Health Access Program

Policy Paper

Financial Assistance for the Underinsured

By Bill Rencher, JD, MPH
Director, Health Access Program

Introduction

Many Georgia residents have trouble paying their hospital bills even when they have health insurance. For example, over the last three years, "Judy" has undergone chemotherapy and other breast cancer treatments at a large Georgia hospital. Although she has insurance through her employer, her annual deductible is $3,000. She was charged that deductible for each of the three years she was in treatment along with various co-payments for a total out of pocket cost of more than $15,000. Judy takes home $2,000 a month and spends $500 a month on prescription drugs and other medical treatments. Because she has a job and insurance, she was not eligible for the hospital's financial assistance program but has worked out a payment arrangement with their billing department. In order to afford her payments, Judy had to move in with her mother.

Judy's story illustrates a common problem with hospital financial assistance policies: They often do not offer any assistance to those with insurance no matter how high their out-of-pocket costs. These patients are commonly referred to as the underinsured. **Typically anyone whose out-of-pocket medical costs in a given year exceed 10% of their annual income is considered to be underinsured.** But the term is more often used to describe anyone with high out-of-pocket costs, such as deductibles and co-payments, or whose insurance does not cover needed procedures. When the Patient Protection and Affordable Care Act (ACA) goes into full effect in 2014 and more people gain insurance coverage, the problems of the underinsured are likely to become more apparent. This paper will describe the legal and regulatory issues that discourage hospitals from providing assistance to the underinsured, the current status of hospital financial assistance policies in Georgia, and possible solutions to the problem going forward.

Legal and Regulatory Background

Traditionally, non-profit hospitals provide community benefits, including charity care, in exchange for their tax-exempt status. In Georgia, hospitals participating in the state Indigent Care Trust Fund (ICTF) are required to offer free care to patients with incomes below 125% of the federal poverty level (FPL) and discounted care to patients with incomes between 125% and 200% of FPL (Georgia DCH, Policies and Procedures for Hospital Services, Appendix Q, July 2012). Nothing in the state's laws or regulations relating to the ICTF mentions insurance status as a qualification for assistance, but only that assistance be offered to the "medically indigent" (O.C.G.A. § 31-8-154 (2)) which is defined as "a person with an income no greater than 200% of [FPL]…" (Ga. R. & Regs. § 111-3-6-.01 (2)).

The drafters of these rules obviously did not envision out-of-pocket costs being an issue for those with insurance. However, such costs have risen quite dramatically in recent years. For example, the Kaiser Family Foundation estimates that one out of three insured Americans currently has a deductible of at least $1,000; in 2006, the rate was one out of ten. Furthermore, half of small firm employees are covered by a high-deductible plan.

While it would seem that those with high out-of-pocket costs who have trouble paying their bills should be eligible for assistance despite their insurance status, federal regulations act as a deterrent to hospitals offering such help. The Georgia ICTF was established to comply with federal laws that require states participating in the Medicaid program to have a mechanism for reimbursing hospitals which treat a high proportion of Medicaid patients or other "low income patients with special needs" (42 U.S.C. 1396 (a)(13)(A)(iv)). These reimbursements are limited by the cost to a hospital of serving Medicaid and uninsured patients (42 U.S.C. 1396r-4 (g)). Federal regulations further clarify these provisions in other requirements that a state report only those amounts incurred for providing hospital services to low-income patients "with no source of third party coverage…" (42 C.F.R. 447.299 (c)(14)). The end result of these rules is that the state of Georgia does not have a mechanism to compensate hospitals for charity or discounted care for people who have insurance; therefore, Georgia hospitals have historically excluded anyone with any insurance from their financial assistance programs.

New provisions of the ACA requiring that all non-profit hospitals have well-publicized financial assistance policies do not specify whether these must include both the uninsured and the underinsured (I.R.C. § 501-r (4)). Proposed regulations interpreting these provisions are also unclear, as they make no reference to insurance status; however, several examples given to illustrate portions of the rules are of patients with insurance, but high out-of-pocket costs (IRS, proposed 21 C.F.R. 1.501 (r)). Given that there are no minimum standards for hospital financial assistance in the ACA, the Internal Revenue Service—charged with enforcing these provisions—cannot go further when regulating compliance. Therefore, there are no federal or state requirements that Georgia hospitals must provide assistance to the underinsured.

Financial Assistance Plans at Select Georgia Hospitals

Despite this legal shortcoming, several Georgia non-profit hospitals now include the underinsured in their financial assistance plans. For example, Piedmont, Northside and Saint Joseph's hospitals in Atlanta and Phoebe-Putney Memorial Hospital in Albany all provide financial assistance to the underinsured with the same eligibility requirements as for the uninsured. However, there are still hospitals that do not provide such assistance. Grady Memorial Hospital in Atlanta and Floyd Medical Center in Rome, for example, only provide financial assistance to those without insurance.

In addition, some hospitals have financial assistance for the underinsured, but with more limited terms than their assistance to the uninsured. For example, Northeast Georgia Medical Center in Gainesville provides assistance to those with high out of pocket costs, but only up to 200% of FPL, whereas their uninsured program offers assistance for those up to 300% of FPL. Georgia Health Sciences University Hospital in Augusta has an underinsured financial assistance program but only for Medicare patients. Wellstar Kennestone Hospital in Marietta provides assistance to the underinsured but excludes those with high-deductible health plans, the very people most likely to need it. (Financial assistance policies were not available from Emory University Hospital in Atlanta, DeKalb Medical Center in Decatur, or Memorial University Medical Center in Savannah).

Opportunities for Advocacy

Even without a requirement or reimbursement mechanism available in Georgia, hospitals which provide assistance to the underinsured have the advantage of including this expense as part of their community benefit requirements, instead of categorizing the amount as bad debt. New ACA requirements for non-profit hospitals have highlighted the obligations of hospitals to provide community benefits in exchange for their tax exempt status and most are eager to be seen as fully supportive of their communities. Therefore, there is opportunity for advocates to educate hospitals about the underinsured and community benefit and to encourage hospitals to adopt financial assistance policies that include the underinsured. Such policies not only benefit patients and the community, but also the hospitals as well.

At the state and federal level, laws and regulations could be changed to either require or encourage hospitals to adopt policies favorable to the underinsured. Unfortunately, there is little chance of that happening at the federal level. Congress could have done so when they drafted the ACA, but they did not; the issue is unlikely to come up again in the near future. There is more room for change at the state level. For example, New York has a program for reimbursing hospitals for assistance to those with high out of pocket costs. Yet, given recent budget cuts, it is unlikely that Georgia would be able to establish such a program without more sources of revenue. For these reasons, the best path for advocacy in Georgia right now is with the hospitals themselves.