

Health Care *Alert*

Health Care Tax alert

April 2, 2010

Additional requirements in maintaining tax-exempt status are part of health care reform bill

The sweeping health care reform signed into law by President Obama on March 23, 2010 will have an immediate impact on tax-exempt hospitals. Section 9007 of the Patient Protection and Affordable Care Act adds two new sections, §§501(r) and 4959, to the Internal Revenue Code (IRC), which are intended to differentiate tax-exempt hospitals from their for-profit counterparts and provide transparency related to how tax-exempt hospitals fulfill their charitable mission. The new IRC sections will impose additional requirements for hospitals to maintain their tax-exempt status; failure to meet these requirements may result in the loss of tax-exempt status.

The Act imposes four basic requirements on tax-exempt hospitals:

- Each hospital must conduct a **community health needs assessment** at least once every three years. Section 4959 imposes an excise tax penalty of \$50,000 on any tax-exempt hospital that fails to meet the community health needs assessment in any given year. Continued noncompliance could result in loss of tax-exempt status.
- Hospitals are required to adopt, implement and publicize a written **financial assistance policy** that includes eligibility criteria for financial assistance, details about free or discounted care, and methods for applying for financial assistance.
- Hospitals have new **limitations on charges** to indigent patients. For individuals eligible for assistance under the financial assistance policy, hospitals are permitted to bill no more than the amounts generally billed with insurance coverage.
- Hospitals have new **billing and collection requirements** that ensure hospitals do not take extraordinary collections actions before making efforts to determine whether the individual is eligible for financial assistance under the hospital's financial assistance policy.

These new requirements are effective for tax years after March 24, 2010, with the exception of the community health needs assessment, which is effective two years from March 23, 2010.

A focus on community health needs assessments

For tax-exempt hospitals, the Act's key component is the requirement to undertake a community health needs assessment. The assessment must include input from a broad spectrum of individuals [in the community] that possess the special knowledge of, or expertise in, public health. Once the assessment is completed, the hospital must then adopt a formal implementation strategy to meet those community needs identified in the assessment. To the extent any needs are not being met, the tax-exempt hospital will be required to explain why these needs have not been addressed.

To enforce compliance, the Act requires the Secretary of the Treasury (or a delegate) to review the hospital's community benefit activities every three years. The Act does not stipulate how this review will be undertaken, though it is expected that it may entail additional scrutiny of the Form 990, Schedule H, where community benefit information is currently reported.

Tax exempt hospitals must be mindful of these new changes and begin compliance efforts almost immediately. This means developing the appropriate written financial assistance policy and implementing the appropriate billing and collections procedures to limit charges to indigent patients and ensure fair collection practices.

Finally, tax-exempt hospitals should also strategize on how they plan to meet the community health needs assessment requirement that goes into effect in 2012. Tax-exempt hospitals should confirm before the beginning of their next tax year that they have the required policies and procedures in place.

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