

# Bulletin Details

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## Important Charity Care Developments

**To:** Chief Financial Officers, Legal Counsel, and Public Policy Advisory Group members

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### Purpose

This Bulletin's purpose is to inform you of recent activity on state and federal charity care requirements for hospitals. This bulletin will cover the following topics:

- The impact of the Affordable Care Act (ACA) on our state's charity care law;
- New charity care requirements of the ACA for nonprofit hospitals;
- Recent state charity care litigation and investigations;
- Recent reviews of charity care policies by the Washington State Department of Health (DOH).

### Applicability/Scope

ALL hospitals in Washington State are required to meet the charity care requirements under Revised Code of Washington (RCW) 70.170 and Washington Administrative Code (WAC) 246-453. The ACA also requires nonprofit hospitals, recognized as 501(c)(3) organizations, to meet certain additional standards.

### Recommendation

Review WSHA's financial assistance pledge to ensure your hospital is in compliance with the pledge. We believe that the pledge will assist you in meeting certain requirements contained in the ACA. *Finance, legal, and operations teams should work together to review your hospital's charity care policy and the on-the-ground practices of staff implementing the policy to ensure they comply with state and federal law, including changes contained in the ACA. WSHA always encourages hospitals to consult their legal counsel on specific questions relating to state or federal law.*

Any changes to your hospital's charity care policy require it to be resubmitted for review and approval from the DOH at [CharityCare@doh.wa.gov](mailto:CharityCare@doh.wa.gov).

## **Background**

Under state law, Washington hospitals are required to provide charity care for all qualifying applicants. Free care for hospital services must be provided to patients (insured and uninsured) with incomes under 100 percent of the federal poverty level. Hospitals must provide discounted care for any patient with income under 200 percent of the poverty level. In 2007, to supplement existing law and to avoid additional legislation, the WSHA Board asked all hospitals to pledge to provide discounts to uninsured patients with incomes up to 300 percent of the poverty level and to ensure that the discounts were meaningful. All Washington hospitals signed the pledge.

## **Charity Care and the Affordable Care Act (ACA)**

**Q:** With the ACA offering additional coverage opportunities, WSHA has been asked if hospitals can require patients to sign up for coverage as a condition of providing charity care.

**A:** *We know a number of hospitals require a Medicaid eligible individual to submit an application and enroll in the program as a condition for receiving charity care. We are unaware of any legal barrier to this practice for individuals the hospital has reason to believe may be eligible for financial assistance. For those individuals who obviously do not qualify for Medicaid based on immigration status or for other reasons, hospitals should ensure they are not creating additional burdens to accessing charity care through an enrollment process.*

*HOWEVER, a requirement for individuals to enroll in Medicaid as a condition of charity care is different than a requirement for enrollment in a commercial insurance plan through the Health Benefits Exchange. Individuals receiving a subsidy through the exchange are still required to pay for a portion of their premiums. As a result, it is probably appropriate to treat these individuals similar to individuals who elected not to purchase commercial health insurance, prior to the exchange's creation, and cannot be compelled to apply for coverage.*

*WSHA encourages hospitals and health systems to educate individuals about the new coverage options and assist them in signing up at [www.WAHealthPlanFinder.org](http://www.WAHealthPlanFinder.org). In the long run, health insurance provides more comprehensive coverage and a better system of care than charity care will.*

**Q:** Are there new requirements under the ACA for hospital financial assistance policies?

**A:** *Yes. There are new requirements under section 501(r) of the Internal Revenue Code. Your hospital should review the proposed federal guidance to ensure compliance. While the federal guidance is not yet final, it is recommended hospitals take steps to comply with the guidance until it is finalized. WSHA*

*believes these new requirements apply only to hospitals recognized as 501(c)(3) organizations. The federal regulations do not apply to public hospital districts that are not also 501(c)(3) organizations.*

**IMPORTANT:** WSHA believes that meeting the requirements of the financial assistance pledge will help hospitals meet **some** of the Affordable Care Act requirements. The following 501(r) requirements should be reviewed in more detail:

- Widely publicizing the financial assistance policy and including the measures the hospital will take to inform the community served by the hospital;
- Making the policies available to populations with limited proficiency in English who constitute more than 10 percent of the residents of the community;
- Stating in the policy the percentage(s) of gross charges the hospital facility applies to determine the appropriate discounts *OR* explaining how members of the public may readily obtain this information in writing and free of charge.
- Not billing a patient who qualifies for financial assistance more than the amount that would be generally billed to a patient with commercial insurance.

### **Charity Care Litigation and Investigations**

Charity care continues to be an area where we are seeing litigation and investigation of our hospitals. Currently, a class action suit has been filed against two hospitals alleging the hospitals collected patient deposits prior to scheduling surgery.

Just recently, WSHA learned that a Washington State Assistant Attorney General (AAG) is investigating a hospital for allegedly violating the state's Consumer Protection Act. The investigation centers on circumstances when patients earn too much to qualify for financial assistance. (For example, a patient earning 500 percent of the federal poverty level who is charged according to hospital charge master rates.) We are hearing, but will confirm, that the AAG believes the hospital should be providing discounts to all uninsured patients.

### **Department of Health (DOH) Reviews**

Based on state law requirements and heightened awareness due to the ACA implementation, the DOH conducted a thorough review of hospital policies and will be in touch with several hospitals on some necessary updates and technical corrections to the policies. The DOH has indicated it is interested in more in-depth conversations with WSHA on the definitions of service areas and other technical interpretations of the charity care regulations.

DOH has also sent a letter to hospital administrators stating the state's charity care law does not allow denial of charity care determinations based on immigration status.

Additionally, the letter states that hospitals may not use the absence of or an incorrect social security number to deny eligibility for charity care. A Social Security number is not included as one of the documents for eligibility as listed in WAC 246-453-030(2).

### **Questions**

Please do not hesitate to contact WSHA with your questions. Chelene Whiteaker, Policy Director, can be reached at [CheleneW@@wsha.org](mailto:CheleneW@@wsha.org) or 206-216-2545.