Monday, March 6, 2023

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue NW Washington, DC 20220

The Honorable Douglas O'Donnell
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue NW Washington, DC 20224

Dear Secretary Yellen and Acting Commissioner O'Donnell:

The undersigned organizations share a dedication to eliminating the impacts of medical debt on people's health and financial well-being. To this end, we write to encourage the IRS to strengthen and enforce current rules, specifically the provisions of 26 C.F.R. §1.501(r) pertaining to non-profit hospitals. We believe §1.501(r) can be improved to limit the accumulation of medical debt, make billing and collections fairer, and hold non-profit hospitals accountable for practices that are antithetical to their charitable status and harmful to their patients.

Medical debt is common and destructive to the economic stability of a family. One-third of all adults in the United States have medical debt. People with medical debt disproportionately have low incomes, and 80 percent of medical debt is held by households with negative net worth. As a result of discriminatory barriers to economic security, Black and Hispanic households are more likely than white households to hold medical debt, so actions to reduce it are a step in the direction of equity. Medical debt brings all of the financial strains of other types of consumer debt — damaged credit, barriers to employment and housing, and reduced capacity to save and to spend on other necessities. It also brings unique health effects, including stress-related illness and diminished access to health care.

Section 1.501(r) implements requirements set forth in the Affordable Care Act (ACA) that a hospital must meet to qualify for tax-exempt status under the Internal Revenue Code. These provisions created some structure for previously loose standards for hospital community benefits. Since §501(r) went into effect, studies and journalistic accounts have continued to show the prevalence and widespread harm caused by medical debt, as well as the aggressive and/or predatory practices used by some non-profits to collect debt. This shows the need for stronger rules and stronger enforcement. We urge you to consider new rulemaking that addresses each of the four main requirements of non-profit hospitals, as follows:

1. Bolster financial assistance policies

Section 1.501(r) gives hospitals wide latitude to establish and implement the Financial Assistance Policies (FAP) mandated by the ACA. Anecdotal evidence shows that people are often not informed about a hospital's FAP, and that many hospitals make their FAP application process burdensome or do not always screen people for eligibility before trying to collect unpaid bills. Setting standards for FAPs and making the application process simpler and more transparent would reduce the medical debt resulting from hospitals' inconsistent and opaque practices. The IRS should:

- **Specify minimum financial eligibility criteria,** such as the percentage of the federal poverty level below which a family would qualify for free care.
- **Prohibit certain non-financial eligibility limitations,** such as residency requirements, lawful presence requirements, and other barriers to assistance.
- **Set standards for a streamlined, uniform FAP application,** which would also be an administrative simplification for hospitals.
- **Add points to ensure that the FAP application is "widely publicized" within the community,** including web pages, in notices mailed to patients, and during both the intake and discharge processes.
- **Require hospitals to assist patients with the FAP application.**
- **Require hospitals to make FAP application data public in their Community Health Needs Assessments** to promote transparency about the hospitals' practices and the debt its patients hold. The FAP reporting must be done in a consistent manner and made public in a way that allows policymakers, academics and others to use the information and make comparisons or identify trends.
- **Require hospitals to annually report how they are complying** with language access requirements for FAP applications and appoint a staff member responsible for ensuring compliance.

2. Limit hospital charges

The statute (26 U.S.C. § 501(r)(5)) states that hospitals must "[prohibit] the use of gross charges" to qualify for tax-exempt status. Current IRS rules interpret this clear statutory language to mean that gross charges should only be prohibited for the FAP-eligible population, though there is no support for this conclusion. We urge you to broaden the rule to be consistent with the statute and prohibit non-profit hospitals from billing any patient for gross charges.

3. Protect people from certain billing and collection practices

Hospitals are required to make a reasonable effort to determine whether a patient is eligible for its FAP before undertaking any Extraordinary Collection Action (ECA). ECAs can inflict long-lasting damage to a person's finances (e.g., property liens, bank account seizures, wage garnishment), liberty (body attachments and arrest), and health (deferring or denying medically necessary care

because of a previously unpaid bill). To make these actions by charitable institutions truly extraordinary, we urge you to strengthen consumer protections in the following ways:

- **Curtail ECAs** by prohibiting outright certain practices such as foreclosures, bank account seizures, and debt sales (except for debt sales to non-profits for the purpose of abolishment is not prohibited).
- **Strengthen the definition of "reasonable effort."** The IRS should require that hospitals notify people of their FAPs in fewer than the 120 days allowed by the current rule; lengthen the period before ECAs may commence; and allow an individual to submit an FAP application throughout the collections process, without a time limit.
- **Prohibit delaying or denying future medically necessary care due to nonpayment.** Charitable institutions, which have other methods of collection available to them, should not be permitted to withhold needed medical care as a means to pressure patients to pay.

4. Strengthen section 501(r) enforcement

The IRS can send a strong signal to hospitals about its ability and willingness to enforce compliance with section 501(r) rules, even to the extent of disclosure of violations and require a public remediation plan. For example, the current rule states that a hospital's failure to meet it "shall be excused" if it is "neither willful nor egregious" and the hospital corrects the violation. That standard could be changed to focus less on the hospital's intent and more on the harm resulting from its failure to carry out the provisions. In addition, the IRS should evaluate a range of options for enforcement action such that there are more enforcement tools beyond simply revoking tax-exempt status. The IRS could also require formal and public reporting of violations of 501(r) rules, creating a public watchlist of sorts.

The IRS has an important role to play in reducing medical debt, which remains an unfortunate reality for millions of families in the United States. We urge you to exercise your authority by making these improvements to 26 C.F.R. §1.501(r).

Sincerely,

ABC for Health, Inc.
ACA Consumer Advocacy
African Services Committee
Americans for Financial Reform Education Fund
Arthritis Foundation
Asian & Pacific Islander American Health Forum (APIAHF)
Be A Hero
Catalyst Miami
Center for American Progress
Centro Sávila

Citizen Action of Wisconsin
Colorado Center on Law and Policy
Colorado Consumer Health Initiative
Community Catalyst
Community Service Society of New York
Consumers for Affordable Health Care
Debt Collective
Dollar For
Economic Action Maryland
Enlace Chicago
Families USA
Florida Health Justice Project
Georgia Watch
Georgians for a Healthy Future
Health Access California
Health Care for All New York
Health Care for America Now (HCAN)
Health Equity Solutions
Health Law Advocates
Human Rights Watch
Illinois Coalition for Immigrant and Refugee Rights (ICIRR)
Innovation for Justice
Justice in Aging
Kairos Center for Religions, Rights, and Social Justice
Kentucky Equal Justice Center
Kentucky Voices for Health
Legal Council for Health Justice
Mano a Mano Family Resource Center
Metro New York Health Care for All Campaign
Minnesota Nurses Association
Mujeres Latinas en Acción
National Birth Equity Collaborative
National Consumer Law Center, on behalf of our low-income clients
National Disability Rights Network (NDRN)
National Health Law Program
National Immigration Law Center
National Partnership for Women & Families
New Jersey Appleseed Public Interest Law Center (PILC)
New Jersey Citizen Action
New Mexico Center on Law and Poverty
Pennsylvania Health Access Network
Protect Our Care
SEIU Local 49
Southwest Suburban Immigrant Project
SOWEGA Rising

Tennessee Justice Center
The AIDS Institute
The Leukemia & Lymphoma Society
The Shriver Center on Poverty Law
Third Way
UnidosUS
United States of Care
Universal Health Care Action Network of Ohio (UHCAN)
Virginia Organizing
Young Invincibles