

April 18, 2017

East Jefferson General Hospital
Attn: Patient Financial Services
4200 Houma Boulevard
Metairie, LA 70006

RE: East Jefferson General Hospital Financial Assistance Policy

To Whom It May Concern:

On behalf of the Southern Poverty Law Center, we write regarding East Jefferson General Hospital's ("EJGH" or the "Hospital") compliance with the Internal Revenue Service's ("IRS") regulatory requirements under the Patient Protection and Affordable Care Act, 26 U.S.C. § 501(r), for hospitals to maintain their 501(c)(3) tax-exempt status. *See* 26 C.F.R. § 1.501(r)-2(a). These regulatory provisions are intended to ensure that patients with the most limited financial means can access charity medical care and are not subject to abusive practices by tax-exempt hospitals to collect outstanding debt for rendered medical services, among other acts. Unfortunately, however, we believe EJGH is not complying with these safeguards and fear that many patients who have relied on EJGH for critical medical care are not receiving the benefit of these regulatory protections. Accordingly, we ask for your prompt attention to the issues we raise in this letter and hope we can work together to ensure EJGH is treating every patient fairly, regardless of financial status.

The Mandates of the IRS Regulations under the ACA

EJGH is identified as a 501(c)(3) nonprofit in its 2014 Form 990, Return of Organization Exempt from Income Tax,¹ and as a nonprofit, it is required to comply with the IRS regulatory requirements promulgated under the ACA, as detailed below.

Tax-exempt hospitals must implement and maintain publicly accessible financial assistance policies, as well as reasonable collection and billing practices, for the indigent populations they serve. *See* 1.501(r)-4(a), (b); *id.* § 1.501(r)-5; *id.* § 1.501(r)-6. Specifically:

1. **Qualifying hospitals must have a written Financial Assistance Policy ("FAP")** that applies to "all emergency and medically necessary care provided by the hospital

¹ If EJGH is no longer a 501(c)(3) nonprofit organization, please inform us when this change occurred.

facility.” The FAP must include the method for applying, as well as the documents required to apply for financial assistance. 26 C.F.R. § 1.501(r)-4(a), (b).

2. **The FAP must include potential actions that may be taken if a patient does not pay his or her bill**, including extraordinary collection actions (“ECAs”), if the hospital does not have a separate billing and collections policy. This policy must include the process and time frames the hospital uses in taking the actions related to obtaining payment of a bill, including efforts it will make to determine whether an individual is FAP-eligible, before engaging in ECAs.

If a separate billing or collections policy does exist, the ECAs must be described in that separate policy, and the FAP must explain how members of the public may obtain a free copy of this separate policy. 26 C.F.R. § 1.501(r)-4(b)(4)(ii); *see also id.* § 1.501(r)-6.

3. **The FAP must include a list of providers, other than the hospital facility, delivering care, and whether the providers are covered by the policy; eligibility criteria; and the basis for calculating the amounts charged to patients**, which must be limited to the amounts generally billed to patients who have insurance covering the care (“AGB”). **It also must include how to obtain information concerning the calculation of these charges.** 26 C.F.R. § 1.501(r)-4(a), (b)(1)(iii)(F), (b)(2)(B)-(C); *id.* § 1.501(r)-5.²
4. **The FAP must be widely publicized**, including a plain-language summary and the application forms. 26 C.F.R. § 1.501(r)-4(b)(5). This requires:
 - a. the FAP to be made available on the hospital’s website and that paper copies be made available in public locations, including, at minimum, the emergency room and the admission areas of the hospital, as well as by mail if requested;
 - b. the hospital to notify patients of the availability of the FAP through “conspicuous public display” of the FAP’s existence, including, at a minimum, in the emergency room and admissions areas; by offering the plain-language summary to patients as part of intake or discharge; and by including on billing statements a conspicuous written notice of the FAP, the contact information of the office or department that can provide more information on the FAP, and a link to the hospital website with copies of the FAP, application form, and plain-language summary; and
 - c. the hospital to translate the FAP to any language spoken by the lesser of more than 1,000 individuals or 5% of the community served by the hospital.

² *See also* Internal Revenue Service, Notice 2015-46, Clarifications to the Requirement in the Treasury Regulations Under § 501(r)(4) that a Hospital Facility’s Financial Assistance Policy Include a List of Providers, *available at* <https://www.irs.gov/pub/irs-drop/n-15-46.pdf>.

Hospitals that fail to comply with these requirements risk losing their 501(c)(3) tax-exempt status. 26 C.F.R. § 1.501(r)-2(a). The IRS is actively reviewing tax-exempt hospitals for compliance, and as of the end of the 2016 fiscal year, it had completed 968 reviews and referred 363 hospitals for field examinations.³

We believe EJGH is not compliant with several of the above regulations—namely, that EJGH does not have any written FAP that includes the required regulatory information, including notice of potential ECAs by the hospital and its billing calculations. We also believe that EJGH is not making any FAP widely publicly available to its patient population. Finally, we are concerned about the number of ECAs—specifically, collections lawsuits—that EJGH appears to be taking against patients.

EJGH Does Not Appear to have a FAP

A hospital organization has established a FAP for a facility only if the hospital facility has *implemented* the policy, 26 C.F.R. § 1.501(r)-4(d)(1), and a hospital will only be considered to have implemented a policy if the hospital facility has *consistently carried out* the policy. *Id.* § 1.501(r)-4(d)(2). It does not appear that EJGH has either implemented or consistently carried out any sort of FAP.

During our site visits to the Hospital over the last several months, multiple staff members, including staff in the patient financial services office, stated that no formal written financial assistance policy or application exists other than through Medicaid enrollment. This failure to implement and maintain a formal FAP is in direct violation of the above regulations. Because of the apparent non-existence of the Hospital's FAP, it appears that EJGH patients are unable to access financial assistance in a systematic way or even determine whether they are eligible for financial assistance. Moreover, the lack of a formal written FAP implies the Hospital is presumably routinely violating other regulatory protections, including the requirement to determine a patient's eligibility for financial assistance before pursuing ECAs or to limit charges to patients to no more than the AGB.

EJGH is Not Making Its FAP Widely Publicly Available

If EJGH does maintain a FAP, neither it nor a plain-language summary of its contents is publicly available or displayed at the EJGH campus or on the EJGH website, as the IRS's regulations mandate. During our site visits, we did not observe any publicly posted notifications of the FAP. Nor was the FAP or FAP application itself available in any public locations of the Hospital, including the emergency room or the admission areas of the Hospital. Indeed, when we asked staff about the Hospital's financial assistance documents, we were told that they were not publicly available and that to the extent they do exist, they would only be shared with current patients of the Hospital.

³ Internal Revenue Service, *Tax Exempt and Government Entities FY 2017 Work Plan* at 6 (Sep. 28, 2016, as amended Mar. 8, 2017), available at https://www.irs.gov/pub/irs-tege/tege_fy2017_work_plan.pdf.

Finally, neither the website nor public areas of the Hospital make the Policy, a plain-language summary, the application, or notices thereof available to those who speak languages other than English. For example, in Jefferson Parish alone—one of the four parishes defined by the Hospital's 2015 Community Needs Assessment as part of the “community” the Hospital serves—more than 45,000 people are identified as Spanish-speaking.⁴ And in St. Charles Parish more than 2,000 people are identified as Spanish-speaking.⁵ Thus, the Hospital must make available information about the Policy and an application form in Spanish, as well as in any other languages spoken by the minimum number of people set by the regulations.

The Hospital's failure to implement, maintain, and make widely publicly available, a FAP not only violates the above regulations, but has a substantial detrimental effect on persons of limited financial means. Individuals cannot be expected to take advantage of a financial assistance program of which they have no knowledge. Indeed, in the absence of knowledge of financial assistance, people may forego treatment for fear of incurring insurmountable medical debt. For this reason, creating and making widely publicly available a fully-compliant FAP, along with the application and plain-language summary, is an indispensable component of a hospital's charity care program.

EJGH Appears to Be Wrongly Pursuing ECAs

Finally, it appears EJGH has filed multiple collections lawsuits against patients—which would constitute ECAs under the regulations—in connection with medical debt patients owe to the Hospital for treatment services. Given the lack of widely publicly available information about the FAP or billing policies, EJGH does not appear to be making patients aware of the availability of financial assistance, or making a determination of their eligibility for financial assistance, before pursuing any ECAs such as filing a lawsuit. Indeed, we spoke with patients against whom the Hospital has filed collections actions for medical debt incurred for services at the Hospital, and none of them indicated the Hospital ever notified them the availability of financial assistance from the Hospital.

Proposed Remedial Steps to Come Into Compliance

In an effort to address the above concerns with EJGH and ensure its compliance with the regulations, we ask that **within three weeks** EJGH provide us copies of any current FAP and FAP application; billing or collections policy, if separate from the FAP; and a plain-language summary of the FAP, if any exists. We also request that you contact us to discuss this matter.

⁴ See Data USA, Jefferson Parish, LA, *Languages*, available at <https://datausa.io/profile/geo/jefferson-parish-la/> (using data from U.S. Census Bureau American Community Survey).

⁵ See Data USA, St. Charles Parish, LA, *Languages*, available <https://datausa.io/profile/geo/jefferson-parish-la/> available at <https://datausa.io/profile/geo/st-charles-parish-la/> (using data from U.S. Census Bureau American Community Survey).

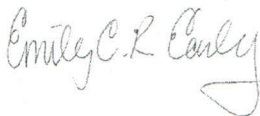
Finally, we request EJGH agree to do the following within a reasonable timeframe:

1. Create, implement, and make widely available to the public a financial assistance policy and related application; plain-language summary of the FAP; and billing and collections policy, if separate from the FAP; and
2. Review Hospital records to determine whether any patients who should have been deemed FAP-eligible, and thus should have received the benefit of financial assistance policies, were the subject of collections actions or other ECAs, and remedy those patients' medical debt by creating a debt forgiveness period during which these patients could apply or re-apply for financial assistance.⁶

If we do not receive a response from EJGH within the designated time frame, we intend to file a formal complaint with the IRS concerning the Hospital's noncompliance with the financial assistance regulations at issue.

You may reach us by contacting SPLC staff attorney Emily Early by phone at 404-221-4036 (office) or 334-207-3952 (cell) or by email at emily.early@splcenter.org. We look forward to hearing from you.

Sincerely,



Emily Early
Staff Attorney
Sara Zampierin
Senior Staff Attorney
Economic Justice Project

CC: Raymond DeCorte, M.D., President and Chief Executive Officer

⁶ See Letter from Senator Chuck Grassley, Chairman of the Judiciary Committee, to Members of the Senate Judiciary and Finance Committees re: Mosaic Life-Care, May 24, 2016, available at https://www.grassley.senate.gov/sites/default/files/constituents/upload/2016-05-24%20Senator%20Grassley%20Mosaic%20Investigation_0.pdf.