

April 18, 2017

Terrebonne General Medical Center
Attn: Susan Priest, Director of Patient Financial Services
8166 Main Street
Houma, LA 70360

RE: Terrebonne General Medical Center Financial Assistance Policy

To Whom It May Concern:

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

The Mandates of the IRS Regulations under the ACA

TGMC is identified as a 501(c)(3) nonprofit in its 2011 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 If TGMC 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)-5.²
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 1000 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 TGMC is not compliant with several of the above regulations—namely, that TGMC does not have a FAP that includes all of required information, including notice of when and how it will pursue certain ECAs and its billing calculations, and that it is not making any FAP widely publicly available to its patient population. We are also concerned about the number of ECAs—specifically, collections lawsuits—that TGMC appears to be taking against patients.

TGMC Does Not Appear to Have a Fully Compliant FAP

TGMC’s Uncompensated Care/Charity Care Policy (hereinafter the “Policy”)⁴ fails to comply with several of the substantive requirements of the IRS regulations. First, the Policy does not clearly identify the eligibility criteria to access free or discounted care under the Policy. Instead, the definition of “[f]inancially indigent” states that “[c]riterion includes but is not limited to published Federal Poverty Guidelines.”⁵ It also states the Hospital has a “sliding scale” policy to provide partial assistance but does not identify the income or other thresholds relevant to eligibility or the percentage of bills that would be covered.⁶

Second, the Policy does not list the other providers that deliver services at the Hospital and whether their services are covered by the Policy.

Third, while the Policy lists the potential ECAs TGMC may take if a patient does not pay his or her bills—namely, that the account will be “transferred to Bad Debt and sent to the legal collection process”—the Policy does not indicate when it will initiate such action.⁷ The Policy also does not explain how and when the Hospital determines whether an individual is FAP-eligible before resorting to an ECA. Rather, it indicates the Hospital will inform the patient about the Policy only if the patient asks, notifies Patient Financial Services that she is unable to

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.

⁴ Terrebonne Gen. Medical Center, *Uncompensated Care/Charity Care Policy* (dated 12/29/08).

⁵ Policy at 1.

⁶ *Id.*

⁷ *Id.* at 3. The Policy does identify the timelines allowed for patients to complete their application relative to the day they were notified. Those persons notified in the review of the “Bad Debt Prelist” have only fifteen days to return their application, in violation of 26 C.F.R. § 1.501(r)-6(c)(4).

pay, or if unidentified “demographic information indicates patient may be eligible for uncompensated care.”⁸

Fourth, 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 for such care—or how to obtain this information.

The absence of these provisions indicates the Hospital is presumably making eligibility determinations in a non-uniform way and 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.

TGMC is Not Making Its FAP Widely Publicly Available

Neither the Policy nor a plain-language summary of its contents is publicly available or displayed at the TGMC premises or on the TGMC website,⁹ as the IRS’s regulations mandate. During our site visits to the Hospital, we did not observe any publicly posted notifications of the FAP, and neither the FAP nor FAP application was available in any public locations of the Hospital, including the emergency room or the admission areas of the Hospital. Indeed, we asked multiple staff members for a copy of the Policy to no avail: emergency room admissions staff directed us to the emergency room discharge agent, who suggested we speak to the cashier’s office, who then sent us to the financial counselor’s office, which was locked and unstaffed. We were able to obtain a copy of the Policy via fax only after a phone call to the financial counselor, and we still have not been able to obtain a FAP application or plain-language summary.

Furthermore, neither the website nor any public areas of the Hospital make the Policy, a plain-language summary, or the application available to those who speak languages other than English. In Terrebonne Parish, more than 1,000 people speak French and Spanish.¹⁰ Thus, the Hospital must make available information about the Policy and an application form in these languages.

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.

⁸ *Id.*

⁹ The website references financial assistance, but does not provide the application or contain the required information about the Policy or plain-language summary. See Terrebonne Gen. Medical Center, Financial Assistance, available at https://tgmc.patientsimple.com/app/index.html#/articles/index?sid=Financial-Assistance_Help-With-Your-Medical-Bills.

¹⁰ See MLA Language Map Data Center, County, available at https://apps.mla.org/map_data (using data from the 2010 U.S. Census).

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.

TGMC Appears to Be Wrongly Pursuing ECAs

Finally, it appears TGMC 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, TGMC 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 collections 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.

Furthermore, while the Policy recognizes that patients who qualify for financial assistance may be the subject of an ECA, it requires those patients who later obtain financial assistance to pay “all legal fees allowed . . . up front and in full.”¹¹ This provision improperly places the onus on the patient to discover the availability of financial assistance, despite TGMC's failure to notify all patients of the Policy's existence.

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** TGMC provide us copies of any revised or updated Policy or other FAP and the related application; billing or collections policy, if separate from the Policy or FAP; and a plain-language summary of the Policy or other FAP. We also request that you contact us to discuss this matter.

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

1. Make widely available to the public any revised or updated Policy or FAP and 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

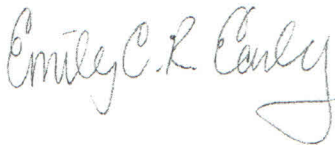
¹¹ *Id.* at 4.

patients' medical debt by creating a debt forgiveness period during which these patients could apply or re-apply for financial assistance.¹²

If we do not receive a response from TGMC 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: Phyllis Peoples, President and Chief Executive Officer

¹² 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.