

April 18, 2017

Scott Regional Hospital
Attn: Business Services
317 Highway 13 South
Morton, MS 39117

Rush Health Systems
Attn: Business Services
1314 19th Avenue
Meridian, MS 39301

RE: Scott Regional Hospital's/Rush Health System's Financial Assistance Policy

To Whom It May Concern:

On behalf of the Southern Poverty Law Center, we write regarding Scott Regional Hospital's ("Scott") 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 Scott is not fully compliant with these safeguards and fear that patients who have relied on Scott or other Rush Health Systems ("RHS") hospitals for critical medical care are not receiving the maximum 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 Scott and other RHS facilities are treating every patient fairly, regardless of financial status.

The Mandates of the IRS Regulations under the ACA

In addition to other hospitals under RHS's ownership, Scott is identified as a 501(c)(3) nonprofit in its 2015 Form 990, Return of Organization Exempt from Income Tax.¹ As a

¹ If Scott or any of other RHS facilities are no longer 501(c)(3) nonprofit organizations, please inform us when this change occurred.

nonprofit, Scott, as well as other RHS hospital facilities, 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 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

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>.

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

Scott Does Not Appear to Have a Fully Compliant FAP

The RHS Financial Assistance Policy applicable to services rendered to patients of Scott (hereinafter the “Policy”) fails to comply with several of the substantive requirements of the IRS regulations. First, while the Policy includes a list of procedures the Policy does not cover and states that it covers patients who have a provider referral, it does not list providers other than the Hospital itself that deliver services at the Hospital and whether the Policy covers services rendered by those providers.

Second, the Policy does not list potential ECAs Scott may take if a patient does not pay his or her bills or the process and time frame the Hospital uses in taking these ECAs, including how and when it attempts to obtain payment of a bill 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 Scott—and possibly other hospitals under RHS’s ownership—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.

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.

Scott is Not Making the FAP Widely Publicly Available

While the Policy and the related application are available on Rush's website, neither the Policy nor the plain-language summary of the Policy otherwise appears widely publicly available in public locations of Scott premises, including through any public display in the emergency room or admission areas of the Hospital or upon request. Indeed, during our site visit to Scott 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 front desk clerk for paper copies. A plain-language summary of the Policy is also not available on Scott's or RHS's website.

Finally, neither the website nor public areas of Scott make the Policy, a plain-language summary, the related application, or any notices thereof available to those who speak languages other than English. Scott, however, must make the Policy as well as the application form available in Spanish because more than 1,000 people speak Spanish in Scott County—the primary county the Hospital services.⁴

The failure of Scott—and presumably of other RHS hospitals—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 Scott and RHS and ensure Scott's and other RHS hospitals' compliance with the regulations, we ask that **within three weeks** Scott provide us copies of any revised or updated Policy; billing or collections policy, if separate from the Policy or; 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 Scott agree to do the following within a reasonable timeframe:

1. Make widely available to the public any revised or updated Policy; a plain-language summary of the Policy; and a billing and collections policy, if separate, that contain all information required by regulation; and

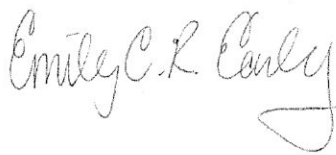
⁴ See Data USA, Scott County, MS, *Languages*, available at <https://datausa.io/profile/geo/scott-county-ms/> (using data from U.S. Census Bureau American Community Survey).

2. Review Scott 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.⁵

If we do not receive a response from Scott 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: Wallace Strickland, President and Chief Executive Officer of Rush Health Systems

⁵ 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.