

VERMONT LEGAL AID, INC.

OFFICE OF THE HEALTH CARE ADVOCATE

264 NORTH WINOOSKI AVE.
BURLINGTON, VERMONT 05401
(800) 917-7787 (TOLL FREE HOTLINE)
(802) 863-7152 (FAX)

OFFICES:

BURLINGTON
RUTLAND
ST. JOHNSBURY

OFFICES:

MONTPELIER
SPRINGFIELD

HCA REVIEW OF SVMC'S FINANCIAL ASSISTANCE POLICY (FAP)

1. FEDERAL REQUIREMENTS FOR A NONPROFIT HOSPITAL FAP

The Code of Federal Regulations specifies the various requirements of a nonprofit hospital's FAP. We evaluated your hospital's FAP to determine whether it is consistent with 11 of the FAP minimum requirements:¹

1. The FAP must be written.
2. The FAP must state that it applies to emergency and medically necessary care.
3. The FAP must list all levels of financial assistance the hospital offers and the eligibility criteria for financial assistance (at each level).
4. The FAP must state how patients can apply for financial assistance.
5. The FAP must make clear that patients eligible for financial assistance may not be charged more than the "amount generally billed" (AGB) to an insured patient and detail how the AGB is calculated.
6. The FAP must describe potential collection steps that the hospital will take to collect on an overdue bill including time frames and collection processes or have a separate billing and collections policy that states this information.
7. The FAP must include a listing of, or link to, providers whose services are covered by the FAP and those that are not.
8. The FAP must provide the contact information for a person(s) that patients can speak with if they need assistance applying for financial assistance or understanding the FAP. The contact information must include the physical location and telephone number of the hospital department or office that can provide additional information about the FAP.
9. There must be a plain language summary of the FAP.
10. The FAP and the plain language summary must be widely available as defined by the applicable regulations.
11. The FAP, the financial assistance application, and the plain language summary must direct patients to translated versions of these documents if such translations must be provided.

¹ 26 C.F.R. § 1.501(r) *et seq.*

2. SOUTHWESTERN VERMONT MEDICAL CENTER'S FAP

Per HCA review, Southwestern Vermont Medical Center (SVMC)'s FAP complies with the following requirement(s):

- The FAP is written. (requirement 1)
- The FAP states how patients can apply for financial assistance. (requirement 4)
- The FAP provides a general statement regarding collection practices including that cross references SVMC Billing and Collections document, which is posted online. (requirement 6)

Per HCA review, SVMC's FAP partially complies with the following requirement(s):

- The FAP states that it applies to medically necessary care in IV(5) and then in a sub-bullet indicates that emergency and urgent medical services are covered too. However, the FAP should clearly indicate that necessary and emergency services are covered instead of have the heading statement indicate that just medically necessary services are covered. (requirement 2)
 - **Recommendation:** The FAP states that it covers medically necessary services (IV(5)) and then indicates that it also covers emergency or urgent services in the sub-bullets associated with IV(5). Amend IV(5) to read that “services must be medically necessary or emergency or urgent.” Also, consider adding that the financial assistance program is intended to ensure that emergency and medically necessary services are available in the Purpose of Policy section.
- The FAP has a summary. However, the summary is not written in plain language (see Section 2 below). (requirement 9)
 - **Recommendation:** Update your FAP summary to be clear, concise and readable (see Section 2 below).
- The FAP states that patients receiving financial assistance will not be charged more than insured patients. SVMC also states that it uses the “look back” method to calculate the AGB percentage and lists that percentage (65%). However, the FAP does not provide a description of the method that would allow members of the public to “readily obtain” the percentage. Simply stating that AGB is calculated using charges minus payments divided by charges for prior fiscal year does not meet the minimum standard required by law. (requirement 5)
 - **Recommendation:** Refer to 26 C.F.R. § 1.501(r)-4(b)(2)(i)(C) for the requirements related to AGB including information that must be provided when a hospital states it is using the “look back” method. Update FAP to comply with these requirements.
- The FAP lists all levels of financial assistance available and the eligibility criteria for financial assistance. However, the FAP financial assistance eligibility criteria table is not clear. For the 300% FPL and 400% FPL categories, it simply lists FPL percentages and the applicable discount percentage but it does not present an understandable FPL range the category covers. For instance, does the “300% FPL” category cover household equal to or greater than 225 to less than 300 ($\geq 225 < 300$), equal to or greater than 225 but equal to or less than 300 covers ($\geq 225 \leq 300$), or simply households at 300% FPL. (requirement 3)
 - **Recommendation:** Clarify eligibility category ranges and ensure that this information is clear and consistent throughout the materials.

- The FAP includes some policies to ensure that it is widely available. However, the FAP fails to include several required policies to ensure that it is widely available (requirement 10).
 - The FAP, plain language summary, and financial assistance application are available on SVMC's website.
 - The FAP does not state that paper copies of the FAP, plain language summary, and financial assistance application can be obtained free of charge.
 - The FAP does not state how paper copies of the FAP, plain language summary, and financial assistance application can be obtained free by mail.
 - The FAP does not state any means by which members of the community served by the hospital facility are informed about the FAP in a manner reasonably calculated to reach those members who are most likely to require financial assistance from the hospital facility (for instance local media advertisement or distribution by working with community partners).
 - The FAP states that the hospital facility notifies and informs self-pay individuals who receive care from the hospital facility about the FAP via each patient's patient statement and the posting of notices in the emergency room and other locations. However, the FAP does not state that patients are given the plain language summary upon intake or discharge.
 - The FAP states that information about the FAP will be poster in registration areas. However, it fails to state this information will also be posted in the emergency room.
 - **Recommendation:** Update the Communication section to correct the above detailed failures to meet minimum regulatory requirements.

Per HCA review, SVMC's FAP does not comply with the following requirement(s):

- The FAP does not list providers who are covered and not covered by the FAP. We note that the plain language summary states that all SVMC's FAP covers "hospital services performed by SVMC and professional services provided by SVMC medical providers." Additionally, it states that "[a patient] may receive services at SVMC from Radiology Associates of Bennington, Anesthesiology Associates or other private physicians in the community. These providers are separate entities and services are billed separately. These physician groups are not required to follow SVMC's Financial Assistance policy." However, as is clarified in IRS Notice 2015-46, patients are often unaware of the relationships between a hospital facility and the health care providers working in the hospital facility. As such, a general statement that all SVMC providers rendering services at SVMC are covered neither provides the specificity required by the IRS nor adequately minimizes consumer confusion. (requirement 7)
 - **Recommendation:** Update the FAP to list all SVMC providers by name that are covered by the FAP and all providers by name that are not covered by the FAP.
- The FAP does not state that assistance is provided and provide contact information for the department and persons that patients can seek more information from regarding the FAP. (requirement 8)
 - **Recommendation:** Update the FAP to state that individuals can obtain more information regarding the FAP from X and provide the contact information for X.

Per HCA review, it is unclear whether the SVMC FAP complies with the following requirement(s):

- The FAP, financial assistance application, and plain language summary are not provided in languages other than English. The Code of Federal Regulations² states that these items must be provided in the appropriate language to be accessible to limited English proficient (LEP) individuals if there is an identifiable population that is reasonably likely to contact the hospital facility and this population consists of 1,000 individuals or more or 5 percent or more of the community served by the hospital, whichever is less. Per the regulations, a hospital is granted latitude to reasonably define how it identifies LEP individuals in the hospital's community. As the method and calculations SVMC uses to assess the need to provide materials in non-English languages is unknown, the HCA cannot assess compliance with this requirement. (requirement 11)
 - ***Recommendation:*** To ensure accessibility to LEP individuals and persons with disabilities, state in all financial assistance materials and on the website that:
 - Southwestern Vermont Medical Center provides free aids and services to deaf people and persons with disabilities to communicate effectively with us. This includes qualified sign language interpretation and written information in other formats (large print, audio, accessible electronic formats, other formats). If you need these services, please contact us at (XXX) XXX-XXXX.
 - Southwestern Vermont Medical Center provides free language services to persons whose primary language is not English. This includes qualified interpreters and written information in non-English languages. If you need these services, please contact us at (XXX) XXX-XXXX.

FAP Evaluation Conclusion:

Our review indicates that the FAP fully complies with 3 out of the 11 above-enumerated minimal requirements set forth in federal regulations.

3. SVMC'S FAP PLAIN LANGUAGE SUMMARY

We evaluated whether the plain language summary of your hospital's FAP conformed with 8 of the requirements enumerated in the Code of Federal Regulations.³ These eight requirements are that the plain language summary:

1. Include a brief description of the eligibility requirements and assistance offered under the FAP.
2. Include a brief summary of how to apply for assistance under the FAP.
3. Include the direct Web site address (or URL) and physical locations where an individual can obtain copies of the FAP and FAP application form.

² 26 C.F.R. § 1.501(r)-4(b)(5)(ii)

³ 26 C.F.R. § 1.501(r)-1(b)(24)

4. Include instructions on how an individual can obtain a free copy of the FAP and FAP application form by mail.
5. Include the contact information, including telephone number and physical location, of the hospital facility office or department that can provide information about the FAP and either—
 - a. The hospital facility office or department that can provide assistance with the FAP application process; or
 - b. If the hospital facility does not provide assistance with the FAP application process, at least one nonprofit organization or government agency that the hospital facility has identified as an available source of assistance with FAP applications.
6. Include a statement of the availability of translations of the FAP, FAP application form, and plain language summary of the FAP in other languages, if applicable.
7. Include a statement that a FAP-eligible individual may not be charged more than the AGB for emergency or other medically necessary care.
8. The plain language summary must provide the above-listed information “in language that is clear, concise and easy to understand.”

Per HCA review, the plain language summary of SVMC’s FAP complies with the following requirement(s):

- The plain language summary includes a brief summary of how patients can apply for assistance. (requirement 2)
- The plain language summary provides a web address and physical location(s) where copies of the FAP and FAP application can be obtained. (requirement 3)
- The plain language summary provides the hospital facility department that can provide information about and assistance with the FAP. (requirement 5)
- The plain language summary states that a FAP-eligible person may not be charged more than AGB for emergency or medically necessary care. (requirement 7)

Per HCA review, the plain language summary of SVMC’s FAP partially complies with the following requirement(s):

- The plain language summary includes a brief statement of eligibility. The statement indicates the “services must be medically necessary” in the Eligibility Requirements section. However, financial assistance must be for emergency or medically necessary services. This is properly stated in the first paragraph of the plain language summary. (requirement 1)
 - ***Recommendation:*** Update the Eligibility Requirements section of the plain language summary to state that emergency or medically necessary services are eligible.
- The plain language summary provides information about where an individual can obtain a copy of the FAP and the FAP application. However, the plain language summary does not state that obtaining a copy of the FAP and the FAP application is *free* or how it can be obtained by mail. (requirement 4)

- **Recommendation:** Update the plain language summary to state that obtaining a copy of the FAP and the FAP application is free and how it can be obtained by mail.

Per HCA review, the plain language summary of SVMC's FAP does not comply with the following requirement(s):

- The plain language summary is not clear, concise, and easy to understand (requirement 8). SVMC's use of bullets and white space increases the readability of the plain language summary. However, the plain language summary is roughly 38% passive sentences, has a Flesch Reading Ease score of 17.9, and Flesch-Kincaid Grade Level of 15.1. These measures indicate that many Vermonters would have difficulty reading and understanding SVMC's plain language summary. For example, a Flesch-Kincaid Grade Level of 15.1 indicates that a person would need over three years of post-secondary education to understand the document.
 - **Recommendation:** Create a clear, concise, and easy to understand plain language summary. Such a plain language summary should have no more than 10% passive sentences, have a Flesch-Kincaid grade level of no higher than 8, and have a reading ease score of 70 or higher. Several free resources are available to help you craft a clear, concise, and easily understandable plain language summary. For example, the Plain Language Action and Information Network's plain language guidelines⁴ and the readability toolkit and online trainings from Kaiser Permanente.⁵

It is unclear whether the plain language summary of SVMC's FAP complies with the following requirement(s):

- The FAP, financial assistance application, and plain language summary are not provided in languages other than English. The Code of Federal Regulations⁶ states that these items must be provided in the appropriate language to be accessible to limited English proficient (LEP) individuals if there is an identifiable population that is reasonably likely to contact the hospital facility and this population consists of 1,000 individuals or more or 5 percent or more of the community served by the hospital, whichever is less. Per the regulations, the hospital is granted latitude to reasonably define how it identifies LEP individuals in the hospital's community. As the method and calculations SVMC used to assess the need to provide materials in non-English languages is unknown, the HCA cannot assess compliance with this requirement. (requirement 6)
 - **Recommendation:** To ensure accessibility to LEP individuals and persons with disabilities, state in all financial assistance materials that:
 - Southwestern Vermont Medical Center provides free aids and services to deaf people and persons with disabilities to communicate effectively with us. This includes qualified sign language interpretation and written information in other formats (large print, audio, accessible electronic formats, other formats). If you need these services, please contact us at (XXX) XXX-XXXX.

⁴ <https://www.plainlanguage.gov/guidelines/>

⁵ <https://www.kpwashingtontresearch.org/about-us/capabilities/research-communications/prism/>

⁶ 26 C.F.R. § 1.501(r)-4(b)(5)(ii)

- Southwestern Vermont Medical Center provides free language services to persons whose primary language is not English. This includes qualified interpreters and written information in non-English languages. If you need these services, please contact us at (XXX) XXX-XXXX.

Plain Language Summary Evaluation Conclusion:

The plain language summary of SVMC's FAP is not clear, concise, and understandable and does not comply with the minimal standards set by applicable federal regulations.

HCA Contact Information:

Eric Schultheis, Ph.D., Esq., Staff Attorney
Julia Shaw, MPH, Health Care Policy Analyst
Email: hcpolicystaff@vtlegalaid.org
Voice: (802) 495-0448 (Eric Schultheis)