

Nonprofit Hospitals Sue Patients, and New IRS Rules Offer Limited Protection

By Guest Blogger: [Erin C. Fuse Brown](#), JD, MPH

Last month, NPR and ProPublica [reported](#) a story that would be shocking if it weren't sadly familiar about how nonprofit hospitals like Heartland Regional Medical Center in Missouri are suing their patients and garnishing their wages for unpaid bills. A few days later, on December 31, 2014, the IRS issued [final rules](#) for tax-exempt hospitals that ostensibly will make these practices more difficult, if not illegal.

The IRS rules implement the requirements of Section 501(r) of the Internal Revenue Code added by the Affordable Care Act in 2010. Despite characterizations that these are “[sweeping new rules](#)” that protect financially vulnerable patients from excessive charges and aggressive debt collection by nonprofit hospitals, the rules provide fairly thin and spotty levels of protection for patients.

Among the rules' requirements are provisions that limit the amounts tax-exempt hospitals may charge patients who qualify for financial assistance to the “amounts generally billed” to insured patients and also prevent such hospitals from using “extraordinary collection actions” before the hospital has made a reasonable effort to determine the patient's eligibility for financial assistance.

These requirements are an [incomplete](#) solution to the problems of unfair hospital prices and onerous debt collection practices. There are two big gaps in these rules' protections: (1) they do

not apply to for-profit or government-run hospitals, which make up over 40% of all [hospitals in the U.S.](#) and (2) the rules leave eligibility for financial assistance (which triggers the protections) to the complete discretion of the hospital. A hospital could adopt a [stingy](#) financial assistance policy or exclude from the policy patients with insurance who may be paying excessive prices because they are out-of-network or have a high deductible.

With the new 501(r) rules for tax-exempt hospitals, we may be tempted to believe that patients are now protected from excessive and unfair hospital pricing and onerous debt collection activities. This belief may create a complacency or false sense of security among patients and policymakers alike that we have slayed the hospital pricing and collection beast, at least with respect to the most financially vulnerable patients. Instead, we have created an uneven and opaque system where the protections of 501(r) depend on hospital characteristics that are generally beyond discovery or control by the patient. Patients generally do not know whether a hospital is for-profit or nonprofit, and it can be difficult for a patient to find this information especially if the hospital is for-profit. Similarly, patients may be unable to determine whether they will be eligible for financial assistance at a particular hospital before seeking care, especially in an emergency.

We have a better model in the form of various state fair pricing and collection laws. [California's Hospital Fair Pricing Act](#), for example, applies to all hospitals in California, not just the ones seeking exemption from state or local taxes. It also applies to both insured and uninsured patients who meet defined income or affordability criteria. California's experience [demonstrates](#) that hospitals are able to adjust to fair pricing and collection requirements that are broader than those offered

by the IRS rules. Taking these state laws as a model, a better national approach would decouple the fair pricing and collection rules from tax status, and instead make compliance with fair hospital pricing and collection rules a condition of participation in Medicare. Under this [proposal](#), all hospitals that participate in Medicare would have to limit charges and collection activities for self-pay patients who fall within certain income limits or whose medical bills exceed a defined percentage of income. Because fairness is not charity, the 501(r) fair pricing and collection rules ought to be decoupled from tax-exempt status to apply to all hospitals and a broader range of patients.