



May 18, 2020

Commissioner Charles R. Rettig
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

By electronic mail (IRS.Commissioner@IRS.gov) and First Class mail

Dear Commissioner Rettig:

We are writing to you regarding our concerns about patient access to hospital financial assistance, pursuant to Section 501(r)(4) of the Internal Revenue Code, 26 C.F.R. § 1.501(r) and Revenue Ruling 69-545. Financial assistance has become even more important during the current COVID-19 crisis and state of emergency. Economic conditions are pushing large swathes of the population into poverty at a time when the demand for emergency health care services is extremely high. While we appreciate that hospitals are currently under a tremendous burden due to the pandemic, patients are struggling under tremendous burdens as well. In order to protect the health of vulnerable patients and the public health broadly, patients without insurance or financial resources must have access to care in non-profit hospitals without fear of financial ruin.

We are concerned that the contractual relationships between certain non-profit hospitals and emergency physician staffing services put hospitals in violation of these financial assistance laws. These concerns pre-date the current pandemic, but noncompliance will only exacerbate the public health crisis facing our nation.

Justice Catalyst Law and the National Consumer Law Center respectfully request that the Internal Revenue Service investigate whether the Memorial Hermann Health System, Orlando



Health, New York-Presbyterian Queens and other non-profit hospitals that outsource their emergency rooms to for-profit physician staffing companies are in violation of their financial assistance obligations under Section 501(r)(4) of the Internal Revenue Code, as a result of the failure of the staffing services to follow hospital financial assistance policies. As the Treasury Department and IRS have indicated, private physician staffing companies that provide patient care in these non-profit hospitals must comply with their hospitals' financial assistance guidelines.

Around two thirds of hospitals in the United States outsource the staffing of their emergency departments to physician management firms or physician staffing services.¹ Two companies dominate the physician staffing industry: TeamHealth and Envision Healthcare Corporation. These companies typically enter into multi-year contracts with hospitals to staff and operate their emergency rooms. They also offer practice management services, such as rate-setting, billing, and debt collection.² TeamHealth stated in a March 13, 2019 letter to Congress, "TeamHealth and nearly 6,000 affiliated practicing physicians provid[e] emergency medical services to over 16 million patients per year in 39 states across the country, representing approximately 12% of the total US emergency department visits[.]" Envision operates in 45 states, with 23,100 affiliated or employed physicians and health care professionals, according to a 2016 financial statement.

Although both Envision and TeamHealth and other outsourced physicians operate extensively within non-profit hospitals across the country, for every hospital we have examined,

¹ Deutsche Bank, *Markets Research – Envision Healthcare*, 2013.

² The private equity firm Blackstone currently owns TeamHealth, based in Knoxville, Tennessee. TeamHealth was a public company from 2009 to 2016.



these physicians do not comply with the hospital’s Financial Assistance Policy (“FAP”) in billing patients. As a result, the hospitals they contract with, including the hospitals and health systems described below, fail to extend the benefits of a required FAP to eligible patients. Eligible patients may receive a deduction or cancellation of the bill from the hospital, but they are likely to receive a separate physician bill with a demand to pay in full. In 2019, ProPublica and National Public Radio reported that TeamHealth subsidiaries had a practice of suing poor patients who could afford to pay for care.³ “Two former TeamHealth employees told MLK50 and ProPublica that they were instructed not to mention the term charity care when patients called with questions about their bills.”⁴

The prospect of burdensome medical debt creates a substantial barrier to health care access. In the current pandemic it is even more important for patients to seek needed health care without being deterred by fears of medical debt and collection lawsuits. We ask that you investigate the actions of the physician staffing companies and their impact on compliance with 26 U.S.C. § 501(r)(4), 26 C.F.R. § 1.501(r)-4 and Revenue Ruling 69-545. Where violations have taken place, we urge you to take immediate corrective action to ensure that these hospitals and physician staffing companies fulfill their mandate to provide financial assistance to eligible patients as required by law.

³ See Wendi C. Thomas et al., *A Private Equity-Owned Doctors’ Group Sued Poor Patients Until It Came Under Scrutiny*, National Public Radio, Nov. 27, 2019, available at <https://n.pr/2XJXZgT> (viewed Apr. 16, 2020).

⁴ *Id.*



Financial Assistance Policy Requirements

Non-profit hospitals must satisfy their obligations under the “Financial Assistance Policy” (FAP) provisions of 26 U.S.C. § 501(r)(4) and 26 C.F.R. § 1.501(r)-4 in order to maintain their tax-exempt status. The IRS may issue sanctions for noncompliance up to and including revocation of a hospital’s tax exemption for willful and egregious actions.

26 C.F.R. § 1.501(r)-4 states, “A hospital organization meets the requirements of section 501(r)(4) with respect to a hospital facility it operates only if the hospital organization establishes . . . [a] written financial assistance policy (FAP)” that meets the requirements of paragraph (b) of this section.” Paragraph (b) sets forth in considerable detail the necessary elements of a FAP, including that it “[a]pply to all emergency and other medically necessary care provided by the hospital facility,” “[b]e widely publicized” as described further in subpart (b)(5), include financial eligibility criteria, prohibit “gross charges,” explain the method for reducing charges, and explain the measures the entity will take in the event of non-payment.

Essential to note here is that the regulations state, “Operating a hospital facility includes operating the facility through the organization’s own employees or contracting out to another organization to operate the facility. For example, if an organization hires a management company to operate the facility, the hiring organization is considered to operate the facility.” § 1.501(r)-1(b)(22)(i).

The Treasury Department’s guidance accompanying the regulation makes clear that a non-profit hospital must provide financial assistance to all eligible patients, even those treated by providers under contract with emergency physician staffing services, or else the hospital risks losing its non-profit status:



In response to comments and to provide transparency to patients, the final regulations require a hospital facility's FAP to list the providers, other than the hospital facility itself, delivering emergency or other medically necessary care in the hospital facility and to specify which providers are covered by the hospital facility's FAP (and which are not). As discussed in section 1.g of this preamble, the final regulations also clarify that a hospital facility's FAP must apply to all emergency and other medically necessary care provided in a hospital facility by a partnership owned in part by, or a disregarded entity wholly owned by, the hospital organization operating the hospital facility, to the extent such care is not an unrelated trade or business with respect to the hospital organization. **In addition, the Treasury Department and the IRS note that if a hospital facility outsources the operation of its emergency room to a third party and the care provided by that third party is not covered under the hospital facility's FAP, the hospital facility may not be considered to operate an emergency room for purposes of the factors considered in Rev. Rul. 69-545 (1969-2 CB 117)** (providing examples illustrating whether a nonprofit hospital claiming exemption under section 501(c)(3) is operated to serve a public rather than a private interest, with one activity of the section 501(c)(3) hospital being the operation of a full time emergency room).⁵

Revocation of 501(c)(3) status for noncompliance

The IRS recently issued a “Private Letter Ruling” (public versions are anonymized) informing a hospital that its 501(c)(3) status would be revoked in part because it did not have compliant FAP policies. *See* PLR 201833021 (Aug. 17, 2018) (available on Westlaw). The IRS stated,

⁵ Additional Requirements for Charitable Hospitals; Community Health Needs Assessments for Charitable Hospitals; Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return, 79 FR 78954-01 at 78971-78972 (Dec. 31, 2014) (emphasis added). *See also* 26 C.F.R. § 1.501(c)(3)-1(d)(ii) (“An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.”).



IRC § 501(r) states hospitals required to follow its provisions will not be recognized as an entity described in subsection 501(c)(3) unless it meets the criteria enumerated in subsections 501(r)(1)(A), (B), (C), and (D). Those sections state the entity must have a CHNA, FAP, limit the amounts charged for emergency or other medically necessary care provided to patients eligible for assistance under its FAP, prohibit the use of gross charges, and states the hospital cannot engage in extraordinary collection actions before reasonable efforts have been made to determine whether the patient is eligible for assistance under the hospital's FAP.

The IRS has also fined hospitals for noncompliance.⁶ Of course, we do not know whether any hospital we mention in this letter may already be the subject of an IRS inquiry.

Hospitals Appear to be Violating their FAP Requirements

1. Memorial Hermann Health System, Texas

In 2007, TeamHealth and the Memorial Hermann Health System, the largest non-profit health system in Texas, signed a letter of understanding awarding TeamHealth rights as *the sole provider* of staffing and management services to eight of the health system's facilities.⁷

According to the Memorial Hermann's FAP, any service provided at a Memorial Hermann facility by a physician who is not employed by Memorial Hermann is *not* covered under the policy.⁸ Memorial Hermann's website lists a total of 373 Emergency Medicine Physicians, 53 Emergency Nurse Practitioners and 20 Emergency Physician Assistants who are not covered by the FAP; approximately two-thirds of them are directly affiliated with TeamHealth.⁹ While the

⁶ See Jonathan Wilk, *The IRS is going after 501(r) violations. Here's how to stay out of trouble*, Becker's Health IT & CIO Report, Apr. 12, 2018, available at <https://bit.ly/38DB6Ow> (viewed Jan. 24, 2020).

⁷ See <https://bit.ly/399iUNn> (viewed May 15, 2020).

⁸ See <https://bit.ly/2T9VX6U> (viewed May 15, 2020).

⁹ See <https://bit.ly/3bBEdr1> (viewed May 15, 2020).



FAP states that there is also a list of physicians who are covered by the FAP, we were unable to find that list. Thus, it is not clear if *any* emergency providers at Memorial Hermann are covered by the hospital's FAP. We have searched but we were unable to find any TeamHealth FAP, or any other policy regarding the reduction of charges to qualifying individuals.

2. Orlando Health, Florida

The Orlando Health system comprises 13 wholly-owned or affiliated facilities, including the area's only Level I trauma center in central Florida, reportedly serving 85,000 patients per year.¹⁰ According to the system-wide FAP, all Orlando Health employed physicians are covered under the FAP, but "Contracted, Community/Private providers are not required to participate in Orlando Health's financial assistance program."¹¹ A list of participating physicians available on the Orlando Health website shows that 100% of the providers who specialize in emergency medicine are either contracted or private, and they do not participate in the system's FAP.¹² It appears that not a single patient of this hospital's emergency department would receive financial assistance for a doctor's bill.

The Orlando Health website includes an online bill pay option for any bill received for hospital charges only. The site states, "The hospital and the professional services provided in the hospital are billed separately. The hospital charges for the room, equipment, supplies, technicians and nurses who cared for you. Any physician or allied health professional that treated you during your stay will have a separate bill."¹³

¹⁰ See <https://bit.ly/360SWe6> (viewed May 15, 2020).

¹¹ See <https://bit.ly/2PAcYoN> (viewed May 15, 2020).

¹² *Id.*

¹³ See <https://bit.ly/2wO4OCD> (viewed May 15, 2020).



3. NewYork-Presbyterian, Queens, NY

NewYork-Presbyterian Queens is a 535-bed facility in Flushing, New York. The certified Level I trauma center reportedly receives 124,000 emergency visits per year.¹⁴ The facility has a FAP on its website, but it notes that “Various physicians and other service providers (providers) may provide care to patients at a Hospital facility. Those providers are not covered by the Hospital's Charity Care Policy.”¹⁵ A list of contracted physician groups affiliated with the facility includes Northern Valley Anesthesia – Brookhaven, a TeamHealth subsidiary, and Queens Emergency Medical Associates, an Envision Healthcare subsidiary.¹⁶ Because neither TeamHealth nor Envision provides a FAP, and the hospital’s FAP does not include care provided by those companies, it appears that Emergency Medicine is not covered by a FAP at NewYork-Presbyterian Queens. On the list of physicians who provide charity care, NewYork-Presbyterian Queens lists *no* emergency department physicians.¹⁷

Conclusion

Allowing outsourced doctors and physician staffing services to avoid financial assistance obligations at non-profit hospitals undermines the worthy goals and mandates of 26 U.S.C. § 501(r)(4) and 26 C.F.R. § 1.501(r)-4. Based on publicly available information, the actions of Envision, TeamHealth and other physician staffing services are placing Memorial Hermann, Orlando Health, NewYork-Presbyterian and other non-profit hospitals in violation of their

¹⁴ See <https://www.nyp.org/queens/about-us> (viewed May 15, 2020)

¹⁵ See <https://bit.ly/2I1ouWb> (viewed May 15, 2020).

¹⁶ See <https://bit.ly/38avSsG> (Contracted Physician Groups); <https://bit.ly/366G5qL> (Emergency Medical Associates) (both viewed May 15, 2020).

¹⁷ See <https://bit.ly/360XAZA> (viewed May 15, 2020).



financial assistance obligations under the Internal Revenue Code, and they are creating barriers to care for economically disadvantaged patients. Therefore, the IRS should investigate and, pursuant to 26 C.F.R. § 1.501(r)-2, should it find any of the hospitals have violated their obligations, take appropriate action. We also request that the IRS issue a letter or other guidance to all non-profit hospitals and their agents regarding their obligations to offer financial assistance to economically disadvantaged patients regardless of the employment status of the treating physician. We urge you to act promptly to ensure that these non-profit hospitals are serving the needs of vulnerable patients, both during this time of great hardship and beyond the end of the pandemic.

Respectfully submitted,

s/ Craig L. Briskin

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