

Implementing 501(r) in Revenue Cycle Management

Billing and Self Pay Collection Practices

B. Roy Engle
President
Team Recovery
330.916.7030
Rengle@teamrecovery.com
www.teamrecovery.com



DISCLAIMER

- TEAM Recovery is a high performing, patient focused, collection agency. Roy Engle is the President of TEAM Recovery.
- The information we share with you is provided solely for general information purposes. You should not rely on the content of this material for any other purpose or as specific guidance for your hospital. The presenter, TEAM Recovery, assumes no liability for typographical or other errors contained in these presentation materials or for changes in the law affecting anything discussed herein.
- You are ultimately responsible for your own actions and your hospital's actions including compliance efforts and cannot rely on this information as business or legal advice. Consult with your own legal and business advisors to obtain specific advice on your compliance, legal and other business needs.

THE LAW: “AFFORDABLE CARE ACT”

- The ACA, signed into law, introduced IRC § 501(r), which included four new requirements that tax-exempt hospital facilities are required to comply with related to a tax-exempt hospital facility's:
 - Community Health Needs Assessment (IRC § 501(r) (3));
 - Financial Assistance Policy (IRC § 501(r) (4));
 - Limitation on amounts charged, to individuals eligible under the organization's financial assistance policy, for emergency or other medically necessary care (IRC § 501(r) (5)); and
 - **Billing and self pay collection practices (IRC § 501(r) (6));**

THE LAW: EFFECTIVE DATES

- The final regulations <http://federalregister.gov/a/2014-30525> effective December 29, 2015 and were published in the Federal Register on December 31st.
 - Tax-exempt hospital facilities with a December 31st calendar year-end have until January 1, 2016 to be fully compliant;
 - Tax-exempt hospital facilities with a June 30th fiscal year-end have until July 1, 2016; and
 - Tax-exempt hospital facilities with a September 30th fiscal year-end have until October 1, 2016.

AFFECTED ENTITIES: NONPROFITS ONLY

- 501r regulations apply to nonprofit hospitals only- wholly or partially owned corporations who are not eligible for 501(c)(3) status are not required to comply with 501r
- Each facility that maintains a separate state license or registration must demonstrate compliance with 501r
- Multiple facilities that operate under the same license do not have to maintain separate documentation
- No direct liability for collection agencies under 501r
- No private right of action
- **Section 501(r)(6)- requires a charitable hospital to make reasonable efforts to determine whether an individual is FAP-eligible before engaging in extraordinary collection actions (“ECAs”).**

501(R): QUICK RECAP

- With respect to any care provided by a hospital facility to an individual, the hospital facility will have made reasonable efforts to determine whether the individual is FAP-eligible for the care if it-
 - Complies with ECA Requirements- Notifies the individual about FAP before initiating any ECAs to obtain payment for the care and refrains from initiating such ECAs **for at least 120 days from the date the hospital facility provides the first post-discharge billing statement for care.**
- Protected Persons- **ECAs against the individual include ECAs to obtain payment for the care against any other individual who has accepted or is required to accept responsibility for the individual's hospital bill for the care.**

ECA: DEFINITION

Extraordinary Collection Activity (ECA) is a defined term under the 501 (r) regulation and includes collection activities used to collect delinquent healthcare debt other than collection phone calls and collection notices:

- Selling a debt
- Reporting adverse information to consumer credit reporting agencies
- Actions that require a legal or judicial process
 - Liens
 - Civil actions
 - Wage garnishments
 - Body attachments or warrants
- **Simply attempting to collect a debt, either by the hospital or a vendor partner, is NOT an ECA**

ECA

Waiting Period Not a Freeze:

- ECA Waiting Period- the 120 day period beginning with the date or the patient's receipt of the first billing statement following discharge (Post Discharge Statement Date or PDSD).

FAP Eligibility Period:

- Nonprofit hospitals are required to refrain from initiating (ECAs):
 - Within 120 days of the patient's receipt of the first post discharge billing statement
 - Until the hospital has made reasonable efforts to determine the patient's eligibility for FAP
 - After **receiving** a completed application for FAP within 240 days of the first post discharge billing statement, ECAs must be suspended

TIMELINE OF 501(R) ACTIVITIES

Time Track for 501(r) Activities

Collection Action	Days from First Post Discharge Billing Statement						
	0-30	31-60	61-90	91-120	121-180	181-240	>241
First Post Discharge Billing Statement	✓	✓	✓	✓	✓	✓	
Patient may apply for FAP	✓	✓	✓	✓	✓	✓	
30 day notice re: pending ECAs				✓			
First date ECA may be initiated					✓		
Last Day for patient to apply for FAP						✓	

WHO OWES THE BILL?

- Ohio Revised Code § 3103.03
 - The biological or adoptive parent of a minor child must support the parent's minor children out of the parent's property or by the parent's labor.
- Doctrine of Necessaries:
 - “To counterbalance legal disabilities, the Necessaries Doctrine was established to create a duty on the husband to provide all necessities for his wife. Should he fail to do so, the wife was authorized to procure necessities on credit and the husband would be liable to the supplier for their costs. *Watkins v. DeArmond*, 89 Ind. 553” (Council).

WHO OWES THE BILL?

- “With the elimination of coverture and the equalization of women’s economic potential and legal rights, states have taken a mixed approach to the Necessaries Doctrine” (Council).
- “Ohio codified its common law Necessaries Doctrine in R.C. § 3103.03 by requiring husbands to support their wives and establishing liability towards third parties that provide their wives necessaries” (Council).
- The Ohio Supreme Court in *Ohio State Univ v. Kinkaid*, relying on R.C. § 3103.03 which establishes that the marriage contract creates mutual obligations of support, found the duty extended to both spouses. 549 N.E. 2d 517.

WHO OWES THE BILL?

- “The Court also found that medical expenses are necessities as defined by the statute, thus establishing that where a married person is unable to provide for their own support, the spouse must aid in the support to the extent that they are able” (Council).
- “Ohio subsequently amended their statute by removing all references to husband and wife and used the term “married person” to explicitly extend liability to both spouses. Ohio has established clear liability for the medical debts of a debtor spouse when the debtor spouse is unable to pay the debt, to the extent that the other spouse is able” (Council).

SO WHAT??

- Self-Pay: An ever growing piece of the Revenue Cycle Pie
 - High Deductibles and Co-Pays
- Demographic Changes: Generational Differences regarding how people pay
- 501(r) is the Federal Government telling Non-Profit Hospitals that they are allowed to take ECAs against patients (as long as the hospital is in compliance with all regulations).

WHAT HAPPENS WHEN MORE THAN ONE PERSON OWES THE BILL?

- 501(r) Treasury Regulations only makes a slight reference to situations where the patient and the responsible party are not the same.
- 26 § C.F.R. 1.501(r)-6(a)(1) “ ECAs against the individual include ECAs to obtain payment for the care against any other individual who has accepted or is required to accept responsibility for the individual’s hospital bill for the care.”
- Best Practices leads to the conclusion that the required notices must be sent to any individual that the Non-Profit Hospital seeks to take an ECA against.

HOW ARE ACCOUNTS REGISTERED AND CREATED AT YOUR HOSPITAL?

What makes the guarantor the guarantor? Is it *always* consistent with policy and does registration always do it the same way?

HOW ARE ACCOUNTS REGISTERED AND CREATED AT YOUR HOSPITAL?

Scenarios

1. Is the guarantor always the patient?

* If the patient has no income, under the Doctrine of Necessaries can you take an ECA against the spouse?

2. Is the guarantor always the primary insurance holder even if they are not the patient?

* If the patient can pay their bill, can you take an ECA against them?

3. Minor Child... Who brought the kid in?

* Which biological parent received the 501(r) ECA notice? Does the other parent owe the bill? Can you take an ECA against them? What about divorce? HIPAA Considerations?

POSSIBLE SOLUTIONS

- Expand hospital systems to accommodate more than one guarantor. All notices and disclosures would go to multiple individuals.
- Work with statement vendor partners to expand options regarding to whom notices and disclosures are addressed. Give ability to send to multiple individuals.
- Educate registration departments regarding these issues, and change old processes that are now antiquated and out of sync with 501(r) disclosure mandates.

QUESTIONS?

- Please feel Free to contact Roy Engle at:
 - rengle@teamrecovery.com
 - 330.916.730

OUTSIDE SOURCES

- Council, Brad. “What a Difference a State Makes: Variations in Spusal Liability for Medical Debts in Ohio, Kentucky, & Indiana.” *Indiana Courts, Kentucky Courts, Medical and Healthcare, Ohio Courts*, 3 June 2013, pp. 1–2.
- State of Ohio Revised Code: § 31.03.03