

April 18, 2017

North Mississippi Medical Center –West Point
Attn: Business Office
835 Medical Center Drive
West Point, MS 39773

North Mississippi Medical Center
Attn: Administration/Financial Services
1494 Cliff Gookin Blvd.
Tupelo, MS 38801

North Mississippi Medical Center
830 South Gloster Street
Tupelo, MS 38801

RE: North Mississippi Medical Center –West Point (Clay County) Financial Assistance Policy

To Whom It May Concern:

On behalf of the Southern Poverty Law Center, we write regarding North Mississippi Medical Center – West Point’s (“West Point” 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 West Point is not complying with these safeguards and fear that many patients who have relied on West Point or other hospitals under North Mississippi Medical Center, Inc.’s (“NMMC”) ownership 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 West Point and other NMMC facilities are treating every patient fairly, regardless of financial status.

The Mandates of the IRS Regulations under the ACA

NMMC—of which the West Point facility is a part—is identified as a 501(c)(3) nonprofit in its 2014 Form 990, Return of Organization Exempt from Income Tax.¹ As a facility operating under NMMS’s nonprofit status, West Point, as well as other NMMC, facilities is required to comply with the IRS regulatory requirements promulgated under the ACA, as detailed below.

Tax-exempt hospital facilities 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)-5.²
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:

¹ If West Point or other NMMC hospital facilities are no longer 501(c)(3) nonprofit organizations, please inform us when this change occurred.

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>.

- 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.

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 West Point is not compliant with several of the above regulations—namely, that West Point does not have and maintain a compliant FAP that includes the required regulatory provisions, including notice of potential ECAs against patients who have not paid their bill and notice of how to request the Hospital's billing and collections policy and to calculate amounts charged. In addition, we believe West Point is not making any FAP widely publicly available to its patient population.

West Point Does Not Appear to Have a Fully Compliant FAP

The North Mississippi Health Services Charity Care Policy and Application Guidelines applicable to services rendered to patients of West Point and other NMMC facilities (hereinafter the "Policy") fails to comply with several of the substantive requirements of the IRS regulations.

First, the Policy does not list covered (or uncovered) providers other than the applicable hospital or whether those providers' services are covered by the Policy. Instead, the Policy simply states charity care is available for "items and services defined as 'covered items and services' in hospital's benefit plan for medically necessary treatment" and that "[c]overed items and services' shall include at a minimum those items and services covered by the Medicare program that are provided by the Hospital." N. MS. Health Servs., *N. MS. Health Servs. Charity Care Policy & Appl. Guidelines*, at 2 (dated 3/14/12), available at <http://www.nmhs.net/documents/charitypolicyMar2012.pdf>. These provisions do not include the specific providers covered and not covered by the Policy.

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.

Second, the Policy does not list potential ECAs a NMMC hospital facility like West Point may take if a patient does not pay his or her bills or the process and time frame West Point or other NMMC facilities use 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, although the Policy summarily explains that the *liability* of a patient whose household income exceeds 100% of the NHMS poverty guidelines will be no more than the amount their household income exceeds the applicable federal poverty guidelines, it 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 for such care—or how to obtain this information.

The absence of these provisions indicates the Hospital—and possibly as other NMMC hospital facilities—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.

West Point is Not Making Its FAP Widely Publicly Available

While the Policy is available on NMMC’s website, it does not otherwise appear widely publicly available in public locations of West Point. Moreover, neither the application nor a plain-language summary of the Policy is available on the NMMC website or on West Point’s individual webpage. Rather, according to the Policy, a NMMC facility such as West Point only provides copies of the Policy and an application to patients it deems “potentially eligible for charity care” either at the time of service or during the billing or collection process. *Id.* at 3. Thus, the Hospital does not make paper copies of its FAP or the application publicly available, including upon request, as the regulations require. Indeed, during our site visit in March 2017, our investigator did not see any paper copies of the Policy or charity care application displayed in the emergency room or admissions area of West Point. Our investigator also was unable to obtain the Policy or any billing or collections policy when she asked the intake clerk at West Point for paper copies during her site visit.

Furthermore, while the Policy Guidelines state that a NMMC hospital facility such as West Point should post notice of the Policy in inpatient and outpatient admission areas of the hospital, our investigator did not see any such public notice of the Policy in or near the Hospital waiting or emergency room or intake desk or other public areas of the Hospital.

The Hospital’s failure to include all required components in the 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 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 West Point and NMMC and ensure West Point's and other NMMC facilities' compliance with the regulations, we ask that **within three weeks** West point 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 or other FAP, if any exists. We also request that you contact us to discuss this matter.

Finally, we request West Point 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; a plain-language summary of that Policy or FAP; and a billing and 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.⁴

If we do not receive a response from West Point 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.

⁴ 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.

Sincerely,

A handwritten signature in cursive script that reads "Emily C. R. Early". The signature is written in dark ink and is positioned above the typed name.

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

CC: Shane Spees, President/CEO, NMHS; Bruce Toppin, Vice President and General Counsel of NMHS; and Barry Keel, Administrator of North Mississippi Medical Center - West Point