

Will Nonprofit Hospitals Disappear Under Obamacare?

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It seems everyone has an opinion on **Obamacare**, officially the Patient Protection Affordable Care Act. The good, the bad and the ugly have been exposed at the individual patient level. But as the January 1, 2014 implementation date approaches, how will the law affect hospitals, and what ramifications will it have on their patients and communities?

Some Wall Street analysts are now bullish on investing in hospital systems, betting that more people covered by insurance equates to more paying patients and thus more revenue, speaking, of course about for profit institutions.

According to the U.S. Census Bureau, nearly 85 percent of people in the U.S. —over 260 million—were covered by insurance in 2011, with about 32 percent of that number on government health insurance such as Medicare or Medicaid. If, as planned, “everyone” will be covered under PPACA, another 46.5 million patients will obviously make a significant financial impact on the healthcare system.

How will this dynamic affect the nation’s roughly 2,900 nonprofit hospitals? These hospitals have long enjoyed tax exempt status with the Internal Revenue Service under 501(c)(3) relying on the common law definition of charity, where the promotion of health is considered a charitable endeavor. These nonprofit institutions provide charitable, or uncompensated care as well as a host of other services that qualify them as nonprofit, and hence, federal tax exempt entities.

Requirements and guidelines

Nonprofit hospitals have always been required to meet certain parameters to maintain their tax exempt status. Providing a certain level of charity care and using surplus funds to offer continuing education for healthcare professionals, conduct medical research and run preventive health outreach programs in their communities are a few examples.

Under the new law, a rigorous new provision in section 501 of the Internal Revenue Code called subsection (r) goes into effect regarding treatment of uninsured patients. Although not spelled out with specific IRS guidance as of yet, failure to comply can result in a new \$50,000 annual excise tax.

Four new requirements must now be met in order for hospitals to maintain their tax exempt status with the IRS. Here is a brief synopsis of each:

1. Community health needs assessment

Hospitals must produce a community health needs assessment based on an assessment done every three years. Specific terms spell out everything that must be included in this document, such as the sources used to conduct the assessment and methods employed, input from community representatives, a prioritized description of the community's health needs and of existing local healthcare facilities and other resources. This written community healthcare assessment must be widely available. A written implementation strategy to meet the needs identified in the community health needs assessment is also required.

2) Financial assistance policy

Hospitals must create a written financial assistance policy. It must be widely publicized and include eligibility criteria and whether assistance includes free or discounted care, how amounts charged are calculated, how to apply and what documentation will be used to determine qualification. It's worth noting that there is no correlation between the community health needs assessment and the financial assistance plan requirements. In other words, a hospital does not have to tailor its financial assistance plan to the findings of the community health needs assessment.

3) Limitations on charges

In the past, it was common practice for hospitals to charge uninsured patients substantially more for care than their insured counterparts. They must now limit charges for emergency or medically necessary care to the rates generally billed to insured individuals. They cannot charge more than the gross charges for non-emergency care. One of two prescribed methods for determining amounts billed must be used: one based on past payments by Medicare fee-for-service or Medicare FFS plus private health insurers' payments; or an estimate of the amount the hospital would be paid by Medicare and a Medicare beneficiary for the care if the patient was a Medicare FFS beneficiary.

Patients not eligible for financial assistance, or those who have not submitted an application for assistance, may still be charged gross charges for all (not just emergency) hospital care.

4) Billing and collections practices

The PPACA prohibits hospitals from engaging in extraordinary collections actions in certain instances. "Extraordinary collections actions" relate to obtaining payment of a bill for care covered under the hospital's financial assistance plan that requires legal or judicial process. Hospitals cannot report adverse information to consumer credit reporting agencies if an individual qualifies for the financial assistance plan. And, selling debt of individuals on the financial assistance plan is prohibited.

Hospitals have to make reasonable efforts to determine whether an individual qualifies under the financial assistance plan before engaging in extraordinary collections efforts, including notifying individuals about the financial assistance plan, providing assistance to an individual who submits an incomplete application and determining and documenting whether an individual qualifies for the plan. The hospital may use extraordinary collections actions if all of these requirements are met.

Nonprofit hospitals on the line

Some nonprofit hospitals are being consolidated and acquired by larger for profit systems. Although not tax exempt, it's been shown that for profit systems typically provide a comparable amount of charity care as nonprofit hospitals do.

Nonprofit hospitals should be advised that the new PPACA requirements will play a significant role in how they operate and report, specifically when it comes to billing and collections for services provided to the uninsured. The new law leaves many gray areas and hospitals themselves will have to establish eligibility criteria for financial assistance. Following the new procedures as best they can will ensure the best chance of maintaining their tax exempt status.

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