



501r 4 - FAP - Learn the Requirements to stay Compliant

shawn@americollect.com

800-838-0100





Shawn Gretz

- VP of Sales for Americollect and AmeriEBO

I am not a lawyer, nor do I play one on TV, and I did not stay at a Holiday Inn last night. People seeking legal advice should always consult with an attorney.





Aesop Fable

Are you the Ant



or the Grasshopper?





Aesop Fable





Effective Date

- Effective Date: Rely on the proposed 2012 and 2013 regulation but regulations are required to be fully implemented by the hospital organization's first taxable year beginning after

December 29, 2015

(Page 13)(Page 178)





Be on the Lookout for:

1. (Page #) Location of the information that I am providing to you from the final release of the 501(r).
2. Suggestions 
3. Questions 
4. Checklists – Americollect is preparing some checklists. Stop by after this presentation and provide me with your information and I can send you the checklists.





Background – 501(r) 4,5,6

- 501(r) enacted March 23, 2010 part of ACA
- Proposed Regulations on requirements described in 501(r)(4) – (r)(6) (June 22, 2012)
- Comment period for Proposed Regulations ended September 24, 2012
- Public hearing conducted December 5, 2012
- Comment period closed July 2, 2013
- Final released December 29, 2014





501(r)(4)

Terms:

1. FAP (Financial Assistance Policy)
2. ECA (Extraordinary Collection Action)





501(r)(4)

1. Financial Assistance Policy (FAP)
2. Plain Language Summary (FA)
3. “Reasonable Efforts” for notification of Financial Assistance – Ties to 501(r) (6)
4. Widely Publicize
5. Emergency Medical Care Policy





FAP

- 1. Can be Used
- 2. Possible Addition
- 3. Required Addition





FAP – Can be Used

Does NOT need to be included in FAP but can be used -

- 1. Attestation
- 2. Oral Application





FAP – Can be Used

Attestation: Will you allow your financial counselors to use attestation?

The final regulation allow a hospital facility the ability to grant financial assistance based **on evidence other** than that described in an FAP or FAP application form or based on an attestation by the applicant, even if the FAP or FAP application form does not describe such evidence **or attestations**. (Page 80)

- Approval – YES
- Denial - NO





FAP – Can be Used

Oral Application: Will you allow your financial counselors to use oral communications to complete an application?

The final regulations amend the definition of “FAP application” to clarify that the term is not intended to refer only to written submissions and that a hospital facility may obtain information from an individual in *writing or orally* (or a combination of both). (Page 81)





FAP – Possible Additions

Possible Additions to your FAP

1. Prior Applications
2. Presumptive Determinations
3. Patient to Cooperate
4. FAP Discounts to Add to 990
5. Separate Billing and Collection policy





FAP – Possible Additions

Prior Applications: How long will your hospital still allow a prior eligibility determination to be used?

Prior FAP Can be used if your FAP describes whether and under what circumstances they *use prior FAP-eligibility* determinations. (Page 82) The criteria needs to be described in your FAP.





FAP – Possible Additions

• Presumptive Determinations





FAP – Possible Additions

Presumptive Determinations: Will your hospital facility use presumptive determinations?

The final regulations require a hospital facility to describe in its FAP any information obtained from sources other than individuals seeking assistance that the hospital facility uses (Page 82 & 216) *The criteria needs to be described in your FAP.*



Hospital facilities are *not prohibited from using third party information sources* and prior FAP- eligibility determinations to try to predict which of its patients are unlikely to be FAP-eligible (Page 165)





FAP – Possible Additions

Presumptive Determinations: Two Kinds

- Demographic Scrub – No hit to the credit bureau (what kind of vehicle do you drive, size of your house, fishing or hunting license, and magazines you subscribe to).
- Credit Check – Soft Hit (only can be seen by the patient) to the Credit Bureau. Can use this but is discouraged from requesting information or documentation that is unreasonable or unnecessary to establish eligibility. (Page 83)





FAP – Possible Additions

Presumptive – *Less than Most Generous*: (Page 163)

The IRS expanded presumptive eligibility guidelines in the Final Regulations.

While hospitals may still provide the most generous assistance to presumptive FAP-eligible individuals, the Final Regulations let hospitals determine if an individual qualifies for "less than the most generous assistance" under its FAP based on information other than that provided by the individual or based on a prior FAP eligibility determination. But hospitals must give these individuals an opportunity to demonstrate that they qualify for more generous assistance. Specifically, the following conditions must be met:

1. The hospital must notify these presumed FAP-eligible individuals about how they can apply for more generous assistance under the FAP.
2. The hospital must give them a reasonable amount of time to apply before initiating ECAs to obtain any outstanding amounts.
3. The hospital must otherwise comply with the "reasonable efforts" requirements if a presumed FAP-eligible individual requests more generous assistance by completing a FAP application. (Page 164)





FAP – Possible Additions

Careful Presumptive Determinations: (Page 163)

- Cannot use presumptive determinations for ineligibility. (Page 164) Hospitals might consider using presumptive determinations to assess which patients are *unlikely* to be FAP-eligible, as ECAs taken against such individuals carry less risk of having to be unwound during the application period.



Suggestion: Your collection agency partner should be able score and sort accounts and perform ECAs on only those that are unlikely to turn in an application!





FAP – Possible Additions

Patient to Cooperate: Do you want a statement in your FAP requiring a patient to cooperate?

While the final rule does not mandate cooperation it does note that hospitals have the flexibility to include any additional information in the FAP that the hospital chooses to convey or that may be *helpful to the community, including a cooperation statement*. (Page 79)





FAP – Possible Additions

Discounts: Are there any other discounts you would like to claim on your 990?

The final regulations only require the FAP to describe discounts “available under the FAP” rather than all discounts offered by the hospital facility. However, only discounts specified in a hospital facility’s FAP (therefore subject to the AGB limitation) may be reported as “financial assistance” on Schedule H of the Form 990. Discounts provided by a hospital facility that are not specified in a hospital facility’s FAP will not be considered community benefit activities for purposes of section 9007(e)(1)(B) of the Affordable Care Act nor for purposes of the totality of circumstances that are considered in determining whether a hospital organization is described in section 501(c)(3). (Page 77)





FAP – Possible Additions

Discounts: Prompt Pay



Suggestion: Hospitals should attempt to shoehorn as many discounts as possible under the FAP, unless such expansion is impractical or unworkable.

Example: Patient qualifies for FA and receives a discount at least at the AGB level. If patient decides to pay in full to take advantage of the prompt pay discount, hospital could count the prompt pay discount on 990.





FAP – Possible Additions

Discounts: AGB



Suggestion: Should AGB be considered a discount and claimed on your 990 Schedule H?





FAP – Possible Additions

Separate Billing and Collection Policy - Will your organization create a separate billing and collection policy? (Page 221) If yes, does the FAP point to the billing and collection policy and how the public can obtain one?



Learn more on July 15th for the 501(r)(6) Webinar for HFMA Region 6.





FAP – Required Additions

Required Additions to your FAP

1. FAP Determination
2. AGB
3. Physicians on FAP
4. What isn't Covered by Financial Assistance





FAP - Determination

Specify Eligibility: Did you specify the eligibility criteria (free or discounted care) for receiving financial assistance under the FAP? (No requirements on how to check eligibility, but do need to describe in your FAP)

Documentation: Is your Financial Assistance Application and Policy requesting any financial documentation?

If you do not request any documentation you cannot deny based upon lack of documentation. (Page 80)





FAP - Determination

"Reliable evidence" for FAP includes:

- Federal Tax Return
- Paystubs
- Documents establishing qualification for certain specified state means-tested programs
- Suggestion: **If these are not available, the patient may call the hospital's financial assistance office to discuss other evidence they may provide.**

(Page 81)





FAP - Determination

Suggestion : Narrow or Broad Time Frame to Access?

- Hospitals may use the **service date**, the **application date**, or some other date to assess eligibility. Whatever period the hospital chooses should inform how the hospital designs its FAP application. For example, will the hospital accept as evidence of household income last month's paystub? If so, this suggests a narrower period for assessing eligibility. Will the hospital accept last year's tax return? This suggests a broader period for assessing FAP-eligibility.

An Individual Financial Situation can change!





FAP – Required Additions

AGB: Does your organization's FAP disclose your AGB? (Page 217)

Does your organization's FAP state that:



FAP-eligible individual may not be charged more than the AGB for emergency or other medically necessary care? (Page 217)

Specify the Amount(s): Did you specify the amount(s) (example - gross charges) to which any discount percentages will be applied.

Suggestion: Create an appendix for the AGB to make it easy to change each year.





FAP – Required Additions

Physicians on FAP: Did you create a list of all physicians (separate practices) that provide emergency or other medically necessary care in the hospital facility and specify which providers are covered by the hospital facility's FAP and which are not? (Page 23,76, & 216)

Preston Quesenberry mentioned, in the 501(r) webinar on 2/19/2015 for HFMA, that it just needs to be a reasonable list the providers - as in listing the **names of the practices** rather than provider names.



Suggestion: Create the provider list in an appendix to the FAP so that it could be revised easily without having to redraft the entire FAP every time a provider is added or deleted.





FAP – Physicians Does it Apply

Physician Groups: The final 501(r) includes physician organizations in certain instances. How is your physician group is classified for tax purposes(page 24):

- Separate Taxable Organization: **501(r) will not apply.**
- **501(r) would apply** to "substantially-related entity" a. 501(r) applies if your physician group a disregarded entity? - if a hospital organization is the sole member or owner of an entity providing care in one of its hospital facilities and that entity is disregarded as separate from the hospital organization for federal tax purposes, the care provided by the entity would be considered to be care provided by the hospital organization through its hospital facility.
- **501(r) applies** if the hospital owns a capital or profit interest in an entity providing care in a hospital facility that is treated as a partnership for federal tax purposes. (Grandfather rule for 501(r) NOT to apply. this was included in the 2013 proposed regulation and adopted in the final - if you meet certain conditions since March 23, 2010)





FAP – Required Additions

What isn't Covered by Financial Assistance:

Does your FAP clearly state that non-emergency and non-medically necessary care will not be covered under your FA? (Page 122) If not, then 501(r) (5) applies and the use of gross charges cannot be used for elective procedures.

Medicaid Definition?





Plain Language Summary

What is a Plain Language Summary:

A document containing a simple explanation of financial assistance. This document will be used in three ways:

1. Mailed with the Final Notice: Required In only one post-discharge bill and only to those subset of patients whom the hospital facility actually intends to engage in extraordinary collection actions. (Page 5)
2. Conspicuous Public Displays
3. Available at Admissions and Emergency Department - FREE





Plain Language Summary

What is required on the Plain Language Summary?

- (1) The direct Web site address and physical location(s) where the individual can obtain copies of the FAP and FAP application form; and
- (2) physical location of hospital facility staff who can provide the individual assistance about the FAP and the FAP application process, or of the nonprofit organizations or government agencies, if any, that the hospital facility has identified as available sources of assistance with FAP application. (Page 94)
- (3) how to apply for financial assistance (page 96)



What other items would you like to add in your plain language summary (example: a statement regarding patient responsibilities)?





Plain Language Summary

Physical Location – For Assistance

- IRS does provide flexibility to describe the physical location in the manner that makes the most sense for the hospital facility.
- IRS did change the final to identify the actual room number and phone number of the appropriate office or department to contact. (Page 96)

Do you have listed who can provide assistance with the FAP application? Will the hospital provide assistance with the FAP application? (Page 96)

- If Yes: List the physical location (Page 95)
- If No: List at least one nonprofit organization or government agency, if any, that the hospital facility has identify as available sources of assistance with FAP application. (Page 95)





Widely Publicize - FAP

Paper Copies Available at "Public Locations" (Page 89):

Do you have paper copies of the FAP and application available to the public for free at:

1. emergency department (Page 89)
2. admissions areas (Page 89)
3. as part of the intake (outpatient) or
4. discharge (inpatient) process are you offering patients about FAP? (Page 92)

Suggestion: Train access to understand that hospital facilities only have to "offer" a plain language summary.





Widely Publicize - FAP

What do you need to have at these locations?

1. FA Application Itself
2. Plain Language Summary
3. FAP (Page 88)
4. Billing and Collection Policy

Are they translated (if applicable) and also available?





Translations

- Translation of Plain Language Summary and Financial Assistance Application to threshold of 5% of the population or 1,000 individuals, whichever is less, likely to be affected or encountered by the hospital facility. (Page 6) (Page 98) May use "any reasonable method to determine such populations" and can use either U.S. Census Bureau or American Community Survey data.
- If there are fewer than 50 persons in a language group that reaches the 5-percent trigger, the recipient of federal financial assistance does not have to translate vital written materials to satisfy the safe harbor but rather may provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost. (Page 98)





Widely Publicize - FAP

2. Available on Website (Page 88):

Is your FAP, Application, Billing and Collection Policy, and Plain Language Summary available on your website?



Suggestion: 1. Each hospital should consider embedding a link on its home page leading viewers to a dedicated FAP webpage. This was one of the examples the Treasury provided.



2. **Don't HIDE it in the Patients Section!**





Widely Publicize - FAP

3. Conspicuous Written Notice (Statements)

Does your billing statement include a conspicuous written notice that notifies and informs the recipient about the availability of FA under the hospital FAP including the telephone number of the hospital department or facility and direct web site address where copies of documents may be obtained? (Page 5 & 91)



This is also required to be of sufficient size to be clearly readable.





Widely Publicize - FAP

4. Conspicuous Public Display(Page 86):

Do you have Conspicuous Public Displays (signs) that attract visitors' attention (in the emergency room and admissions area)? The final regulation requires these to be in "noticeable size" and in minimum "public locations" meaning emergency rooms and admissions areas.(Page 90)



Suggestion: The Treasury provided the following example for verbiage: **"Uninsured? Having trouble paying your hospital bill? You may be eligible for financial assistance."** Also include the website and telephone number for assistance. Finally, it is suggested the signs have brochures that are basically the plain language summary.





Widely Publicize - FAP

5. Notify and Inform the Community

How are you notifying and informing members of the community about the FAP? (Page 86) (Page 93)





Widely Publicize - FAP

Suggestion:

Will you create scripting to email FA documents: "Great what is your email and I will send you the FA information?" (Page 89).

1. The final regulations clarify that hospital facilities may inform individuals requesting copies are available electronically.
2. Online Application?
3. Digital Signature?





Emergency Medical Care Policy

Must establish a written policy that requires the hospital facility to provide, without discrimination, care for emergency medical conditions to individuals regardless of whether they are FAP-eligible. The policy must prohibit debt collection activities in the emergency department or in other areas of the hospital facility where such activities could interfere with the provisions, without discrimination, of emergency medical care. (Page 102)

Will you create another policy for Emergency Medical Care or include it in a previous written policy? IRS allows it to be included in the FAP or EMTALA policy? (Page 103)

In the final regulations the IRS did note that if you are following EMTALA, you should already be following 501(r)(4) – (4)(c)(2)





Emergency Medical Care Policy

FAILURE TO REQUIRE INDEPENDENT CONTRACTOR EMERGENCY ROOM PHYSICIANS TO ADOPT FAP IS PROBLEMATIC

If you outsource 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 the purposes of the factors considered in Rev. Rul. 69-544 (1969-2 CB 117) which states the requirement of a 501(c)(3) Community Benefit Standard is:

1. Community Board
2. Open Medical Staff
3. Have an Emergency Room
4. Non-Emergency Care to All Patients
5. Use Surplus funds improve quality of patient care, facilities, and advance medical training. (Page 77) Another way is to require your those who operate your Emergency room to implement your FAP.





How do you Establish these Policies?

How to Establishing FAP, Emergency Medical Care Policy and Collection Policy

- Has all of these policies been approved by the authorized body or committee approved the authorized body? All policies are only "established" if it is adopted by an authorized body of the hospital facility. (Page 103) Authorized body can be a governing board or the committee or person authorized by the governing board.
- How will you monitor that the policy is "consistently carried out"? (Page 103) A policy will only be considered implemented if it is "consistently carried out"





Joint Policies?

Will you have a joint FAP, Emergency Medical Care Policy or Collection Policy? (Page 104)

The final regulations clarify that multiple hospital facilities may have identical FAPs, billing and collections policies, and/or emergency medical care policies established for them (or even share one joint policy document), provided that the information in the policy or policies is accurate for all such facilities and any joint policy clearly states that it is applicable to each facility.





■ If you have any questions, please

contact me at:

Shawn Gretz

shawn@americollect.com

920-420-3420

<https://www.federalregister.gov/articles/2012/06/26/2012-15537/additional-requirements-for-charitable-hospitals>

