

**MEMORANDUM IN SUPPORT OF IRS FORM 13909 TAX-EXEMPT
ORGANIZATION COMPLAINT (REFERRAL) FORM**

Internal Revenue Service Exempt Organizations (EO) Classification
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**RE: JACKSON HEALTH SYSTEM'S FAILURE TO COMPLY WITH THE
REQUIREMENTS OF 26 U.S.C. § 501(R).**

COMPLAINANT/SUBMITTER

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Florida Legal Services, Inc. ("FLS") is a Florida non-profit corporation representing low-income Floridians on a variety of issues including access to health care. The Miami Advocacy Office of FLS works on both statewide issues and on issues particularly impacting low-income Miami-Dade residents. The National Health Law Program ("NHeLP") is a non-profit organization that protects and advances the health rights of low income and underserved individuals. The oldest non-profit of its kind, NHeLP advocates, educates, and litigates at the federal and state level.

REFERRED ORGANIZATION

Jackson Health System (“JHS”) is a nonprofit academic medical system governed by the Public Health Trust (“PHT”), which acts on behalf of the Miami-Dade Board of County Commissioners¹ and is empowered by the State of Florida to govern designated JHS facilities.² JHS consists of its main hospital, Jackson Memorial Hospital, as well as multiple primary care and specialty care centers.

JURISDICTION

Under Internal Revenue Service (“IRS”) FS-2008-13, “IRS Complaint Process For Tax Exempt Organizations,” a member of the general public may allege that a tax-exempt organization is in potential noncompliance with the tax law by submitting Form 13909 “Tax-Exempt Organization Complaint (Referral) Form” and any supporting documentation to the IRS Exempt Organization Classification office.³ This Complaint is based on Section 9007 of the Patient Protection and Affordable Care Act (“ACA”), codified at 26 U.S.C. § 501(r).

PRELIMINARY STATEMENT

Under the ACA, nonprofit hospital organizations shall not be treated as tax exempt unless they meet specific requirements ensuring that patients and advocates are able to navigate complex financial assessment systems in a fair and uniform manner and not be subject to certain billing and collection practices.⁴ These requirements are consistent with the ACA’s overarching

¹ See generally Miami-Dade County, FL. Code Ch. 25A, accessed June 2, 2014, https://library.municode.com/HTML/10620/level2/PTIIIICORR_CH25APUHETR.html; “About Jackson Health System,” last accessed June 13, 2014, <http://www.jacksonhealth.org/about.asp>.

² See § 154.08(1), Fla. Stat. (2014).

³ “IRS Complaint Process For Tax Exempt Organizations, Internal Revenue Service Fact Sheet 2008-13,” (last updated January 10, 2013), accessed June 2, 2014, <http://www.irs.gov/uac/IRS-Complaint-Process-For-Tax-Exempt-Organizations>.

⁴ Patient Protection and Affordable Care Act, H.R. 3590, 111th Cong. § 9007(a) (2d Sess. 2010), codified as 26 U.S.C. § 501(r)(1).

goal that all citizens and lawful residents have access to affordable health care. For the first time, the federal law requires that tax exempt hospitals have reasonable billing and collection requirements to ensure fairness and help reduce the existence and threat of medical debt that prevents many poor people in the community from ever seeking care. The ACA further requires that tax exempt hospitals provide accessible information on the hospitals' financial assistance policies ("FAP"). Finally, the ACA requires that nonprofit hospitals effectively engage with the community in performing a needs assessment.

The IRS, which is the federal agency responsible for interpreting the statute's requirements and which is authorized to promulgate rules defining the actions required for compliance, has issued proposed regulations.⁵ While the regulations are not yet final, they have received comments and can be considered substantially reliable. In other words, these proposed regulations instruct tax exempt hospitals how they can comply with the statutory requirements. Moreover, they can rely upon them to ensure that they are complying with the law. *See, e.g., Lutheran Hosp. of Indiana, Inc. v. Bus. Men's Assur. Co. of Am*, 51, F. 3d 1308, 1313 (7th Cir. 1995) (applying proposed IRS regulations to interpret statutory intent); *Lincoln Gen. Hosp. v. Blue Cross/Blue Shield of Nebraska*, 963 F. 2d 1136, 1142 (8th Cir. 1992) (finding proposed IRS regulations to represent "the regular practice" of the agency); *Gaskell v. Harvard Co-op. Soc.*, 3 F. 3d 495, 500 (1st Cir. 1993) (finding proposed IRS regulations are not authoritative, but are persuasive); *see generally Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (finding an IRS

⁵ *See* Additional Requirements for Charitable Hospitals, Prop. Treas. Reg. § 1.501(r), 77 Fed. Reg. 123 (proposed June 26, 2012) (to be codified 26 C.F.R. § 1.501(r)), <http://www.gpo.gov/fdsys/pkg/FR-2012-06-26/pdf/2012-15537.pdf>. (hereafter citation to the proposed regulations will be shortened to "proposed 26 C.F.R. § 1.501(r)").

position is substantially justified if it is justified to a degree that could satisfy a reasonable person).

As discussed more fully below, there is no question that JHS has failed to comply with the statute's requirements at 26 U.S.C. § 501(r). Also, with regard to the proposed regulations, JHS has failed to take specific measures that the IRS has proposed is required for compliance with the statute. The Miami office of FLS and other local consumer advocates have repeatedly requested that JHS change its FAP and collection practices to comply with the ACA, as well as requesting that the FAP be made publicly available and more transparent in general.⁶ And while JHS has acknowledged receipt of these requests and made some improvements, significant noncompliance remains.⁷

Notably, a significant percentage of Miami-Dade County's low-income beneficiaries would have been eligible for Medicaid coverage under the ACA. At least 165,000⁸ county residents are currently in the "coverage gap" due to the Florida Legislature's refusal to expand Medicaid under the ACA.⁹ As a result, these low-income consumers rely on JHS for health care.¹⁰ Given JHS's violations, many of these uninsured patients will likely continue

⁶ See, e.g., Exhibit 1, correspondence with JHS.

⁷ Exhibit 1, FLS letter of August 22, 2014 re corrective action requests.

⁸ See "Florida Coverage Gap Population," Miami Herald, last accessed July 2, 2014, <http://media.miamiherald.com/smedia/2014/04/11/19/26/15IjKv.So.56.pdf>.

⁹ See Jeffrey Young, "Millions Are Now Realizing They're Too Poor For Obamacare," Huffington Post (January 31, 2014), last accessed June 3, 2014, http://www.huffingtonpost.com/2014/01/31/florida-medicare-uninsured_n_4680566.html.

¹⁰ See, e.g., Daniel Chang, "Jackson Health System trying to figure out why the surge in uninsured patients," Miami Herald (January 15, 2014), last accessed June 3, 2014, <http://www.miamiherald.com/2014/01/15/3873023/jackson-health-system-cannot-explain.html>.

to believe that they cannot receive services and may either forgo necessary medical care to avoid a medical debt or be subjected to billing practices that violate the ACA.

JACKSON HEALTH SYSTEM HAS VIOLATED THE CHARITABLE HOSPITAL REQUIREMENTS REQUIRED FOR TAX EXEMPTION

A. JHS fails to meet the financial assistance policy requirements.

The ACA requires that a tax exempt hospital's written financial assistance policy (FAP) must contain the following: 1) the eligibility criteria for financial assistance; 2) the basis for calculating amounts to patients; 3) the method of applying for financial assistance; 4) a billing and collections policy, whether included in the FAP or a separate document; and 5) measures to widely publicize the policy within the hospital's patient community.¹¹ JHS has failed, both in policy and practice, to adequately provide the eligibility criteria, the billing and collection guidelines, or the measures requiring wide publication.

The statute also requires that tax exempt hospitals limit charges to the "amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under the [F A P] to not more than the amounts generally billed to individuals who have insurance covering such care."¹² Accordingly, IRS proposed that the hospital's FAP include a statement that "a FAP-eligible individual will not be charged more for emergency or other medically necessary care than the amounts generally billed to individuals who have insurance covering such care."¹³ Such a statement is important, as it prohibits hospitals from charging unreasonable fees to low income patients. Indeed, even the Department of Treasury and the IRS, while acknowledging a desire to "preserve hospital facilities' flexibility," and not "dictate the

¹¹ 26 U.S.C. § 501(r)(4)(A).

¹² 26 U.S.C. § 501(r)(5)(A).

¹³ Proposed 26 C.F.R. § 1.501(r)-4(b)(2)(C).

amounts or kinds of financial assistance that a FAP must provide,” have indicated that compliance can be achieved with inclusion of this language in every non-profit hospital’s FAP.¹⁴ While other non-profit hospitals in Florida have incorporated this required reference to the amounts generally billed,¹⁵ JHS fails to provide any written assurance to its uninsured patients who are eligible for financial assistance that they will not be charged more than insured patients.

The ACA further requires a tax exempt hospital to widely publicize its FAP.¹⁶ The IRS proposes four publication measures: 1) through the hospital’s website; 2) through paper distribution; 3) through conspicuous public displays in the facility; and 4) through community notices designed to reach those patients who most likely require financial assistance.¹⁷

Again, other Florida nonprofit hospitals have included all four publication requirements in their respective FAPs,¹⁸ while what JHS is doing is clearly not “wide publication.” JHS’s only “publication” of the hospital’s assistance program are a statement in code 750 that a “brochure” will be made available in service areas,¹⁹ and the brochure summarizing the FAP on the JHS website.²⁰ There are no “conspicuous” public displays²¹ about the availability of financial

¹⁴ Proposed 26 C.F.R. § 1.501(r), 77 Fed. Reg. 123 at 38149.

¹⁵ See, e.g., “Adventist Health System Financial Assistance,” Adventist Health System at 6, last accessed July 6, 2014, https://www.floridahospital.com/sites/default/files/financial_assistance_policy_final_format_for_web_1_30_14.pdf; “Policy Title: Charity Care,” Baptist Health South Florida at 4, last accessed July 7, 2014, https://baptisthealth.net/en/patient-visitor/documents/charity_care_policy_2012.pdf.

¹⁶ 26 U.S.C. § 501(r)(4)(A)(v).

¹⁷ Proposed 26 C.F.R. § 1.501(r)-4(b)(5)(i).

¹⁸ See, e.g., “Adventist Health System Financial Assistance,” *supra* note 30, at 3-4.

¹⁹ See Ex. 2, Code 750 at 10.

²⁰ Ex. 4.

assistance to low income patients. And as described in two recent surveys the brochure is not apparently available in obvious service areas, including the ER waiting room.²² As a practical matter, JHS's continued failure to publicize its financial assistance program in a minimal (much less "wide") manner, means that low-income uninsured Miami-Dade residents in need of health care do not know about or even apply for financial assistance.²³

B. JHS violates the billing and collection requirements.

The ACA is intended to enable low-income consumers who rely on a community's tax exempt hospitals to seek and gain access to care without being subject to certain billing and collection practices. To this end, Congress required tax exempt hospitals to undertake "reasonable efforts" to notify individuals about the hospital's financial assistance plan before engaging in "extraordinary collection actions" (ECAs).²⁴ The IRS then defined what constitutes "ECAs"²⁵ and "reasonable efforts." As previously noted, undersigned counsel does not know what JHS's billing policies are with regard to ECAs. Counsel has asked JHS officials for a copy of the facility's billing and collection policies multiple times and received no response.²⁶ But, as

²¹ See Ex. 6, Declarations of G. Louis.

²² See Ex. 6.

²³ See Exhibit 7, Declaration from L. Ayerdis at ¶ 4 (attorney assisting low income individuals who received treatment at JHS stating that these patients were never told about the Charity Care program or provided with an application and that the first they learned of the program was when they sought legal assistance.)

²⁴ 26 U.S.C. §501(r)(6).

²⁵ By definition, a hospital engages in ECA when it does one of the following: takes legal action against the individual for the bill, sells the bill to a collection agency, or reports the individual to a credit reporting agency. Proposed 26 C.F.R. § 1.501(r)-6(a)(2)-(b).

²⁶ See , e.g., Exhibit 1 (FLS correspondence Feb. 4, 2014, March 1, 2014, March 25, 2014, April 14, 2014, April 25, June 19, 2014, July 3, 2014, July 17, 2014).

described more fully below, we are aware that JHS charity care patients have been subject to ECA for some services they receive at JHS facilities, including physician and anesthesiologist services.²⁷

Regardless of whether or not the hospital engages in ECA for all JHS services, JHS is not engaging in “reasonable efforts” to inform or assist people who may be eligible for the charity care program.²⁸ IRS has proposed that a hospital meets the “reasonable effort” prerequisite if the hospital facility provides written notice to the patient during the notification period. The notification period begins “the first date care is provided to the individual and ends on the 120th day after the hospital facility provides the individual with the first billing statement for the care.”²⁹ A hospital satisfies the proposed notification requirements only if it does the following: 1) provides a plain language summary of the FAP and an application to the individual upon discharge from the hospital; 2) provides a plain language summary in at least three billing statements as well as all other communications given to the individual; 3) informs the individual about the assistance program whenever discussing the bill; and 4) provides at least one written notice including information about possible ECAs that could be taken if the individual does not apply for the FAP or pay the bill at least 30 days prior to the deadline specified in the notice.³⁰

²⁷ See Exhibit 8, bill from collection agency.

²⁸ See Exhibit 1, FLS 7/23/14 letter requesting compliance with proposed regulations proposed 26 C.F.R. § 1.501(r)-4(a)(4)(B) & proposed 26 C.F.R. § 1.501(r)-4(b)(4)(i)(A) and JHS response 8/13/14; *see also*, Exhibit. 8, Declaration from L. Ayerdis at ¶ 4.

²⁹ Proposed 26 C.F.R. § 1.501(r)-1(b)(18).

³⁰ Proposed 26 C.F.R. § 1.501(r)-6(2)(A)-(D)

JHS has not followed any of the proposed notification requirements, nor has it engaged in other activity that would satisfy the statutory requirement.³¹

Further, the IRS proposed that an individual may apply for assistance within 240 days after the hospital facility provides the first billing statement.³² Consequently, if an individual applies for assistance within the “application period” even after extraordinary collection actions may have been commenced, the hospital cannot take any further action on the ECA after the individual applies.³³ JHS does not allow any of this, nor has it agreed to do so.³⁴

JHS’ policy does not require even nominal efforts to notify individuals about its charity care program. Also, to the extent some individuals do become aware of the charity care program, JHS limits retroactive application of their financial classification to 90 days, as opposed to the required 240 day IRS standard.³⁵ And even in that case, the JHS policy arbitrarily provides that only “some” classifications will be made within the 90 day period.³⁶

Additionally, as noted above, consumers who have a charity care classification and who paid the requisite fee based on her/his classification prior to receiving treatment, are subsequently billed for treatment they received at JHS that far exceeds the amount charged for

³¹ 26 U.S.C. §§ 501(r)(1)(D) 501(r)(6).

³² Proposed 26 C.F.R. § 1.501(r)-1(b)(3).

³³ Proposed 26 C.F.R. § 1.501(r)-6(a)(4)(D)(5).

³⁴ See Ex. 1, JHS letter of 8/13/14, FLS letter of 8/22/14..

³⁵ Ex. 2, draft 750, at page 1 (allowing 90 days, an increase over the previous 30 in non-strike through version of code 750, but significantly less than the IRS proposal of 240 days).

³⁶ *Id.*

the service pursuant to the charity care program.³⁷ Those bills, which low income consumers can obviously not afford, are then turned over to collection agencies engaging in extraordinary collection actions. For example, Jacqueline Samuels, a low income county resident was classified as a J03. She suffers from end stage renal disease and underwent an outpatient (one day) surgical procedure for installation of a shunt for the purpose of receiving dialysis on March 17, 2014. Under Jackson's charity care program, the maximum charge for an outpatient procedure for a J03 is \$200.³⁸ Ms. Samuel subsequently received a bill for \$ 4,524 for anesthesia services provided to her at JHS. That bill was turned over to a collection agency.³⁹

On August 6, 2014 undersigned counsel contacted JHS complaining that allowing this practice to continue defeats the purpose of the JHS charity care program. The issues had been previously raised during an April 1, 2014 meeting and counsel had proposed a corrective action that JHS only contract with physicians who agree to adopt the same fee schedule as JHS.⁴⁰ Thus, for patients with a JO2 classification receiving specialty care, the physician would not bill the patient more than \$40. For a J03, the physician bill would be limited to \$70. The August 6 correspondence cited Ms. Samuels' example. On August 13, JHS responded that they have "resolved Ms. Samuels' account and asked the anesthesiologist group to retract the bill from collections."⁴¹ JHS, however, did not respond to the April 14 and August 6, 2014 written

³⁷ Ex. 8.

³⁸ Ex. 3.

³⁹ Ex 8, Bill from collection agency; Ex. 10, Declaration of J. Samuel, Ex. 1 email exchange between her counsel and JHS officials at August 7 and August 12, 2014.

⁴⁰ Ex. 1, *see* FLS letters of April 14, August 6, 2014.

⁴¹ *See* Exhibit 1 #29-30, correspondence regarding J. Samuels on (Aug. 7 – Aug. 12).

requests for a corrective action that would address this problem for other low income consumers. See Exhibit 1. Further, “the Brochure,” which is the Jackson FAP material currently on the JHS website makes no mention of the fact that charity care patients may be billed for care received at JHS separate and apart from the amount owed pursuant to their charity classification.⁴² However, the brochure which was given to FLS on August 14, 2014 during her on-site visit and which is **not available** on line states that “JHS Care Card discount services are available only at Jackson Health System facilities. Not all services offered at Jackson Health System are covered by the JHS Care Card. For services covered, only JHS facility costs are included and not the physician’s bill.”⁴³

C. JHS fails to meet the community health needs assessment requirement.

Under the ACA, tax exempt hospitals must conduct a community health needs assessment (“CHNA”) and make the assessment widely available to the public. A hospital organization meets the CHNA requirement in a taxable year “only if” it has conducted a community health needs assessment which “takes into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health, and (ii) is made widely available to the public.”⁴⁴

The Centers for Disease Control and Prevention (“CDC”) have a detailed website with tools and resources for implementing the CHNA.⁴⁵ In Miami-Dade, other non-profit hospitals,

⁴² Ex. 4.

⁴³ Ex. 9 at 4.

⁴⁴ 26 U.S.C. § 501(r)(3).

⁴⁵ “Resources for Implementing the Community Health Needs Assessment Process,” Centers for Disease Control and Prevention Office of the Associate Director for Policy, last accessed July 5, 2014, <http://www.cdc.gov/policy/chna/>.

including, Baptist Health South Florida,⁴⁶ University of Miami Hospital,⁴⁷ and Douglas Gardens Hospital,⁴⁸ have followed the CDC's guidance and made their CHNAs publicly available by posting on their websites.⁴⁹ In addition, county hospitals around the country have also published CHNAs in conjunction with their respective departments of health.⁵⁰

By contrast, JHS does not have a CHNA available on its website.⁵¹ Nor can undersigned counsel find a JHS CHNA publicized anywhere. Counsel has requested JHS provide the CHNA multiple times, including a request that JHS consider input from community advocates such as legal services attorneys representing low-income county residents. On 8/13/14, JHS stated that they are in the process of completing a CHNA. JHS did not respond to question of whether they are willing to engage low income consumer advocates in the process.⁵² In sum, JHS has fallen far

⁴⁶ See "Community Health Needs Assessment & Implementation Plans," Baptist Health South Florida (last accessed July 3, 2014), <https://baptisthealth.net/en/about-baptist-health/pages/community-health-needs-assessments.aspx>.

⁴⁷ See "University of Miami Hospital Community Health Needs Assessment," University of Miami Hospital (May 24, 2013), last accessed July 3, 2014, <http://umiamihospital.com/documents/UMH-CHNA-2013.pdf>.

⁴⁸ See "Douglas Gardens Hospital at Miami Jewish Health Systems FY 2013 Community Health Needs Assessment," Douglas Gardens Hospital (June 30, 2013), last accessed July 3, 2014, <http://miamijewishhealthsystems.org/wp-content/uploads/2013/09/Community-Health-Needs-Assessment-2013.pdf>.

⁴⁹ 26 U.S.C. § 501(r)(B)(ii).

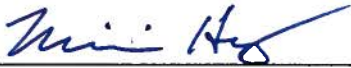
⁵⁰ See, e.g., "2013 Community Health Needs Assessment and Implementation Strategy," Kings County Hospital, last accessed July 3, 2014, <http://www.nyc.gov/html/hhc/downloads/pdf/community-assessment/hhc-chna-kings.pdf>; "Horizons: The Dallas County Community Health Needs Assessment," Parkland Health and Hospital System (2013), last accessed July 5, 2014, <http://www.parklandhospital.com/Uploads/Public/Documents/PDFs/Community/Community-Health-Needs-Assessment.pdf>.

⁵¹ See, e.g., "Community," Jackson Health, last accessed July 3, 2014, at <http://www.jacksonhealth.org/community.asp>.

⁵² See Ex. 1

short of the requirements of the statute's requirement that the CHNA be made widely available to the public.⁵³

Respectfully submitted, this 25 day of August, 2014,



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⁵³ 26 U.S.C. § 501(r)(3)(B)(i).

