September 18, 2012

CC:PA:LPD:PR (REG-130266-11)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

VIA ELECTRONIC SUBMISSION AT: http://www.regulations.gov (IRS REG-130266-11)

Re: Comments in Response to Section 501(r) Proposed Regulations

To Whom It May Concern:

The Florida Hospital Association (FHA), on behalf of its more than 180 hospital and health system members, as well as nearly 1,200 individual members, appreciates the opportunity to offer comments on the proposed regulations issued June 22 to implement, in part, the additional obligations for tax-exempt hospitals as a result of the *Patient Protection and Affordable Care Act of 2010*. Section 501(r) of the Internal Revenue Code includes requirements that each hospital maintain a financial assistance policy (FAP), as well as an emergency medical care policy, limit amounts charged to individuals determined to be eligible under a facility's FAP and refrain from taking extraordinary collections actions (ECAs) until the facility has made reasonable efforts to determine an individual's FAP eligibility. While our member hospitals are committed to the requirements of the law, the IRS proposed rule is overly prescriptive and adds burdensome administrative procedures on hospitals that seek to be compliant with 501(r). FHA members are concerned that the lack of flexibility, in combination with overly detailed rules, will result in inadvertent violations that would place a charitable hospital's tax-exempt status in jeopardy.

Our hospitals currently provide extensive financial assistance to their patients and we are concerned that the proposed regulations will dictate uniformity and preclude other methods that are equally or even more effective in achieving transparency and accountability for financial assistance and billing and collection practices. Our member hospitals have adopted financial assistance policies that are shared with their patients and community, and they encourage patients who need help in paying for their care to apply for assistance. Efforts to encourage application for assistance continue beyond discharge and are part of the billing process. Existing policies and procedures provide the protections intended by the statute. We urge that the final regulations focus on transparency and disclosure rather than presume that a one-size-fits-all approach is feasible or most effective.

Based on our initial review of the proposed regulations, we ask Treasury and the IRS to address the following concerns:

1. The method for demonstrating "reasonable efforts" to determine eligibility for financial assistance is unreasonably limited.

2. The methods for determining the "amount generally billed" are too limited.
3. The "emergency care policy" guidance should be consistent with EMTALA.

We address each of these concerns below.

1. THE METHOD THAT A HOSPITAL MUST FOLLOW TO DEMONSTRATE IT MADE "REASONABLE EFFORTS" TO DETERMINE FAP ELIGIBILITY IS UNNECESSARILY COMPLEX AND FAILS TO TAKE INTO ACCOUNT STANDARD HOSPITAL PRACTICES

The proposed regulations require that a hospital make reasonable efforts to determine an individual's eligibility for financial assistance before pursuing certain collection actions. While we support the goal, the method prescribed will require unnecessary staff time and other resources and will preempt other meaningful approaches to achieve the goal.

The proposed regulation is focused on a patient's completion of an application for assistance. In our member's experience, many patients are eager to complete any forms needed to determine their eligibility for assistance. For others, however, a lack of information or reluctance to provide information has led providers to look for other means to determine eligibility. In the absence of information, a hospital must begin the billing process. To avoid sending bills to individuals who, if information were known, might qualify for assistance, our members have established presumptive eligibility programs that make use of third-party information to assess potential eligibility. This can lead to a complete write-off of financial responsibility or a bill that includes a discount based on a sliding scale. The proposed regulation would not allow this.

The final regulations should permit determinations of FAP eligibility based on reliable sources other than the FAP process. The proposed safe harbor for presumptive eligibility does not achieve this. It precludes the use of a sliding scale for assistance and subjects hospitals to the complex "FAP process" that presumes a hospital has not offered assistance. We also urge that the highly prescriptive and complex notification and application period FAP process for demonstrating reasonable efforts not be mandatory. Hospitals should be able to maintain current practices that are effective and transparent. The FAP process in the proposed regulations could serve as a safe harbor, but should not be required.

In addition, we urge the IRS to eliminate the requirement that the "plain language summary" of the FAP be included in all billing statements. This further adds to the administrative burden of this proposed rule on our member hospitals and increases expense with increased printing and postage.

2. THE "AGB" METHODS SHOULD NOT LIMIT THE AVAILABILITY OF FINANCIAL ASSISTANCE

A hospital should be able to offer a range of financial assistance to diverse groups of patients. As drafted, the AGB would apply to "any individual eligible for assistance under the FAP." That definition is broad enough to include individuals who have insurance in addition to indigent, uninsured patients. Literally read, the proposed regulations would appear to require that financial assistance for the insured may be provided only if the AGB is applied. The objective of the limitation on charges was to provide the uninsured the benefit of rates paid by the insured. Requiring that assistance for the insured be provided at the same level as the uninsured is not appropriate in all cases.

While 501(r) is intended to provide the uninsured in need of financial assistance the benefit of rates paid by the insured, the definition of FAP-eligible individual does not recognize that many hospitals also provide assistance to the insured in certain circumstances. Many hospitals offer assistance to individuals who are insured but need help with their co-pays or deductibles. The proposed regulations could make the extension of such assistance economically unfeasible and reduce assistance otherwise provided. The final regulations should confirm that hospitals may continue to offer assistance to the insured at their discretion through their financial assistance policies and clarify that the AGB does not apply to assistance for the insured.

The options for determining AGB should be expanded to include a method that does not incorporate Medicare payments. The proposed regulations provide only two methods for calculating AGB, and both methods require that payments received from Medicare be included in the calculation. However, in many cases, Medicare does not cover the costs for providing care to its beneficiaries. Building a formula based on payments that do not cover costs is economically unsound and will limit the ability of hospitals to extend assistance to those in need. Many of our member hospitals have established the hospital's AGB using the guidance provided by Congress when it enacted these provisions. We urge that the final regulations permit flexibility and, at a minimum, allow use of the options Congress expressly contemplated. Hospitals should be allowed to use the average of the three best negotiated commercial rates, as detailed in legislative history, rather than an amount-paid methodology.

We also believe that a hospital should not be tied to a one-time selection of an AGB methodology and should be able to change the methodology used annually.

3. GUIDANCE FOR EMERGENCY DEPARTMENT PRACTICES SHOULD BE CONSISTENT WITH EMTALA

Hospital policies and procedures in the emergency department have been built on the federal *Emergency Medical Treatment and Labor Act* (EMTALA), which requires that emergency medical care be provided to all in need without regard to their ability to pay. The regulations establish the ground rules for registration processes and discussions regarding a patient's ability to pay. We urge that the final 501(r) regulations recognize the role of EMTALA and not attempt to separately regulate interactions in the emergency department. When EMTALA obligations have been met, it is customary to discuss financial responsibility and financial assistance, including responsibility for co-pays or deductibles. Literally read, the proposed rule could prohibit this interaction from occurring. EMTALA should continue to be the controlling federal guidance for a hospital's interactions with patients in the emergency department.

Finally, we would like to raise of a couple of questions based on our read of the proposed regulations and ask that the IRS provide comment on them in the final rule –

- The proposed rule focuses on "emergency and other medically necessary services" but also states that in no case would a FAP-eligible individual be billed gross charges. Does this mean that hospitals are required to provide elective, non-medically necessary services such as cosmetic procedures at discounted or no charge?

- The proposed rule provides extreme detail on what a hospital is to do following discharge of a FAP-eligible patient, but does not seem to recognize that many of the patients who

ultimately qualify for assistance are not FAP-eligible at the time of service. Often patients, due to their illness or other circumstances, lose their job or a major source of income six months or a year after services are provided. What processes does the IRS expect hospitals to follow in order to qualify these patients for assistance?

Again, we appreciate the opportunity to provide these comments on the proposed rule and urge you to work with the American Hospital Association and the hospital community to address these and other issues as you work to finalize the regulations. If there are questions on these comments, please do not hesitate to contact me at kathyr@fha.org.

Sincerely,

Kathy Reep
VP/Financial Services