

The logo for the Hospital & Healthsystem Association of Pennsylvania (HAP) features the letters 'HAP' in white, bold, sans-serif font, set against a dark blue square background.

THE HOSPITAL & HEALTHSYSTEM  
ASSOCIATION OF PENNSYLVANIA

# **CHARITY CARE *and* FINANCIAL AID GUIDELINES *for* PENNSYLVANIA HOSPITALS**

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## Background

Pennsylvania hospitals and health systems have a long history of addressing charity care and financial aid responsibilities through their health care missions in their communities and compliance with Hill-Burton funding, federal tax-exempt status, Act 55 of 1997 (the Institutions of Purely Public Charity Act), and Act 77 of 2001 (the Tobacco Settlement Act) requirements. Providing charity care to indigent patients is only one aspect of the current intricate health care system that includes government funding for some patients (Medicare and Medicaid), private commercial insurance funding for others, and at times, inadequate funding for services even when insurance is available. An ever-increasing number of Pennsylvanians have no form of insurance to help pay for their hospital care.

To receive funds for uncompensated care or extraordinary expenses under Pennsylvania Act 77, hospitals and health systems, regardless of tax-exempt status, must provide attestation statements to the Department of Public Welfare (DPW) on an annual basis affirming the existence of their charity care program, their efforts to seek collection for all claims, and attempts to obtain health coverage for patients, particularly the uninsured. As a result, state law requires hospitals and health systems to continue to periodically review their charity care policies.

In addition, hospitals maintain open admission policies consistent with the requirements for their federal tax-exempt status and the more recently established requirements for tax-exempt hospitals under the Affordable Care Act (ACA), and comply with Emergency Medical Treatment and Labor Act (EMTALA) requirements to conduct medical screening exams for individuals that seek emergency treatment, as well as to provide stabilizing medical treatment when an emergency medical condition is identified.

Hospitals and health systems conduct periodic reviews of their charity care and financial aid policies to ensure that they are meeting the needs of both the indigent and the uninsured in their communities while at the same time attempting to balance that responsibility with the financial and staffing resources available to meet the various needs of the communities they serve.

In 2004, the Board of Directors of The Hospital & Healthsystem Association of Pennsylvania (HAP) worked with HAP's CFO Advisory Group, Committee on Public Payor Policy, and Trustee Leadership Steering Committee to develop guidelines for Pennsylvania hospitals and health systems that incorporate national and state-specific guidance. These updated guidelines reflect ACA provisions and the policy bulletin issued by DPW on charity care requirements.

HAP will continue to review the guidelines, and modify them as necessary, to assist Pennsylvania hospitals in maintaining charity care and financial aid policies that meet the needs of Commonwealth residents and comply with applicable laws and regulations. In addition, the American Hospital Association (AHA) provides guidance to hospitals and health systems on charity care and financial aid policies in accordance with federal law and regulations.

## Overall Principles for Charity Care and Financial Aid

- Concern over a hospital bill should never prevent any individual from receiving emergency health services. Hospitals should communicate this message clearly to prospective patients and to local community service agencies, and make it clear that emergency services will be provided to all patients without regard to ability to pay. This principle reflects hospitals' commitment to caring for those in their community.
- Hospitals should assist patients in obtaining health insurance coverage from privately and publicly funded sources whenever appropriate.
- Hospitals should have charity care and financial aid policies and practices that are consistent with their missions and values, and with federal and state law, and that take into account each individual's ability to contribute to the cost of his or her care, as well as the hospital's financial ability to provide the care.
- Financial aid policies should be clear, understandable, and communicated in a manner that is dignified and in languages appropriate to the communities and patients served. These policies should be made readily available to prospective and current patients and to the community at large.
- Debt collections policies—by both hospital staff and external collections agencies—should reflect the mission and values of the hospital, and should be monitored carefully to avoid unintended consequences.

### **Pennsylvania Act 77 of 2001 The Tobacco Settlement Act**

Under state law that provides some funding through the state Medical Assistance program for hospital uncompensated care, hospitals (regardless of their tax-exempt status) must:

- 1) Submit annual attestation statements to the Department of Public Welfare affirming the existence of their charity care program, their efforts to seek collection for all claims, and attempts to obtain health care coverage for patients. Virtually all eligible hospitals in Pennsylvania have complied with this requirement since it was established in 2001.
- 2) Have a charity care policy that addresses:
  - Patient eligibility for other public or private coverage.
  - Income eligibility threshold based on family size.
  - Consideration of other resources available to a patient or responsible party.

- Patient or responsible party employment status and earning capacity.
  - Other financial obligations of the patient or responsible party.
  - Other sources of funds available to the hospital such as endowments or donations specified for charity care.
- 3) Have a plan in place to serve the uninsured and:
- Accept all individuals, regardless of their ability to pay, for emergency medical screening and for stabilization services, as necessary, within the scope of the hospital's capabilities and capacity.
  - Seek collection of a claim, including collection from an insurer or payment arrangements with the person who is responsible for payment of the care rendered.
  - Attempt to obtain health care coverage for patients, including assisting patients in applying for Medical Assistance or the Children's Health Insurance Program (CHIP).
  - Ensure that an emergency admission or treatment is not delayed or denied pending determination of coverage or requirement for prepayment or deposit.
  - Post adequate notice of the availability of medical services and the general obligation of the hospital to provide charity care.

The Department of Public Welfare (DPW) issued a Medical Assistance Bulletin on August 30, 2010 (01-10-24), that outlines in detail the requirements for hospitals to receive uncompensated care funds, including addressing the steps that hospitals should take to provide assistance to patients applying for publicly-funded programs, a model charity care application that includes the maximum scope of information hospitals may collect from charity care applicants in determining charity care eligibility, the requirements for posting notices, and the attestation process for hospitals for purposes of compliance.

## **Pennsylvania Tax-Exemption Requirements**

To qualify for tax-exemption as an institution of purely public charity under the Pennsylvania constitution, as interpreted by the Pennsylvania Supreme Court in the *Hospital Utilization Project (HUP)* case, a not-for-profit entity must:

- Advance a charitable purpose.
- Donate or render gratuitously a substantial portion of its services.

- Benefit a substantial and indefinite class of persons who are legitimate subjects of charity.
- Relieve the government of some of its burden.
- Operate entirely free from private profit motive.

These requirements were reaffirmed by the Pennsylvania Supreme Court in a case (*Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals*) issued in 2012. In addition, Act 55 of 1997 establishes more detailed criteria for not-for-profit entities for each of the above standards.

## **Federal Tax-Exemption Requirements under the Affordable Care Act**

The ACA established specific statutory requirements that hospitals must meet in order to qualify as 501(c)(3) tax-exempt organizations under the Internal Revenue Code. The new requirements are included in section 501(r) of the Internal Revenue Code, which outlines the additional requirements that an organization must satisfy in order to retain its 501(c)(3) tax-exempt status.

The new requirements apply to each hospital on a facility-by-facility basis, and became effective for tax years beginning on or after the date of ACA's enactment, March 23, 2010. Tax-exempt organizations are required to:

1. Conduct a community health needs assessment every three years and adopt an implementation strategy to meet the community health needs identified.
2. Include audited financial statements or the consolidated financial statements with its Form 990.
3. Establish a financial assistance policy and an emergency medical care policy.
4. Limit charges for emergency or other medically necessary care provided to individuals eligible for assistance under the hospital's financial assistance policy.
5. Forego extraordinary collection efforts against an individual before the hospital has made reasonable efforts to determine if the individual is eligible for assistance under the hospital's financial assistance policy.

Regarding the ACA requirements related to financial aid policies, tax-exempt hospitals must implement a written financial assistance policy that includes:

- Eligibility criteria for financial assistance, and whether the assistance includes free or discounted care.
- The basis for calculating the amounts charged to patients.
- The method for applying for financial assistance.
- For organizations that do not have a separate billing and collection policy, the actions the organization may take in the event of non-payment, including collection actions and reporting to credit agencies.

The financial assistance policy must be widely publicized within the community the organization serves.

In addition, hospitals need a written policy that includes the provision of care for emergency medical conditions to individuals regardless of the individuals' eligibility for assistance under the hospital's financial assistance policy, without discrimination. Most Pennsylvania hospitals should already have a financial assistance policy in place pursuant to Pennsylvania Act 77 of 2001 requiring such policies to be eligible for uncompensated care under the state's tobacco settlement.

Under the ACA, hospitals also must limit the amounts charged for care provided to individuals eligible for assistance under the organization's financial assistance policy to no more than what is charged to individuals with insurance. This requirement can be met by charging the lowest negotiated commercial rates, an average of three best negotiated commercial rates or Medicare rates. The method used to determine charges should be reviewed for consistency with the new section 501(r) of the Internal Revenue Code.

Finally, hospitals are not allowed to engage in extraordinary collection efforts against an individual until reasonable effort has been made to determine if the individual is eligible for assistance under the hospital's financial assistance policy. Extraordinary collection efforts include lawsuits, liens on residences, arrests, body attachments, or other similar collection processes.

## **Guidelines for Eligibility for Financial Aid**

Financial aid is intended to assist low-income, uninsured individuals who do not otherwise have the ability to pay fully for medically necessary health care as prescribed by their physician and as determined by the hospital's qualification criteria. Hospitals should take into account each individual's ability to pay for the cost of his or her medically necessary hospital care.

Consideration also should be given to providing financial assistance on a case-by-case basis to patients who have exhausted their insurance benefits and/or who exceed financial eligibility criteria but face extraordinary medical costs. Hospital financial aid should not be considered a substitute for employer, public, or individually purchased health insurance.

In establishing a financial aid program, consideration should be given by a hospital to:

- Maintaining understandable, written financial assistance policies for low-income uninsured patients, addressing both the hospital's charity care policy, as well as its discount payment policy for the low-income uninsured.

- That financial assistance policies clearly state the eligibility criteria, including:
  - Patient employment status and earning capacity.
  - Income eligibility based on family size.
  - Consideration of other resources available, including assets.
  - Other financial obligations.

The policy also should state the process used by the hospital to determine whether a patient is eligible for financial assistance. Such a process should evaluate a particular patient's financial status relative to existing Federal Poverty Levels. (*Note: This is a requirement of Act 77.*)

Patients who are at or below the Federal Poverty Levels or higher depending on the geographic cost of living differences in the state, should then be eligible to apply for financial assistance under each hospital's charity care policy (which may include a discount payment policy). Hospitals may consider providing financial assistance to those who earn more than the Federal Poverty Levels, and may establish collections policies and practices based on those patients' ability to pay. Federal and state laws and regulations should be considered in identifying these criteria.

- Absent any regulatory prohibition, each hospital should limit expected payments from these patients eligible for financial assistance to amounts that do not exceed the payments the hospital would receive for similar services from their aggregate commercial payors, government-sponsored health programs, or as otherwise deemed appropriate by the hospital. (*Note: The ACA requires tax-exempt hospitals to limit charges for emergency and other medically necessary care for those who qualify for financial assistance to no more than the amounts generally billed to individuals who have insurance.*)
- The policy should define the type and scope of essential services eligible for financial aid, including hospital-employed physician fees. Different discount scales may apply to different categories of services. For example, a sliding scale of fixed fees may be applied to clinic or outpatient care, if the patient is determined eligible for financial aid or charity care.
- The policy should clearly state whether the charity care/financial aid policy applies only to patients from certain geographic areas and, if so, the policy should define those areas.
- Hospitals should use their best efforts to ensure all financial assistance policies are applied consistently.
- In determining a patient's eligibility for financial assistance, hospitals should assist the patient in determining if he or she is eligible for government-sponsored programs or other insurance coverage. (*Note: This is a requirement of Pennsylvania Act 77.*) The hospital may require the patient to first apply for government-sponsored programs before being considered for financial assistance.

While it is incumbent upon hospitals to have and fairly implement financial aid policies for the most financially needy patients, it is important that financial aid applicants understand the importance of cooperating with the hospital's need for accurate and detailed financial information. Therefore, the hospital should make clear that any patient seeking financial aid needs to comply with hospital assistance application requirements, including the production of necessary documentation within a reasonable time frame, and that the patient or his or her representative will provide the hospital with any financial and other information needed to assist in enrollment in a publicly sponsored insurance program (e.g., Medicaid, HealthChoices, CHIP, etc.), if required. Further, the hospital should specify what the patient should expect if she or she fails to provide the information requested by the hospital (e.g., the patient may not be eligible for a discount plan).

Because individual patients and their families will be sharing this financial information, hospital policies also must include confidentiality protections to assure that such information only will be used to assist in enrollment or for evaluating eligibility for financial aid, and for no other purpose.

For Pennsylvania, it is important to note that hospitals now have the use of the Internet to enroll patients in the Medical Assistance and CHIP Programs. Pennsylvania's COMPASS program provides an online application process that facilitates this enrollment. Hospitals should make sure their financial representatives are trained to use COMPASS and remain current with the state's requirements for the use of the program.

## **Guidelines for Collections Policies**

Although clear and consistent financial aid policies will go far toward promoting access to care and minimizing bad debts, hospitals also should have clear collections policies that reflect the mission and values of the hospital. Hospitals should take steps to ensure that debt collections activities exercised by outside collections agencies comport with the hospitals' mission, values, and policies.

Following are considerations for hospitals in establishing collections policies:

- Hospitals should work with each patient to establish a reasonable payment plan.
- Hospitals should have written policies about when and under whose authority patient debt is advanced for collection, and should use their best efforts to ensure that patient accounts are processed fairly and consistently.
- Legal action against individuals may be taken by the hospital only when there is evidence that the patient or responsible party has income and/or assets to meet his or her obligation. This would involve a review consistent with the hospital's financial assistance program, including consideration of the patient's employment status and earning capacity, income eligibility based on federal poverty guidelines, and other resources available. (*Note: The ACA requires reasonable efforts to determine eligibility for financial assistance before undertaking collections efforts.*)

- Hospitals should not force the sale or foreclosure of a patient's primary residence to pay an outstanding medical bill. Liens are permitted only when there is evidence that the patient or responsible party has income and or assets to meet his or her obligation. This would involve a review consistent with the hospital's financial assistance program, including consideration of the patient's employment status and earning capacity, income eligibility based on federal poverty guidelines, and other resources available.
- Hospitals should not use body attachment (a third-party that uses physical or legal means to compel an action) to require the patient or responsible party to appear in court.
- For inpatient care and high-cost outpatient emergency care, hospitals should review the patient's record to determine if reasonable efforts were undertaken to ensure that financial assistance was offered and/or if financial assistance is appropriate before any collections agency assignment.
- Hospitals should define the standards and scope of practices to be used by their outside (non-hospital) collection agencies and should obtain written agreements from such agencies that they will adhere to such standards and scope of practices.

## **Guidelines for Accountability/Advocacy**

- Hospital boards should be provided with information on the extent of the charity care and financial aid provided, as well as the administration of the financial aid policy on a periodic basis.
- Hospital boards should periodically review charity care and financial aid policies and determine if modifications are needed. Subsequently, hospitals should review the implementation of their charity care, financial aid, and collection practices for consistency with board-approved policies.
- Hospitals should share information on the availability of hospital financial aid/charity care policies with community service agencies and the general public (including posting on the hospital's website).
- Hospitals should use their community service plans as a vehicle for publicly communicating the community and patient benefits and services they provide.
- Hospitals should seek opportunities to work with government agencies, payers, businesses, consumer groups, and others to address the underlying problem that too many Pennsylvanians lack adequate health insurance.

## Implementation

Many hospitals have existing financial aid policies in place and should periodically review their policies in light of changing federal and/or state laws. Hospital and health system financial aid policies should address:

1. How the policy will be communicated to patients and the public.
2. Identification of appropriate staff to administer the policy.
3. Periodic training for both the financial staff, as well as other hospital staff that comes in contact with patients and their families.
4. How the policy will be administered fairly, respectfully, and consistently.

### Communicate the Availability of Financial Aid

- Communications to the public regarding financial assistance should be made readily available and should be written in consumer-friendly terminology and in languages that patients served by a hospital can understand. Posting the policy on a hospital's website should be considered.
- Information in hospital bills should include the availability of financial aid and how to obtain further information and apply for financial aid. Hospitals should respond promptly to patient questions about their bill and to requests for financial assistance.
- Information on financial assistance policies should be posted in key public areas with instructions on how to apply or obtain further information. (*Note: This is a requirement of Act 77.*)
- Patients should be informed about their responsibilities, the potential financial obligation they may incur, their obligations for completing eligibility documentation, and the hospital's bill collection policies. This should include information regarding billing by hospital-based physicians who are not employed by the hospital.
- Patients should be referred to a facilitated enroller and/or provided with assistance regarding applying for Medicaid (including HealthChoices) or CHIP for future care needs. In addition, hospitals should inform patients about opportunities to obtain available insurance.
- Patients should be informed that they may reapply for financial assistance before, during or after care or after collection agency assignment if their situation changes.

- Patients should be informed that they may receive a hospital bill, which includes full charges, if they do not pursue the hospital's financial aid policy prior to their service, as the hospital will have no information to act otherwise. The bill should explain that patients who receive a bill may still contact the hospital for financial aid, and will then be brought into the financial aid eligibility review process.

### **Consult with Board and Educate and Train Staff to Meet the Expectations of the Hospital**

- Hospitals should engage their Boards in developing and reviewing the hospitals' charity care and financial aid policies. Boards may be particularly helpful in identifying community needs for free care and financial assistance, and in ensuring that hospital policies are communicated to appropriate community representatives.
- Hospitals should ensure that their charity care and financial aid policies are disseminated to all appropriate levels of hospital management and staff, and should be reviewed periodically by the hospitals' boards.
- In addition to making sure their financial staff are trained regarding the policy, hospitals should provide training to appropriate administrative and all clinical staff that interact with patients about financial aid availability, how to communicate that availability to patients, and how to direct patients to appropriate financial aid staff.
- Staff should be trained to treat applicants with courtesy, confidentiality, and cultural sensitivity.
- Translation services should be provided as needed.

### **Administer Financial Aid Policies Fairly, Respectfully, Consistently**

- Policies should be reasonable, simple, respectful, and promote appropriate access to care and responsible utilization of services.
- Documentation requirements should be easy to follow (e.g., require documents such as pay stubs, tax returns, mortgage papers, rent receipts, etc.).
- Hospitals should make timely and consistent financial aid decisions.
- All financial information obtained from patients should be treated consistent with the hospital's confidentiality policies.
- Periodic reports on the administration of the hospital's financial aid policy should be made to the hospital board.



## **Model Patient Notice of Financial Aid**

*[NAME OF HOSPITAL]* is proud of its mission to provide quality care to all who need it, 24 hours a day, 7 days a week, 365 days a year.

If you do not have health insurance or worry that you may not be able to pay for part or all of your care, we may be able to help. *[NAME OF HOSPITAL]* provides financial aid to patients based on their income, assets, and financial needs. In addition, we may be able to help you get free or low-cost health insurance or work with you to arrange a manageable payment plan.

Federal and state laws require all hospitals to seek payment for care provided from individual's health insurance or when individuals have the financial means to pay for care. This means *[NAME OF HOSPITAL]* could ultimately turn unpaid bills over to a collections agency, which could affect your credit status. Therefore, it is important that you let us know as soon as possible if there may be a problem paying your bill so that it can be determined if our charity care and financial aid programs would apply to you.

For more information, please contact *[NAME OF PERSON]* in our financial counseling office at *[PHONE NUMBER]*. We will treat your questions and any information you provide us with confidentiality and courtesy.