

NONPROFIT ORGANIZATIONS

JULY

2015

A L E R T

NOTICE CLARIFIES PROVIDER LIST REQUIREMENTS FOR HOSPITAL FACILITIES UNDER SECTION 501(R)

By Molly Sharbaugh Unterseher

Background

On December 31, 2014, the Internal Revenue Service (IRS) issued final regulations under Section 501(r) of the Internal Revenue Code (IRC), which requires a hospital facility to establish a written financial assistance policy (FAP). Under the final regulations, a hospital facility's FAP must apply to all emergency and medically necessary care provided in the hospital facility, but only to the extent the care is provided by the hospital facility itself or a substantially-related entity. Further, § 1.501(r)-4(b)(1)(iii)(F) of the final regulations require a hospital facility's FAP to include a list of providers, other than the hospital facility itself, delivering emergency or other medically necessary care in the hospital facility and specify which providers are covered by the hospital facility's FAP and which are not ("Provider List").

Provider List Concerns

Commentators expressed concerns regarding the application of the Provider List requirement to large hospital facilities with a large number of providers and the difficulty in maintaining an up-to-date Provider List. Commentators raised practical questions whether the entire Provider List must be included in the FAP itself, or whether it could be provided in a separate document and whether the Provider List could specify the emergency or other medically necessary care covered by the FAP by department or by type of

service, if all of the providers in the department or of the service are covered by the hospital facility's FAP.

Notice 2015-46

In response to these concerns, the IRS issued Notice 2015-46 (the "Notice") on June 26, 2015, and provided clarification regarding the Provider List requirement, which applies for tax years beginning after December 29, 2015. In particular, the Notice provides that:

1. A hospital facility may list the names of individual doctors, practice groups, or any other entities that are providing emergency or medically necessary care in the hospital facility by the name used either to contract with the hospital or to bill patients for care provided. Alternatively, a hospital facility may specify providers by reference to a department or a type of service if the reference makes clear which services and providers are covered.
2. If a provider is covered by a hospital facility's FAP in some circumstances but not in others, the hospital facility must describe the circumstances in which the emergency or other medically necessary care delivered by the provider will and will not be covered by the FAP.

3. A Provider List must indicate whether the services of a particular provider are or are not covered by the hospital facility's FAP but is not required to indicate whether that provider's services are (or may be) covered by another entity's financial aid policy or program.
4. A Provider List may be maintained in a document separate from the FAP, such as in an appendix, provided that the document includes the date on which it was created or last updated and the hospital facility's FAP states that the list of providers is maintained in a document separate from the FAP and explain how members of the public may obtain it.

IRC Section 501(r)(4) that a hospital organization establish a FAP for each hospital facility it operates, that an authorized body of the hospital facility has adopted the policy for the hospital facility, and that the hospital facility has implemented the policy. The Notice explains that if the only change a hospital facility makes to its FAP is to update the Provider List (whether the provider list is in the FAP or in a separate document), the FAP does not need to be re-adopted by an authorized body of the hospital facility in order for the FAP to continue to be considered "established."

Finally, the Notice indicates that omissions and errors in the Provider List that are either inadvertent or due to reasonable cause, including a failure to include a provider in the Provider List or to identify a service covered by the FAP, are not considered failures to meet a requirement of IRC Section 501(r) if they are promptly corrected, and hospital organizations are not required to disclose such omissions or errors. For purposes of the final regulations, a hospital facility that updates its list of providers by adding new or missing information, correcting erroneous information, and deleting obsolete information at least quarterly will be considered to have taken reasonable steps to ensure that its Provider List is accurate and will be

considered to have corrected any minor omissions or errors in the Provider List. ♦

This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.

For more information about Schnader's Nonprofit Organizations group or to speak with a member of the firm, please contact:

Marla K. Conley
Co-Chair, Nonprofit Organizations
215-751-2561
mconley@schnader.com

Joseph E. Lundy
215-751-2525
jlundy@schnader.com

Molly Sharbaugh Unterseher
215-751-2517
munterseher@schnader.com

Copyright 2015, American Health Lawyers Association, Washington, DC. Reprint permission granted.

www.schnader.com
© 2015 Schnader Harrison Segal & Lewis LLP
* See: www.schnader.com/jakarta