

501r “Reasonable Efforts”

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This newsletter is dedicated to the four "reasonable efforts" requirements released in 501r (501r is an IRS regulation released in 2014 with requirements for all not-for-profit 501c3 hospitals). We are going to dive into the requirements for 501r's reasonable efforts and how many facilities are accomplishing these "reasonable efforts."

4 Reasonable Efforts

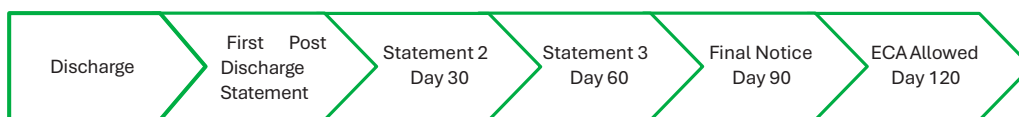
1. At Least Three Statements: Send billing statements with conspicuous written notice about financial assistance.
2. Plain Language Summary: Mail a plain language summary with only one post-discharge communication.
3. Final Notice - Written notice to state a deadline after which the identified ECA(s) (extraordinary collection actions) may be initiated.
4. Oral Notification - Orally notify patients about financial assistance at least 30 days before ECAs.

These "reasonable efforts" are to be spelled out in the billing and collection policy as well as the timeline for usage by the health system. This article will go into detail on how to accomplish the reasonable efforts. Americollect is offering FREE Financial Assistance and Billing and Collection policy reviews. To take advantage of these free reviews, just email your policies to Shawn@americollect.com.

"Reasonable Effort" #1

The "third time's a charm" is how the IRS would like not-for-profit health systems to comply with 501r regarding statements. In making this part of the regulation the IRS pointed to two items: 1) IRS looked to those that commented on the regulation to suggest: "based on typical billing cycles reported by commenter's, should ensure patients receive at least three bills before facing an ECA" and 2) The IRS pointed to HFMA's Medical Debt Taskforce when making this decision which can be found at www.hfma.org/medical-debt/.

The IRS requires each hospital to spell out the timeline to send statements in their billing and collection policy. Below is a typical timeline:



All statements have two requirements:

1. Conspicuous Written Notice: Does your billing statement include a conspicuous written notice that notifies and informs the recipient about the availability of financial assistance under the hospital FAP including the telephone number of the hospital department or facility and direct website address where copies of documents may be obtained? Below is a sample of that language:

Financial assistance is available to those who qualify; please call XXX-XXX-XXXX or learn more at www.XXX.com

2. Sufficient size and clearly readable. The IRS also clarified that electronically sending (email) statements is also acceptable!

Finally, I received a lot of questions regarding mail returns. I suggest two items to ensure your facility has made a reasonable effort regarding mail returns.

1. Make sure your billing and collection policy is written correctly to put the requirement on the patient to provide a correct mailing address such as: It is the patient's obligation to provide a correct mailing address at the time of service or upon moving. If an account does not have a valid address, the determination for "Reasonable Effort" will have been made.
2. IRS stated in the regulation that the statements will be considered "Provided" the date it was mailed, emailed, or delivered by hand. My suggestion on mail return is that you provided the statement the date it was mailed and if it was returned the billing and collection policy would allow you to consider the "reasonable efforts" requirement of any mailing of statements or final notices to be accomplished, but I would still suggest that you make an oral notification to the patient.

Plain Language Summary - "Reasonable Effort" #2

The second "reasonable effort" requires that a plain language summary is mailed (included) with one post-discharge communication. The plain language summary can be sent to the subset of patients against whom the hospital facility intends to engage in extraordinary collection actions with. What is a plain language summary you may ask? It is supposed to be a simple explanation as opposed to the policy of how a patient can apply for financial assistance.

Each facility will have to choose how the plain language summary will be sent. It can be mailed by itself, with one post-discharge statement, or with the final notice. Most facilities are accomplishing this by putting it on the back (backer) of all statements and final notices. Remember that you will also use the plain language summary for the following four ways:

1. Conspicuous Public Displays - Although it is not required, most facilities put the plain language summary pamphlet in each conspicuous public displays that are required by the definition of widely publicized.
2. Available on your website.
3. Available at admissions and emergency department for free.
4. Offered as part of intake or discharge process.

Also, remember that the plain language summary will also need to be translated along with your policies into any population that exceeds 5% of the population or 1,000 individuals, whichever is less. What should be on your plain language summary:

1. A statement such as, "Financial assistance is available to those that qualify."
2. How to qualify. Most health systems use the federal poverty guidelines to qualify a patient for financial assistance. My suggestion is to put what those qualifications are.
3. How to apply (required):
 - a. The direct website address and physical location(s) where the individual can obtain copies of the FAP and FAP application form; and
 - b. The physical location of hospital facility staff who can provide individual assistance about the FAP and the FAP application process that the hospital facility has identified as available sources of assistance with FAP application.
4. Where free copies of the policies and applications can be obtained.

If you are looking for a sample plain language summary, might I suggest looking at any hospital in your area that has already completed 501r. The one that I like the most comes from a health system in Michigan: www.spectrumhealth.org/fapplainlanguage.

Oral Notification - "Reasonable Effort" #3

Reasonable effort #3 requires that, "hospital facility make a reasonable effort to orally notify an individual about the hospital facility's FAP and about how the individual may obtain assistance with the FAP application process at least 30 days before the initiation of ECAs against the individual."

Let's take each one of these underlined requirements separately:

1. "reasonable effort" - The IRS in the final regulation clarified that you don't actually have to speak with a patient but attempt to speak with them orally. Meaning if the patient does not answer your calls and as long as you attempted to call this covers the reasonable effort.
2. "orally notify" - The IRS does not require that it be a live agent making these phone calls and a message reminder is sufficient.
3. " about the hospital facility's FAP and how the individual may obtain assistance with the FAP" - The oral notification has to be about the hospital's FAP.
4. " at least 30 days before the initiation of ECAs against the individual" - The requirement of at least 30 days before ECAs allows the hospital to make this attempt at any time while the account is still in self-pay and before it is written off to bad debt. This is because a collection agency is required to give a 30-day dispute period before doing any ECAs and listing with a collection agency is not an ECA.

Here are two options on how to assure the oral notification is accomplished:

Option 1. Drop Message/Appointment Reminder: Some facilities are using a drop message/appointment reminder call that are scripted as such:

"Hi this is XXX financial assistance counselors who can be reached at XXX-XXX-XXXX and we offer financial assistance to those that qualify and who are struggling to pay for their medical bills. Press 1 to talk to a financial assistance counselor today or call us back at XXX-XXX-XXXX, again

that number is XXX-XXX-XXXX. To opt out of any further communications please call us back at XXX-XXX-XXXX."

Financial assistance drop messages will have to comply with the TCPA (Telephone Consumer Protection Act) because they have "financial content". Here is the TCPA requirements:

1. They must be sent only to the wireless telephone number provided by the patient;
2. they must state (at the beginning of the call for voice calls) the name and contact number of the healthcare provider;
3. they must be limited strictly to the above-described purposes and cannot include any telemarketing, solicitation or advertising; may not include accounting, billing, debt-collection or other financial content; and must comply with HIPAA privacy rules;
4. they must be concise, generally one minute in length for voice calls and 160 characters or less for text messages;
5. they must be limited to one message per day, and up to a maximum of three messages per week from a specific healthcare provider;
6. they must offer an easy means of opting out of future messages; and
7. opt-out requests must be honored immediately.

To comply with the TCPA you will need to receive "express permission" signed by your patients in your admissions agreement such as:

You agree to receive pre-recorded/artificial voice messages calls and/or use of an automatic dialing device, text messages and/or emails from XXX Hospital, our partners, subcontractors, or any and all other companies that we may have to transfer your account to at any telephone number or email address that you have provided us or that we have otherwise obtained, which could result in charges to you. We may place such calls, texts or emails to (i) notify you regarding upcoming appointments; (ii) notify you of results; (iii) troubleshoot problems with your account (iv) resolve a dispute; (v) collect a debt ; or (vi) as otherwise necessary to service your account or enforce this admissions agreement, our policies, applicable law, or any other agreement we may have with you.

Option 2. Have your self-pay or customer service team implement live call oral notification into their scripting.

AmeriEBO (self-pay collections) has implemented the oral notification in every outbound communication to our patients. Our scripting says:

"Charles, Charles Barkley? Hi this is Shawn from ABC Hospital and financial assistance is available to those that qualify."

AmeriEBO also monitors this process using CallMiner's speech analytics scrub that ensures 100% compliance.

Final (Notice) Count Down! - "Reasonable Effort" #4

The IRS must have been a fan of Geico's commercial with the song "Final Countdown" because they also wanted hospitals to provide a final countdown before initiating extraordinary collection action. If you are

not familiar with the commercial check it out on YouTube by searching Geico Final Countdown (maybe not at work.)

The gist of the commercial is that a man is microwaving a burrito and as the time ticks away, the band Europe is in the background playing "Final Countdown" with a voiceover saying, *"If you are the band Europe, you love a final countdown, it is what you do, if you want to save 15% or more on car insurance you call Geico."* Enough about commercials (yes, I watch too much TV) and onto our subject; the final notice.

Regarding the "reasonable efforts," the final notice has generated the most questions. This article will provide you two sample final notices and discuss the requirements of final notices and if you can "outsource" this to your collection agency.

Final notices will be used in two instances:

1. Sent to a patient who hasn't paid their bills.
2. Sent after an financial assistance application was denied or missing information.

Requirements of a Final Notice:

- "written notice to state a dead- line after which the identified ECA(s) may be initiated that is no earlier than 30 days after the date that the written notice is provided. In addition, the final regulations require the written notice to generally indicate that financial assistance is available for eligible individuals."
- final regulations continues to require a final notice about potential ECAs but requires notice only of the ECAs the hospital facility intends to initiate rather than all ECAs that may be initiated.
- if a hospital facility aggregates an individual's outstanding bills for multiple episodes of care before initiating one or more ECAs to obtain payment for those bills, it may not initiate the ECA(s) until 120 days after it provided the first post-discharge bill for.

Let's take each one of these underlined requirements separately:

1. "written notice" - the IRS has clarified that written means mailed or electronically sent.
2. "state a deadline that is no earlier than 30 days after the date that the written notice is provided"
 - a. The requirement means that at a minimum the patient is allowed 30 days from the date of this notice.
 - b. It also means that a final notice can be sent earlier than 30 days. A great example of this is a \$50 balance final notice could be sent at day 60 after two statements with a deadline date of 60 days if your software system is sophisticated enough to send.
 - i. "aggregates an individual's outstanding bills" - Another example of sending the final notice earlier would be to "aggregate" or combine multiple episodes of care to save statement and final notice costs to mail to frequent flyers.
Who doesn't like to save money!
3. "generally indicate that financial assistance is available for eligible individuals"

- a. This language throws a wrench into the plans of outsourcing the final notice to the collection agency. By requiring the language about financial assistance it puts Americollect (or your collection agency) at risk of violating the FDCPA (Fair Debt Collection Practices Act). The FDCPA requires that all notices not confuse the "Least Sophisticated Consumer." There is a high risk for this language to confuse the "least sophisticated consumer" because the attorney for the "least sophisticated consumer" will argue that the patient didn't know the account was in collections and because the financial assistance information points back to the hospital.
4. "ECAs the hospital facility intends" - A hospital does not need to list all the ECAs, but just those they "intend" to do.