

Billing and Collections

Summary of IRS Hospital Tax-Exemption Requirements Section 501(r) Final Rule

This section was modified from the proposed rule to require fewer specific requirements during the 120-day notification period, but includes specific notices to individuals 30 days prior to specific collection actions. The 240-day period remains as the timeframe in which a hospital must accept and process an application for financial assistance. It also stipulates that hospitals must widely publicize the availability of financial assistance.

Hospitals are prohibited from engaging in extraordinary collection actions to obtain payment before making reasonable efforts to determine whether the individual is eligible for a financial assistance policy (FAP) for care. This is only applicable to individuals and not applicable to third-party payers. "Reasonable efforts" requires certain notifications and waiting for at least 120 days after the first post-discharge billing statement before initiating ECAs.

Extraordinary Collection Actions (ECAs)

ECAs are defined as actions that involved:

- Selling an individual's debt to another party
- Reporting adverse information about an individual to a consumer credit reporting agency or bureau
- Deferring or denying or requiring payment before providing medically necessary care because of nonpayment for prior bills covered under the hospital's FAP—considered an ECA due to the past-due bills, not the current care sought
- A required legal or judicial process, such as:
 - Placing a lien on an individual's property. However, liens against proceeds of settlements, judgments or compromises arising from a suit against a third party will not be considered an ECA;
 - Foreclosing on an individual's real estate property;
 - Attaching or seizing a bank account or other personal property;
 - Commencing a civil action against an individual;
 - Causing an individual's arrest;
 - Causing an individual to be subject to a writ of body attachment; and
 - Garnishing an individual's wages.

Filing a claim in a bankruptcy proceeding is not considered an ECA. The final rule says the sale of debt is not an ECA if, prior to the sale, the hospital has a legally binding written agreement with the purchaser containing four conditions: the purchaser must not engage in ECAs to obtain the debt; no interest is charged in excess of a certain rate; the debt must be returned if the individual is found FAP-eligible; and if FAP-eligible debt is not returned, the purchaser ensures the individual does not pay more than what he or she would under the FAP.

Notification and Application Periods

A hospital will have notified an individual if at least 30 days before first initiating one or more ECAs, it:

- Provides a written notice that FA is available and identifies the ECA that may be initiated within 30 days;
- Provides a plain language summary of the FAP;
- Makes a reasonable effort to orally notify the individual about the FAP and how to obtain assistance with the application process;

Written notification may be made electronically to individuals who indicate they prefer that method. The final rule eliminates any

separate requirement regarding documenting notification, but hospitals are responsible for maintaining records to substantiate information required by Form 990.

Hospitals are free to accept FAP applications for whatever time period they choose, but must accept and process such applications for a minimum of 240 days from the first post-discharge bill. This time period could be longer if the notification process regarding potential ECAs was delayed.

Hospitals may satisfy the notification requirements simultaneously for multiple episodes of care for notifying the individual about FAP and potential ECAs. However, it may not initiate ECAs until 120 days after it provided the first post-discharge bill for the most recent episode of care.

Hospitals must provide written documentation to individuals determined eligible for free care. A zero billing statement is not necessary.

Incomplete and Complete Applications

- Hospitals must suspend ECAs against an individual who submits an incomplete FAP application until the application is completed and the hospital makes a determination whether they are FAP-eligible or until a reasonable time period has elapsed during which the individual has not responded with additional information.
- Hospitals must provide notice about potential ECAs and an accompanying plain-language summary of the FAP to an individual who has submitted an incomplete application. Hospitals also must provide contact information for further assistance with the application process.
- The hospital has made reasonable efforts to determine FAP eligibility if upon receipt of a complete application it suspends any ECAs and notifies the individual in writing of the FAP determination. If the individual is FAP-eligible for less than free care, the hospital will provide a billing statement indicating how much is owed, how the amount was determined and how to get further information regarding AGB; provide a refund of any amounts paid in excess of the FAP-determined amount; and take reasonably available measures to reverse any ECA.
- Receipt of a completed FAP application and the above steps fulfill the notification requirements.
- A hospital may postpone a FAP determination until Medicaid eligibility has been determined for patients the hospital believes may qualify.
- Obtaining a signed waiver from an individual that they do not wish to apply for FA does not satisfy the reasonable efforts requirement.

Agreements with Other Parties

With the exception of the sale of debt and appropriate steps outlined above, a hospital that sells or refers debt to another party needs to have a legally binding written agreement to ensure no ECAs are taken until the requirements regarding FAP-eligible determinations are followed.

Presumptive Eligibility

- Hospitals are allowed to utilize presumptive eligibility sources to determine if an individual is eligible for both free care or for less generous assistance. If eligible for less than the most generous assistance, the hospital must notify the individual of the basis for the determination and how he or she can apply for more generous assistance, provide a reasonable time period to apply for additional assistance and process any complete FAP application by the end of the application period.
- Hospitals may not make a presumptive determination or use a waiver form to determine that an individual is not FAP-eligible.