

April 18, 2017

Lady of the Sea General Hospital  
Attn: Business Office  
200 West 134th Place  
Cut Off, LA 70345

Lady of the Sea General Hospital  
Attn: Hospital Patient Billing  
200 West 134th Place  
Cut Off, LA 70345

**RE: Lady of the Sea General Hospital Financial Assistance Policy**

To Whom It May Concern:

On behalf of the Southern Poverty Law Center, we write regarding Lady of the Sea General Hospital's ("LOSGH" 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 LOSGH is not compliant with these safeguards and fear that many patients who have relied on LOSGH 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 LOSGH is treating every patient fairly, regardless of financial status.

**The Mandates of the IRS Regulations under the ACA**

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

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<sup>1</sup> If LOSGH is no longer a 501(c)(3) nonprofit organization, please inform us when this change occurred.

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 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.<sup>2</sup>
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

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<sup>2</sup> *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>.

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 1000 individuals or 5% of the community served by the hospital.

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.<sup>3</sup>

**We believe LOSGH is not compliant with several of the above regulations. Specifically, LOSGH does not have a FAP that includes the required provisions, including notice of potential ECAs by the hospital and its billing calculations, or a plain-language summary of the Policy. We also believe that LOSGH is not making its FAP widely publicly available to its patient population. Finally, we are concerned about the number of ECAs—specifically, collections lawsuits—that LOSGH appears to be taking against patients.**

#### **LOSGH 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 LOSGH has either implemented or consistently carried out an FAP.

During our recent site visit to the Hospital, staff from the Financial Assistance office stated that no formal written financial assistance policy exists. This failure to have a formal FAP, or to familiarize staff with the FAP if one exists, is in direct violation of the above regulations.

The non-existence of the Hospital’s written FAP suggests LOSGH patients may not be able to access financial assistance in a systematic way. 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 of ECAs and to limit charges to patients to no more than the AGB.

#### **LOSGH is Not Making Its FAP Widely Publicly Available**

If LOSGH does maintain a FAP, neither it nor a plain-language summary of the FAP is publicly available, including through public display at the LOSGH campus or on the LOSGH website, as the IRS’s regulations mandate. While LOSGH maintains a “Financial Information

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<sup>3</sup> 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](https://www.irs.gov/pub/irs-tege/tege_fy2017_work_plan.pdf).

for Patients” section on its website, the website only states that “[the Hospital] may have programs to help you” and suggests individuals contact the Financial Assistance office.

Moreover, during our site visit, we did not observe any posted notifications of a FAP and could not obtain a copy of a FAP from Hospital staff upon request. Additionally, neither a FAP nor FAP application was publicly available in public areas of the Hospital, including in the emergency room or admission areas of the Hospital.

The Hospital’s failure to make a FAP widely publicly available not only violates the above regulations, but it 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, making a FAP widely publicly available is an indispensable component of a hospital’s charity care program.

### **LOS GH Appears to Be Wrongly Pursuing ECAs**

Finally, it appears LOS GH 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 or collection policies, LOS GH 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 like filing a lawsuit. Indeed, we spoke with patients against whom the Hospital has recently filed collections actions for medical debt incurred for services at the Hospital, and none of them indicated the Hospital ever notified them of the availability of financial assistance from LOS GH.

### **Proposed Remedial Steps to Come Into Compliance**

In an effort to address the above concerns with LOS GH and ensure its compliance with the regulations, we ask that **within three weeks** LOS GH provide us copies of any current FAP; 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.

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

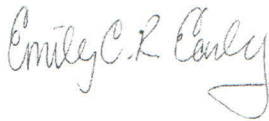
1. Create, implement, and make widely available to the public a financial assistance policy; plain-language summary of the FAP; and a billing and collections Policy, if separate from the FAP;
2. Review LOS GH records to determine whether any patients who should have been deemed FAP-eligible, and thus 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.<sup>4</sup>

If we do not receive a response from LOSGH 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](mailto: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: Karen Collins, RN, Chief Executive Officer

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<sup>4</sup> 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](https://www.grassley.senate.gov/sites/default/files/constituents/upload/2016-05-24%20Senator%20Grassley%20Mosaic%20Investigation_0.pdf).