

June 30, 2015

**ILLINOIS HOSPITAL ASSOCIATION
M E M O R A N D U M**

TO: Chief Financial Officers, Member Hospitals and Health Systems
Patient Financial Services Staff
In-House Counsel

Please route to: Compliance Officers

FROM: Sandy Kraiss, Assistant Vice President, Health Delivery & Payment Systems

SUBJECT: IHA Update: IRS Notice to Clarify Section 501(r) Requirement for Tax Exempt Hospitals -- Listing of Providers included in Hospital Financial Assistance Policies

The IRS's final rule to implement Section 501(r) as required by the Affordable Care Act for hospitals to maintain exemption from federal income tax was issued December 31, 2014. It includes a new and unexpected requirement, 501(r)(4)(b)(iii)(F), that hospital financial assistance policies (FAP) "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)".

This new requirement has caused concern because such lists may change frequently and keeping it up to date would be difficult. Also, it was unclear what specificity needed to be included in the list and whether the list could be a separate document attached to the FAP.

On June 26, 2015, the IRS issued [Notice 2015-46](#) to provide some clarification to this requirement including examples. The requirement is applicable to tax years beginning after December 29, 2015. Key points of the IRS clarification include:

- A hospital may list the names of individual doctors, practice groups or any other entities providing care in the hospital by the name used either to contract with the hospital or to bill patients for care provided. Or it may list providers by reference to a department or type of service if the reference makes clear which services and providers are covered.
- If a provider is covered by the FAP in some circumstances, but not others, such circumstances must be described.
- Hospitals must list whether a provider is covered by the hospital, but are not required to indicate whether that provider may be covered under another entity's FAP.
- The list of providers may be in a separate document from the FAP, such as an appendix, as long as it has the date it was created or updated. The FAP must state that the list is in a separate document and explain how the public may obtain it.

- The hospital FAP needs to be adopted by an authorized body to be “established”, but if the only change a hospital makes is to update the provider list, the FAP does not need to be adopted again by an authorized body.
- Minor mistakes that are inadvertent or due to reasonable cause are not considered failures to meet this requirement if they are promptly corrected.

If you have any questions, please contact me at skraiss@ihastaff.org or 630-276-5522.