# HOSPITAL CHARITY CARE: THE CURRENT STATE OF ILLINOIS LAW

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# How do uninsured individuals *currently* pay for and access care?



- Self-pay
- CCHS County Care
- Free/Low Cost Care at public hospitals, clinics, Federally Qualified Health Centers
- EMTALA-protected emergency care
- Hospital Financial Assistance Programs (also known as “Charity Care”)
- Forgoing care

# Impact on Individuals



- Access: the availability and accessibility of financial assistance from a hospital directly affects access to medical care for the uninsured.
- Financial Consequences: Medical debt from care that was not provided at a free or low cost can have powerful consequences for patients including forcing bankruptcies, ruined credit, wage garnishments, property liens and even body attachments.

# Introduction to Hospital Tax Exemption



I. History of hospitals as non-profit/tax exempt charities providing care to individuals living in poverty

II. Benefits tax-exempt status provided to hospitals

III. Advent of insurance programs and simultaneous advances in medical practice allowed new healthcare business model.

IV. Present day hospital systems as complex and sophisticated business units with significant gross revenues, raising concerns about the appropriateness of their tax-exemptions and debt collection practices.

V. Many states enacted "charity care" statutes and rules to create benchmarks for tax-exempt status.

# More on Hospital Tax-Exemption



- Scrutiny of hospital tax exemptions at the federal level as a revenue issue
- IRS Forms reform
- State attention to hospitals including examples of revoking tax-exempt status (*Provena*)
- Scrutiny of hospital debt-collection practices against patients (Accretive)
- The Affordable Care Act Provisions on Tax-Exemption

# Value of Hospital Tax-Exemptions



| | Property | Sales | State Income | Federal Income | Total |
|---|---|---|---|---|---|
| Advocate Network | $56,518,583 | $31,764,838 | $2,139,173 | $9,235,952 | $99,658,546 |
| Northwestern | $33,886,354 | $14,235,368 | 0 | 0 | $48,121,722 |
| Resurrection | $26,641,030 | $16,798,921 | $9,072 | $39,166 | $43,488,188 |
| U of Chicago | $29,455,449 | $13,594,201 | $2,931,950 | $12,658,796 | $58,640,397 |

In total, in 2009, Illinois had to forgo almost $490 million in revenues because of hospital tax exemptions. In that same year, Illinois tax-exempt hospitals provided only $176 million in charity care.

# The Affordable Care Act: A Law with Many Layers



- Provisions for the expansion of medical insurance eligibility/requirements.
- Provisions for regulating the medical insurance industry.
- New measures for accountability and transparency by tax-exempt hospitals. The ACA amends the IRS Code under §501(c)(3) adding new obligations.

The ACA affects the issue of the provision of free/low cost care in two ways:

Directly by imposing additional requirements on hospitals to maintain their federal tax exemption.

Indirectly by reducing the number of individuals who will be uninsured and in need of free/low cost care.

# Who will remain uninsured after full implementation of the ACA?



- Individuals who could access insurance (either on the Exchange or through Medicaid) but do not, and who are exempt from or willing to pay the penalty for being insured.
- Individuals below 100% of the federal poverty level who are not otherwise eligible for traditional Medicaid in states that do not expand Medicaid under the ACA
- Individuals who are barred from obtaining either Medicaid or from purchasing insurance on the Exchange—primarily individuals who are undocumented.

# How will these individuals access care?



- Generally, they will access care via the same avenues discussed in our first slide.
- For these individuals charity care will continue to be an important concept even in a healthcare universe post-ACA.

# The ACA and Tax-Exempt Hospitals: Community Needs Assessment



Under the ACA hospitals now must:

- Conduct a Community Needs Assessment every three years, and
- Adopt an implementation strategy to meet the community health needs identified through such assessment.
- A community health needs assessment must:
  - Take into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health, and
  - Be made widely available to the public.

# The ACA and Tax-Exempt Hospitals: Financial Assistance Policy



- Hospitals must establish a written Financial Assistance Policy, including:
  - Eligibility criteria for financial assistance, and whether such assistance includes free or discounted care,
  - The basis for calculating amounts charged to patients,
  - The method for applying for financial assistance,
  - The actions the organization may take in the event of nonpayment, including collections action and reporting to credit agencies, and
  - Measures to widely publicize the policy within the community to be served by the organization.

# The ACA and Tax-Exempt Hospitals: Emergency Care



- Emergency Care Requirements:
  - A written policy requiring the organization to provide, without discrimination, care for emergency medical conditions (within the meaning EMTALA) to individuals regardless of their eligibility under the financial assistance policy described,
  - Limits on amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under their financial assistance policy to not more than the lowest amounts charged to individuals who have insurance covering such care, and
  - The use of gross charges is prohibited.
  - An organization meets the requirement of this paragraph only if the organization does not engage in extraordinary collection actions before the organization has made reasonable efforts to determine whether the individual is eligible for assistance under their financial assistance policy.

# The ACA and Tax-Exempt Hospitals: Fair Billing Practices



- Patient's may not be billed for "gross charges"
- If patients need ER or medically necessary care, they can only be charged "amounts generally billed" to insured patients.
- No extraordinary collections actions before making a reasonable effort to determine whether a person qualifies for financial assistance from the hospital.

# Illinois Laws on Charity Care



- Illinois Constitution
- Illinois Property Tax Code
- Illinois Community Benefits Act
- Hospital Uninsured Patient Discount Act
- Illinois Fair Patient Billing Act

# Illinois Constitution



- Article IX, §6

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and schools districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits."

# Illinois Constitution, Cont.



- The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. The Illinois Constitution does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution.

# Illinois Property Tax Code



- §15-65 Charitable Purposes
- All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:
  - (a) Institutions of public charity . . .

# Illinois Community Benefits Act



"Charity care" means care provided by a health care provider for which the provider does not expect to receive payment from the patient or a third party payer.

"Community benefits" means the unreimbursed cost to a hospital or health system of providing charity care, language assistant services, government-sponsored indigent health care, donations, volunteer services, education, government-sponsored program services, research, and subsidized health services and collecting bad debts. "Community benefits" does not include the cost of paying any taxes or other governmental assessments.

"Annual report" each nonprofit hospital shall prepare an annual report of the community benefits plan and file with the Attorney General. The report must include:

(1) A disclosure of the health care needs of the community that were considered in developing the hospital's community benefits plan. (2) A disclosure of the amount and types of community benefits actually provided, including charity care. Charity care must be reported separate from other community benefits. In reporting charity care, the hospital must report the actual cost of services provided, based on the total cost to charge ratio derived from the hospital's Medicare cost report not the charges for the services. (3) Audited annual financial reports for its most recently completed fiscal year.

# HUPDA Summary



- All hospitals must limit charges for medically necessary care to 135 percent of costs for uninsured patients. All hospitals must offer discounts to the uninsured who meet certain eligibility requirements. Hospitals may add an additional asset requirements for eligibility.
- Hospitals must cap the amount an uninsured patient pays out of pocket per year at 25 percent of individual gross income. Applies only to hospital services received at that hospital.
- Also, it is the patient's responsibility-not the hospital's-to tell the hospital that he or she has previously received hospital care there and has been found eligible for the uninsured discount. A patient has 60 days to apply for the uninsured discount.
- The provisions of this Act are limited to the uninsured, not the underinsured.
- Hospitals may make the availability of a discount contingent upon patients applying for public insurance if there is a reasonable basis to believe they are eligible.

# Fair Patient Billing Act



Right to:

- receive sufficient billing information from hospitals to determine the accuracy of bills;
- receive an opportunity to discuss and assess the accuracy of bills; and
- receive information about the opportunity to enter into a reasonable payment plan or to qualify for financial assistance.

Uninsured Patients: A hospital cannot refer an account to a collection agency until it has provided the opportunity to: (a) assess the accuracy of the bill; (b) apply for financial assistance (the hospital must give 60 days from the date of discharge or receipt of outpatient care to submit an application for financial assistance); and (c) request a reasonable payment plan.

Insured Patients: A hospital cannot refer an account to a collection agency until it had provided the opportunity to request a reasonable payment plan. Patients request this payment plan within 30 days following the date of the original hospital bill. Otherwise, the hospital may proceed with collection efforts.

# Fair Patient Billing Act



Hospitals must make financial assistance information available on signs and brochures in the admission and registration areas of the hospital and must post this information on its website.

**Collection Limitations**

- Hospitals may not pursue legal actions for non-payment of a hospital bill against an uninsured patient who has shown that they have neither income nor assets to meet their financial obligations, provided the patient has complied with their responsibilities.

**Hospital Agents**

- Hospitals must ensure that all outside collection agencies, law firms, or individuals who collect the hospital's bills agree in writing to comply with the collection provisions of this Act.

**Patient Responsibilities**

- To receive the protections of this Act, a patient must, within 30 days of a request from the hospital, "act reasonably and cooperate in good faith with the hospital by providing the hospital with all of the reasonably requested financial and other relevant information and documentation needed to determine the patient's eligibility" for financial assistance or a payment plan.

# Recent Amendments to Illinois Law



- The legislation adds a new to the Illinois Property Tax Code, relieving hospitals *and* hospital affiliates seeking a "charitable purpose" property tax exemption from having to establish that they are "institutions of public charity" pursuant to Section 15-65.
- In recent years, courts were increasingly finding that hospitals failed to meet this burden and hospitals organized to get this legislation passed to make a tax exemption much easier to obtain.
- The amendment allows hospitals to be exempt from taxes if if the value of qualifying services or activities of the "relevant hospital entity" equals or exceeds the estimated property tax bill for the hospital for that tax year.

# Recent Amendments to Illinois Law, Cont.



- Hospitals in Illinois have long been frustrated with the Illinois courts' definition of what can be considered "charity care" for purposes of satisfying Illinois law and constitution. The courts defined what hospital activities can be considered to support a charitable purpose property tax exemption mainly as free and discounted financial assistance to patients.
- The new law allows a vastly broader array of services and activities to By contrast, new Section 15-86(e) allows consideration of a much broader list of services and activities, including:

# Recent Amendments to Illinois Law, Cont.



- **Charity care**
- **Health services to low-income and underserved individuals.** Financial or in-kind support to affiliated or unaffiliated hospitals, community clinics or programs that treat low-income or underserved individuals; paying for or subsidizing health care professionals; providing or subsidizing outreach or educational services for disease management/prevention; free or subsidized goods, supplies or services for medical condition; and prenatal outreach.
- **Subsidy of state or local governments.** Direct or indirect financial or in-kind subsidies of state or local governments that pay for or subsidize activities or programs related to health care for low-income or underserved individuals.
- **Support for state health care programs for low-income individuals.** the amount of the alleged difference between the cost of treating Medicaid recipients and the Medicaid reimbursement rate. (Including dual **Dual-eligible subsidy.** The amount of subsidy provided to government by treating dual-eligible Medicare/Medicaid patients.
- **Other activities.** Any other activity by the hospital that the Department determines relieves the burden of government or addresses the health of low-income or underserved individuals.

# HUPDA Amendments



A hospital, other than a rural hospital or Critical Access Hospital, shall:

- provide a charitable discount of 100% of its charges for all medically necessary health care services exceeding $300 in any one inpatient admission or outpatient encounter to any uninsured patient who applies for a discount and has family income of not more than 200% of the federal poverty income guidelines, and
- provide a discount from its charges to any uninsured patient who applies for a discount and has family income of not more than 600% of the federal poverty income guidelines for all medically necessary health care services exceeding $300 in any one inpatient admission or outpatient encounter.

# HUPDA Amendments



A Rural hospital or Critical Access Hospital:

- shall provide a charitable discount of 100% of its charges for all medically necessary health care services exceeding $300 in any one inpatient admission or outpatient encounter to any uninsured patient who applies for a discount and has family income of not more than 125% of the federal poverty income guidelines.

- shall provide a discount from its charges to any uninsured patient who applies for a discount and has annual family income of not more than 300% of the federal poverty income guidelines for all medically necessary health care services exceeding $300 in any one inpatient admission or outpatient encounter.

# Fair Patient Billing Act Amendments



Application Procedures for Financial Assistance.
(a) Applications. The Attorney General shall, by rule, adopt standard provisions to be included in all applications for financial assistance no later than June 30, 2013. On or before January 1, 2013, a statewide association representing a majority of hospitals may submit to the Attorney General recommendations concerning standard provisions to be used in an application for financial assistance, and the Attorney General shall take those recommendations into account when adopting rules under this subsection.

(b) Presumptive Eligibility. The Attorney General shall, by rule, adopt appropriate methodologies for the determination of presumptive eligibility no later than June 30, 2013. On or before January 1, 2013, a statewide association representing a majority of hospitals may submit to the Attorney General recommendations concerning those methodologies, and the Attorney General shall take those recommendations into account when adopting rules under this subsection.

# Scenarios



Patient 1:

John Doe is a 45 year old individual who was injured at work and went to the Emergency Department at Generic Tax-Exempt Hospital (GH) and received care one month ago. He has just received a bill from GH for $2,000. Doe is an immigrant who does not have documentation.

What do you need to know about Mr. Doe if you want to help him get hospital financial assistance?

Patient 2:

Jane Roe is a 55 year old individual who has a serious heart condition and was seen in GH's Emergency Department two days ago. She says that they took a lot of information from her about her income and household and that she signed something but she cannot explain what it was. She is very worried that GH will be sending her a bill because she lives alone and has been unemployed for 10 months due to her illness.

What follow-up questions do you have for Jane or GH?

# Scenarios



Patient 3:

Don Smith was recently a patient in the GH Emergency Department. Although Smith told the GH billing person who came to see him in the ED that he is unemployed, GH insisted that Smith put $300 on his credit card before leaving and refused to give him an application for financial assistance. Smith tells you that he is only surviving because he is getting $200 per month in food stamps.

# Best Practices for Hospital Charity Care



- Broad financial eligibility and sliding scale fees at higher levels of poverty.
- Provision of all services not simply emergency care at free or reduced cost.
- Hospitals should provide for free or reduced cost physician, laboratory and imaging services when those services are provided by entities other than the hospital—entities that are not charities.
- Use of presumptive eligibility criteria for free or reduced cost services.
- Eligibility should last for a prescribed period (6 months, one year) and not need to be re-established each visit.

# More Best Practices



- Applications should be as concise as possible, available in many languages, available at patient's first encounter, and accepted at any point in time, including after the bill has gone to collections.
- Applications should not be turned down as incomplete unless the hospital has made good faith attempts to reach the former patient.
- Applications should not require a social security number.

# Contact Info/ Questions?



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