

Non-Profit Hospitals: Reducing the Risk of Being Accused of Overcharging Uninsured Patients

Lawsuits Against Hospitals

As we have previously reported, a wave of mass tort-type class action lawsuits are being filed against non-profit hospital systems in several states by prominent plaintiffs' attorneys identified with mass tort cases such as the tobacco litigation. The complaints allege that the hospitals are overcharging uninsured patients and failing to provide adequate charity care, in violation of the law and their agreements with state and federal governments regarding their tax-exempt status. Specifically, the plaintiffs claim that these non-profit hospitals are:

Charging their uninsured and underinsured patients more than patients with Medicare, Medicaid or private insurance;

Harassing uninsured and poor patients by using overly aggressive collection tactics; and

Engaging in these collection activities for the benefit of private interests.

To date, lawsuits have been filed against 39 non-profit hospitals and hospital systems in 21 different states, including three lawsuits in Pennsylvania.

Multi-Pronged Attack

Because these lawsuits represent a coordinated effort by national plaintiffs' law firms with substantial experience in mass tort litigation, they will likely be expanded to include other tax-exempt hospitals nationwide. (Recently, even for-profit hospital systems have been sued by these plaintiffs' firms alleging that they have overcharged the uninsured.) On related fronts, Congress has been holding hearings into hospitals' debt collection and financial aid policies for uninsured patients. In addition, tax authorities in several jurisdictions have challenged the tax-exempt status of hospitals based on allegations that the hospitals' debt collection and charity care practices are inadequate to justify their exemption from taxation. This general climate, and the litigation in particular, could have major implications for all hospitals, affecting critical hospital interests in addition to tax exemption, such as charity care policies, debt collection, charge structures and EMTALA (emergency care) compliance.

What Can Hospitals Do?

The class action lawsuits discussed above represent an important battle in the multi-pronged attack being waged against hospitals. Those hospitals that are sued clearly must take immediate action to defend the lawsuits. All hospitals, however, can take action to reduce the risk that they will be named in such lawsuits or will become the target of other scrutiny regarding their treatment of the uninsured based on future actions.

Non-profit (and even for-profit) hospitals should have a comprehensive plan with respect to charity care, the uninsured, community benefits, costs, charges, patient safety and quality of care *and* they should actively

communicate this plan, as appropriate, to the community. These actions will help the hospital improve its relationship with its community and face the additional scrutiny that will likely continue in light of the litigation.

The first step in this process should be to perform a thorough internal assessment of policies and procedures regarding billing and collections with respect to the uninsured. This would include, at a minimum, the following:

Analyze and determine who should be eligible for charity care and financial assistance by conducting the following:

Review of state legal requirements

Community assessment of income demographics

Financial assessment of hospital's needs and capabilities

Develop or review policies and procedures to conform to charity care and financial assistance criteria

Develop fair and appropriate collection practices, policies and procedures

Review (and modify as necessary) agreements with third party debt collectors to require conduct consistent with collection practices, policies and procedures

Review charge structure in light of overall third party payor reimbursement and determine whether the charge structure should be modified

The litigation will continue to generate headlines about hospital charges and finances generally, affecting even those hospitals not actually sued. Therefore, attention should also be devoted to developing a public message regarding the hospital's mission. Hospitals should be prepared to educate their communities regarding the activities the hospitals perform that benefit the community and the hospitals' financial needs and resources. For this effort, every hospital should:

Determine the benefits provided by the hospital to the community (defining these benefits more broadly than just free care)

Educate hospital officials and representatives regarding the community benefits provided by the hospital so that they become effective spokespersons

Incorporate references to the hospital's charitable mission in internal and external communications

Determine an acceptable level of transparency as to costs, charges, compensation, discounting, charity care, patient safety and quality of care, and implement a plan to provide appropriate access to such information

Because our healthcare lawyers not only focus on healthcare litigation, but also are experienced in handling hospital business and tax-exemption issues, we are highly qualified to assist clients in evaluating what exposure they may have in this area, preparing for and defending these lawsuits or taking proactive measures, including the preparation of adequate charity care policies, to reduce the risk of exposure to these lawsuits and other types of undesirable public scrutiny based on future actions.

Duane Morris

Health Law Practice Group

For more information on the recent class action lawsuits filed against non-profit hospitals, please contact any of the following Health Law Practice Group members or the Duane Morris attorney with whom you are regularly in contact.

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