

## Financial Assistance Disclosures for Hospitals

Article By:

Melissa S. Watkins

---

A charitable hospital organization must have a financial assistance policy (“FAP”), which explains the criteria used to determine how services are discounted for financially needy patients. The IRS requires that the FAP must include a list of providers, other than the hospital facility itself, delivering emergency or other medically necessary care in the hospital facility. This list must also disclose which providers are subject to the FAP and which are not. Patients are not always aware of the contractual relationships that the hospital may have with other third party health care providers delivering services in the hospital facility. Based on this concern, the IRS determined that a hospital’s FAP must clearly disclose this information. Effective for taxable years beginning after December 29, 2015, the IRS issued [Notice 2015-46](#) which clarifies the requirements for FAPs to include a list of those providing care in the hospital facility.

As part of the requirement under Section 501(r) to establish a written FAP that applies to all emergency or other medically necessary care, the IRS also requires that the FAP include the extent to which a hospital’s FAP covers other providers, such as non-employee providers in private physician groups or hospital-owned practices. Under the final 501(r) regulations, a hospital facility’s FAP must apply to all emergency and medically necessary care provided in the hospital facility only to the extent the care is provided by the hospital facility itself or a substantially-related entity (which includes a partnership in which the hospital owns a capital or profits interest or a disregarded entity of which the hospital entity is the sole member or owner). There is also an exception for care provided in the hospital facility which is considered an unrelated trade or business.

For purposes of this requirement, 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 to contract with the hospital or the name used to bill patients for care provided. If all of the doctors in a practice group providing such care are covered by the hospital facility’s FAP, the hospital facility may list the name of the practice group, rather than the name of each individual doctor, in its provider list and indicate which services of the practice group are covered by the FAP. 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. For example, if all providers of all services in a department of a hospital facility are covered by the FAP, the hospital facility’s FAP may list the department, rather than the specific names of doctors or practice groups, in its provider list and indicate that the services in that department are covered by the FAP.

To the extent that 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. If the provider list is maintained in a document separate from the FAP, the FAP must contain a statement that indicates that the list of providers is in a separate document from the FAP and explain how members of the public may obtain the list free of charge, both online and in paper format.

To the extent that a hospital updates the provider list at least quarterly, it will be considered to have taken reasonable steps to ensure that the list is accurate.

© Steptoe & Johnson PLLC. All Rights Reserved.

---

National Law Review, Volume VI, Number 50

Source URL: <https://natlawreview.com/article/financial-assistance-disclosures-hospitals>