

Number of Non-Profit Hospitals Sued in Charity Care Class Actions Continues to Grow

Several high-profile law firms have continued to file class action lawsuits against non-profit hospitals. The basis of these class action suits is that these hospitals have failed to meet their charity care requirements because of certain billing and aggressive collection practices against uninsured patients. Through mid-July, thirty-one lawsuits have been filed in federal court against nearly 300 hospital facilities in fifteen states including Louisiana. The lawsuits also name the American Hospital Association as a conspirator.

A couple of somewhat related events that preceded these lawsuits included an action earlier in the spring by the Illinois Department of Revenue against a non-profit hospital and hearings in June by Congress on hospital billing practices. The Illinois Department of Revenue revoked the tax exempt status of a local non-profit hospital based on several collection practices of the hospital and requested payment of property taxes in excess of one million dollars. In June, the U.S. House of Representatives Ways and Means Committee on Oversight held hearings to examine hospital billing practices for both tax-exempt and "other" hospitals.

These suits filed in federal court, which are seeking class action status, have been primarily brought against tax-exempt hospitals. According to the law firms that have brought these suits, these "tax-exempt hospitals" include hospitals that are county-owned through hospital authorities or are faith-based and hospital facilities that are leased to not-for-profit hospital corporations. The suits provide that these hospitals have received a federal tax exemption as a "charitable" institution under § 501(c)(3) of the Internal Revenue Code and have also received state and local income, property and sales tax exemptions.

The suits are generally brought on behalf of uninsured patients, which have been described in the suits to include individuals who do not (or cannot afford) health insurance or who are indigent and are not eligible for Medicare or Medicaid benefits. Some of the allegations in these lawsuits include that the hospital is breaching its agreement with the U.S. Government and state and local governments in return for its tax-exempt status by:

- Failing to provide emergency room care to uninsured patients without regard to their ability to pay;
- Charging uninsured patients an undiscounted cost for medical care at inflated rates from the actual cost while providing the same services to insured patients of private insurance companies for significantly lower prices;

- Providing discounted medical care to its employees and entities connected to its Board of Directors;
- Allowing for non-charitable for-profit physician groups and service providers to derive profits from use of its tax-exempt hospital; and
- Engaging in aggressive efforts to collect medical debt from uninsured patients through aggressive lawsuits, liens, and garnishments.

An interesting allegation in the suits concerns the use of facilities of a tax-exempt hospital to derive a profit by physician groups. In the suits, the complaint argues that physician groups and other service providers are essentially deriving a profit in the tax-exempt hospital's facilities that are supposed to be operated actually and exclusively for charitable purposes under 26 U.S.C. § 501(c)(3). This suits state that section 501(c)(3) prohibits charitable tax-exempt property to be used for non-charitable purposes.

Several of these suits also contain allegations regarding conflicts of interest and improper financial gains by hospital board members. The complaints state that hospitals' board members have interlocking conflicts of interest with their hospitals and may profit directly from the current practices of the hospital that are contrary to the hospital's charitable purpose.

It will be interesting to see what affect these law suits may have on the billing and collection practices of hospitals, including both non-profit and for-profit hospitals. Besides concerns with meeting its charitable purpose, tax-exempt hospitals (and all hospitals) need to consider other federal statutes that may adversely affect the hospital because of its billing and collection practices. For example, Section 1128(b)(6)(A) of the Social Security Act permits the OIG to exclude from participation in Federal Health Care Programs any provider or supplier that submits bills or requests for payment to Medicare or Medicaid for amounts that are substantially more than the provider's or supplier's usual charges. The OIG has also commented that the Federal anti-kickback statute does not prohibit discounts to *uninsured* patients who are unable to pay their hospital bills; however, discounts offered to *underinsured* patients potentially raise a significant concern under the anti-kickback statute.

Clay J. Countryman is a health care attorney with Kean, Miller, Hawthorne, D'Armond, McCowan, & Jarman, L.L.P. in Baton Rouge.
Clay.Countryman@KeanMiller.com