

April 18, 2017

Magee General Hospital  
Attn: Serina Blackwell, Director of Revenue Cycle  
Lynn Prewitt, Director of Patient Financial Services  
300 Third Avenue Southeast  
Magee, Mississippi 39111

**RE: Magee General Hospital Financial Assistance Policy**

To Whom It May Concern:

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

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

Magee 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.

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:

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

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 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.

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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>.

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 Magee is not compliant with several of the above regulations—namely, that Magee does not have a fully compliant FAP that includes the required regulatory provisions, including notice of covered (and uncovered) providers, potential ECAs by the hospital, and billing calculations, and that Magee is not making a FAP widely publicly available to its patient population in the required manner.**

### **Magee Does Not Appear to Have a Fully Compliant FAP**

Magee's Charity Care Policy (the "Policy") Policy<sup>4</sup> fails to comply with several of the substantive requirements of the IRS regulations. First, the Policy does not list providers other than the Hospital that deliver services at the Hospital and whether their services are covered by the Policy.

Second, the Policy does not list potential ECAs the Hospital may take if a patient does not pay his or her bills or the process or time frame the Hospital uses in taking these ECAs, including how and when it determines whether an individual is FAP-eligible before resorting to an ECA. Nor does the Policy indicate how a person can obtain a copy of any separate billing and collections policy that may enumerate any potential ECAs that are not described in the Policy.

Third, the Policy fails to provide the basis for calculating the amounts actually *charged or billed* to patients—for example, no more than the amounts generally billed ("AGB") to patients with insurance covering such care—or how to obtain this information.

The absence of these provisions indicates the Hospital is presumably routinely violating other regulatory protections, including the requirement to make reasonable efforts to determine a patient's eligibility for financial assistance before pursuing ECAs or to limit charges to patients to no more than the AGB.

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

While the Policy is available online, neither it nor its plain-language summary otherwise appears widely publicly available in public locations of the Hospital, including in the emergency room or admission areas of the Hospital or upon request at the Hospital. Indeed, during our site

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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).

<sup>4</sup> Magee Gen. Hosp., *Charity Care Coverage Policy* (dated 2/1/06), available at [http://www.mghosp.org/docs/CHARITY\\_POLICY\\_2016.pdf](http://www.mghosp.org/docs/CHARITY_POLICY_2016.pdf).

visit in March 2017, our investigator was unable to obtain the Policy or any separate billing or collections policy that may describe potential ECAs when she asked the intake clerk for paper copies.

Moreover, a plain-language summary of the Policy is not available online. And while an application is available online, the Hospital's website offers two different versions of the application, causing confusion among the public as to which version of the application an individual must complete to be considered for financial assistance.<sup>5</sup>

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 the five counties identified as part of the Hospital's Service Area in the Policy—Simpson, Smith, Covington, Jeff Davis, and Lawrence Counties—more than 1,000 people speak Spanish.<sup>6</sup> Thus, the Hospital must make available information about the Policy and an application form in Spanish.

The Hospital's failure to include all required substantive components in its Policy and make the Policy widely publicly available not only violates the above regulations but also 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, billing calculations, and covered providers, people may forego treatment for fear of incurring insurmountable medical debt. For this reason, making a fully-compliant FAP, along with the application and plain-language summary, widely publicly available in the manner required by the regulations is an indispensable component of a Hospital's effective charity care program.

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

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

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

1. Make widely available to the public any revised or updated Policy or FAP and the related application;<sup>7</sup> a plain-language summary of that Policy or FAP; and a billing and

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<sup>5</sup> Compare Policy, p.4, with Application for Charity Care Coverage, available at [http://www.mghosp.org/docs/Charity\\_Application.pdf](http://www.mghosp.org/docs/Charity_Application.pdf).

<sup>6</sup> See MLA Language Map Data Center, County, available at [https://apps.mla.org/map\\_data](https://apps.mla.org/map_data) (using data from the 2010 U.S. Census).

<sup>7</sup> To minimize confusion, please only make available the version of the application the Hospital currently uses.

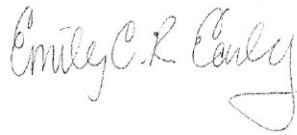
collections policy, if separate, that contain all of the information required by regulation; and

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.<sup>8</sup>

If we do not receive a response from Magee 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: Amy Tolliver, Chief Executive Officer

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<sup>8</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).