility may obtain information from an individual in writing or orally (or a combination of both).

(14) *FAP application form* means the application form (and any accompanying instructions) that a hospital facility makes available for individuals to submit as part of a FAP application.

(15) *FAP-eligible* means eligible for financial assistance under a hospital facility's FAP for care covered by the FAP, without regard to whether an individual has applied for assistance under the FAP.

(16) *Gross charges*, or the *chargemaster rate*, means a hospital facility's full, established price for medical care that the hospital facility consistently and uniformly charges patients before applying any contractual allowances, discounts, or deductions.

(17) *Hospital facility* means a facility that is required by a state to be licensed, registered, or similarly recognized as a hospital. Multiple buildings operated under a single state license

are considered to be a single hospital facility. For purposes of this paragraph (b)(17), the term "state" includes only the 50 states and the District of Columbia and not any U.S. territory or foreign country. References to a hospital facility taking actions include instances in which the hospital organization operating the hospital facility takes actions through or on behalf of the hospital facility.

(18) *Hospital organization* means an organization recognized (or seeking to be recognized) as described in section 501(c)(3) that operates one or more hospital facilities. If the section 501(c)(3) status of such an organization is revoked, the organization will, for purposes of section 4959, continue to be treated as a hospital organization during the taxable year in which such revocation becomes effective.

(19) *Medicaid* means any medical assistance program administered by the state in which a hospital facility is licensed in accordance with Title XIX of the Social Security Act (42 U.S.C. 1396 through 1396w-5), including programs in which such medical assistance is provided through a contract between the state and a Medicaid managed care organization or a prepaid inpatient health plan.

(20) *Medicare fee-for-service* means health insurance available under Medicare Part A and Part B of Title XVIII of the Social Security Act (42 U.S.C. 1395c through 1395w-5).

(21) *Noncompliant facility income* means income that a hospital organization operating more than one hospital facility derives from a hospital facility that fails to meet one or more of the requirements of section 501(r) during a taxable year as determined in accordance with § 1.501(r)-2(d).

(22) *Operating a hospital facility*—(i) *In general.* Operating a hospital facility includes operating the facility through the organization's own employees or contracting out to another organization to operate the facility. For example, if an organization hires a management company to operate the facility, the hiring organization is considered to operate the facility. An organization also operates a hospital facility if it is

the sole member or owner of a disregarded entity that operates the hospital facility. In addition, an organization operates a hospital facility if it owns a capital or profits interest in an entity treated as a partnership for federal tax purposes that operates the hospital facility, unless paragraph (b)(22)(ii) of this section applies. For purposes of this paragraph (b)(22), an organization is considered to own a capital or profits interest in an entity treated as a partnership for federal tax purposes if it owns such an interest directly or indirectly through one or more lower-tier entities treated as partnerships for federal tax purposes.

(ii) *Exception for certain partnerships.* An organization does not operate a hospital facility despite owning a capital or profits interest in an entity treated as a partnership for federal tax purposes that operates the hospital facility if—

(A) The organization does not have control over the operation of the hospital facility operated by the partnership sufficient to ensure that the operation of the hospital facility furthers an exempt purpose described in section 501(c)(3) and thus treats the operation of the hospital facility, including the facility's provision of medical care, as an unrelated trade or business described in section 513 with respect to the hospital organization; or

(B) At all times since March 23, 2010, the organization has been organized and operated primarily for educational or scientific purposes and has not engaged primarily in the operation of one or more hospital facilities and, pursuant to a partnership agreement entered into before March 23, 2010—

(1) Does not own more than 35 percent of the capital or profits interest in the partnership (determined in accordance with section 707(b)(3));

(2) Does not own a general partner interest, managing-member interest, or similar interest in the partnership; and

(3) Does not have control over the operation of the hospital facility sufficient to ensure that the hospital facility complies with the requirements of section 501(r).

(23) *Partnership agreement* means, for purposes of paragraph (b)(22)(ii)(B) of this section, all written agreements

among the partners, or between one or more partners and the partnership, and concerning affairs of the partnership and responsibilities of the partners, whether or not embodied in a document referred to by the partners as the partnership agreement. A partnership agreement also includes any modifications to the agreement agreed to by all partners, or adopted in any other manner provided by the partnership agreement, except for modifications adopted on or after March 23, 2010, that affect whether or not the agreement is described in paragraph (b)(22)(ii)(B) of this section. In addition, a partnership agreement includes provisions of federal, state, or local law that were in effect before March 23, 2010, and continue to be in effect that govern the affairs of the partnership or are considered under such law to be part of the partnership agreement.

(24) *Plain language summary of the FAP* means a written statement that notifies an individual that the hospital facility offers financial assistance under a FAP and provides the following additional information in language that is clear, concise, and easy to understand:

(i) A brief description of the eligibility requirements and assistance offered under the FAP.

(ii) A brief summary of how to apply for assistance under the FAP.

(iii) The direct Web site address (or URL) and physical locations where the individual can obtain copies of the FAP and FAP application form.

(iv) Instructions on how the individual can obtain a free copy of the FAP and FAP application form by mail.

(v) The contact information, including telephone number and physical location, of the hospital facility office or department that can provide information about the FAP and of either—

(A) The hospital facility office or department that can provide assistance with the FAP application process; or

(B) If the hospital facility does not provide assistance with the FAP application process, at least one nonprofit organization or government agency that the hospital facility has identified as an available source of assistance with FAP applications.

(vi) A statement of the availability of translations of the FAP, FAP application form, and plain language summary of the FAP in other languages, if applicable.

(vii) A statement that a FAP-eligible individual may not be charged more than AGB for emergency or other medically necessary care.

(25) *Presumptive FAP-eligibility determination* means a determination that an individual is FAP-eligible based on information other than that provided by the individual or based on a prior FAP-eligibility determination, as described in §1.501(r)-6(c)(2).

(26) *Private health insurer* means any organization that is not a governmental unit that offers health insurance, including nongovernmental organizations administering a health insurance plan under Medicare Advantage (Part C of Title XVIII of the Social Security Act, 42 U.S.C. 1395w-21 through 1395w-29). For purposes of §1.501(r)-5(b), medical assistance provided through a contract between the state and a Medicaid managed care organization or a prepaid inpatient health plan is not considered to be a reimbursement from or a claim allowed by a private health insurer.

(27) *Referring* an individual's debt to a debt collection agency or other party means contracting with, delegating to, or otherwise using the debt collection agency or other party to collect amounts owed by the individual to the hospital facility while still maintaining ownership of the debt.

(28) *Substantially-related entity* means, with respect to a hospital facility operated by a hospital organization, an entity treated as a partnership for federal tax purposes in which the hospital organization owns a capital or profits interest, or a disregarded entity of which the hospital organization is the sole member or owner, that provides emergency or other medically necessary care in the hospital facility, unless the provision of such care is an unrelated trade or business described in section 513 with respect to the hospital organization. Notwithstanding the preceding sentence, a partnership that qualifies for the exception described in paragraph (b)(22)(ii)(B) of this section is not considered a substantially-related enti-

ty within the meaning of this paragraph (b)(28).

(29) *Widely available on a Web site* means—

(i) The hospital facility conspicuously posts a complete and current version of the document on—

(A) The hospital facility's Web site;

(B) If the hospital facility does not have its own Web site separate from the hospital organization that operates it, the hospital organization's Web site; or

(C) A Web site established and maintained by another entity, but only if the Web site of the hospital facility or hospital organization (if the facility or organization has a Web site) provides a conspicuously-displayed link to the Web page where the document is posted, along with clear instructions for accessing the document on that Web site;

(ii) Individuals with access to the Internet can access, download, view, and print a hard copy of the document from the Web site—

(A) Without requiring special computer hardware or software (other than software that is readily available to members of the public without payment of any fee);

(B) Without paying a fee to the hospital facility, hospital organization, or other entity maintaining the Web site; and

(C) Without creating an account or being otherwise required to provide personally identifiable information; and

(iii) The hospital facility provides individuals who ask how to access a copy of the document online with the direct Web site address, or URL, of the Web page where the document is posted.

[T.D. 9708, 79 FR 78998, Dec. 31, 2014; 80 FR 12762, Mar. 11, 2015]

#### **§ 1.501(r)-2 Failures to satisfy section 501(r).**

(a) *Revocation of section 501(c)(3) status.* Except as otherwise provided in paragraphs (b) and (c) of this section, a hospital organization failing to meet one or more of the requirements of section 501(r) separately with respect to one or more hospital facilities it operates may have its section 501(c)(3) status revoked as of the first day of the