

New IRS Requirements For Charitable Hospitals: Final Rule Implements Affordable Care Act Mandates and New Tax Code Section 501 (r)

The IRS published its long awaited final rule December 31, 2014 to implement certain requirements of the Affordable Care Act (the ACA). The ACA added a new provision in Section 501(r) of the Tax Code, which creates additional criteria that tax-exempt hospitals must meet to remain eligible for exemption. These new exemption criteria are in addition to other mandates of the ACA, including the requirement that hospitals make their standard charges available to the public.

The regulations impose highly specific conditions upon hospitals with Tax Code Section 501 (C)(3) tax-exempt status and warrant a full and comprehensive assessment of and revision, as needed, to existing policies and financial practices at facilities that meet the new tax exemption criteria. These new rules will be effective on the first taxable year following December 29, 2015. Unexcused failure to meet the requirements of 501(r), other than minor omissions or errors, may result in revocation of 501(C)(3) status, and/or the imposition of tax liability upon income of the non-compliant hospital. In addition, non-compliant hospitals are subject to an excise tax of \$50,000 per year for each hospital facility that is non-compliant.

In short, the new requirements under 501(r) include:

1. Hospitals must conduct a Community Health Needs Assessment (CHNA) every three years which defines the community served and assesses the health needs of that community, including financial and other barriers to care. Input must be solicited from persons who represent the broad interests of the community and the CHNA must be published on the hospital's website and made publicly available in paper copy for inspection. The governing body must adopt an implementation strategy to meet the community's health needs.
2. Hospitals must have written Financial Assistance and Emergency Medical Care Policies which apply to all emergency and other medically necessary care. These policies must:
 - Be publicized in plain language in highly specific ways, including offering a paper summary to patients at intake or discharge, adding a conspicuous statement on bills and setting up public displays in the Emergency Department and Admissions areas of the facility;
 - Be translated for limited English proficiency (LEP) populations;
 - Include eligibility criteria that patients must satisfy for financial assistance and explain whether such assistance includes free or discounted care;
 - Set forth the basis for calculating amounts patients are charged and specify the method the hospital uses to determine the amounts generally billed (AGB) to individuals who have insurance;
 - State that a patient who meets financial assistance eligibility may not be charged more than the AGB charged to patients with insurance;

- Describe the method for applying for financial assistance;
 - Identify actions that may be taken in the event of non-payment, if this is not covered in a separate policy;
 - List information obtained from sources other than the patient if used in determining eligibility and describe under what circumstances prior financial assistance eligibility determinations are used; and
 - Provide a list of other providers delivering the emergency or medically necessary care in the hospital and identify which providers are covered under the facility's Financial Assistance Policy and which are not.
3. Hospitals must limit charges to patients who are eligible for financial assistance to no more than the AGB for emergency and medically necessary care that is covered under the financial assistance policies and in the case of all other care covered under the policies, to an amount less than the gross charges. Hospitals must make AGB calculations in accordance with IRS-accepted methods.
4. Hospitals must use reasonable efforts to determine whether a patient is eligible for financial assistance before they pursue extraordinary collection actions (ECA), including selling the debt to a third-party without appropriate safeguards to protect against ECA, reporting to consumed credit agencies, denying care until payment is made or pursuing legal or judicial processes regarding the debt.

Hospitals must also submit additional information with their tax returns including: (1) audited financial statements; (2) copies of the CHNA implementation strategy and specific sections of the CHNA subject to the implementation strategy or the URL to the Website where it is published; (3) a description of actions taken or deferred to address identified health needs in the CHNA and (4) amounts of excise tax, if any, imposed for non-compliance with these new requirements of 501(r).

Hospitals should review and develop necessary changes to financial assistance policies, forms, billing statements, financial practices, notices and prepare to conduct the required CHNAs. Governing Boards must be educated on the requirements imposed upon them to adopt and approve implementation strategies to ensure that the health needs of the community served are sufficiently addressed.

Bond's Exempt Organizations Practice Group has a long history of assisting exempt organizations and works closely with Bond's team of health care attorneys to provide comprehensive and practical services to charitable hospitals. These legal professionals are available to assist you as you undertake efforts to meet these new requirements.

To learn more, contact [Regina S. McGraw](mailto:rmcgraw@bsk.com) (315.218.8694; rmcgraw@bsk.com) or [Frank J. Patyi](mailto:fpatyi@bsk.com) (315.218.8164; fpatyi@bsk.com).



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