



The Hilltop Institute

analysis to advance the health of vulnerable populations

Federal Requirements for Tax-Exempt Hospitals: the IRS Final Rules

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The New Era:
Hospital Community Benefits &
Patient Financial Assistance

Overview

- The Patient Protection and Affordable Care Act, P.L. 111-148 (2010)
- Regulatory History
- IRS' Final Rule:
 - Scope, Impact, and Compliance Deadline
 - Key Provisions and Notable Changes
(79 Fed. Reg. 78953 - 79016)

ACA § 9007: Additional Requirements for Charitable Hospitals

Adds I.R.C. §501(r)

- Community health needs assessment and implementation strategy on 3-year cycle
- Written financial assistance policy
- Limitations on hospital charges, billing, and collections
- Sanctions for noncompliance

Regulatory History

- IRS issued two Notices of Proposed Rulemaking in 2012 and 2013
- Almost 300 comments received
- IRS amended Schedule H to include extensive information regarding 501(r) compliance

Final Rules: Scope

The rules apply to:

- All private, nonprofit, tax-exempt hospital facilities
- Many government hospital facilities

Final Rules: Impact

- Rules address every part of §501(r)
- Sanctions for noncompliance range from a requirement to correct a minor error or omission to revocation of tax exemption for willful and egregious actions

Final Rules: Compliance Deadlines

- Apply to hospitals' taxable years beginning after 12/29/15
- For taxable years beginning on or before 12/29/15, hospitals can rely on reasonable, good faith interpretations of §501(r) by complying with either the proposed or final rules

Financial Assistance Policies (FAPs)

- Notable changes in the Final Rules regarding a hospital's FAP include:
 - FAP must cover “all emergency and other medically necessary care.” Hospitals are to define “medically necessary care.”
 - FAP must describe which providers are covered by the FAP and those which are not. (26 C.F.R. §1.501(r)-4(a))

Financial Assistance Policies

continued

- The FAP, plain language summary of the FAP, and FAP application form must be available in at least two places: the emergency room and the admissions area (26 C.F.R. §1.501(r)-4(a))
- Hospitals must also “notify and inform” members of the community about their FAP (26 C.F.R. §1.501(r)-4(b))

Financial Assistance Policies

continued

- Final Rules reduce the language translation *threshold* to the lesser of 1,000 individuals or 5 percent of the community
- Final Rules clarify that only discounts within the FAP may be reported on Schedule H

Community Health Needs Assessment

- Final Rules generally follow the approach of the proposed rules:
 1. Development of a CHNA, including prioritizing significant needs identified
 2. Issuance of a CHNA report
 3. Adoption of an Implementation Strategy that explains how the hospital proposes to address significant health needs identified (70 Fed. Reg. 78976-77)

CHNA: Health Needs

- Final rules clarify that the health needs a hospital may consider in its CHNA include not only the need to address financial and other barriers to care, but also the need to prevent illness, to ensure adequate nutrition, or to address social, environmental, and behavioral factors that influence health. (26 C.F.R. §1.501(r)-2)

CHNA: Health Needs continued

- Strong signal that CHNA concerns the health of the community
- Also consistent with recent indications from IRS that community benefit spending can encompass investments in community health improvement. (2014 Instructions to Form 990, Schedule H).

CHNA: Defining “Community”

- Final rules clarify that geographic area, target populations, and principal hospital functions should be taken into account
- But also reiterate that medically underserved low-income or minority populations who live in the geographic area may not be excluded—subject to 3 narrow exceptions (26 C.F.R, §501(r)-3)

CHNA: Input from Community

- Requirement that input from persons representing the broad interests of the community is retained
- Final rules clarify that hospital must solicit and consider input in:
 - Assessing health needs
 - Prioritizing needs identified
 - Identifying resources available to meet those needs
 - The effectiveness of prior CHNAs and implementation strategies (26 C.F.R. §501(r)-3(b))

CHNA: Evaluation Required

- New Requirement
 - CHNA report must evaluate the impact of any actions taken to address identified needs since the hospital finished conducting its immediately preceding CHNA (26 C.F.R. §501(r)-(3))

Implementation Strategy: Additional Time

- Final rules provide hospital authorized body an additional 4 1/2 months to adopt Implementation Strategy
 - Implementation Strategy must be adopted on or before the 15th of the month after the end of the tax year in which the hospital completes the final step in its CHNA (26 C.F.R. §1.501(r)-3(c)(5))

Failures to Satisfy Section 501(r)

- Hospitals should ensure that they have practices and procedures in place that are reasonably designed to facilitate overall compliance
- This will put them in a more favorable position should enforcement issues ever arise

Failures to Satisfy Section 501(r): Minor Errors and Omissions

- Under Final Rules, minor errors or omissions not considered a failure if:
 - Either inadvertent or due to reasonable cause
and
 - Hospital promptly corrects the error or omission
- “Minor,” “inadvertent,” and “due to reasonable cause” are defined terms (26 C.F.R. §1.501(r)-2)

Failures to Satisfy Section 501(r): Minor Errors or Omissions continued

- Correcting the minor error or omission includes establishing, reviewing, or revising practices or procedures that are reasonably designed to facilitate overall compliance (26 C.F.R. §1.501(r)-(2))
- IRS declined to provide further guidance or examples

Failures to Satisfy Section 501(r): Excused

- As in the proposed regulations, IRS will excuse compliance failures that are neither willful nor egregious if the hospital corrects and discloses the failure in accord with agency policy instructions
 - A \$50,000 excise tax will be imposed for each excused compliance failure (26 C.F.R. §1.501(r)-(2)(d))

Next Steps for Hospitals

- Each hospital will want its “authorizing body” and appropriate staff to:
 - Closely examine the Final Rules
 - Ensure that its community benefit practices, procedures, and documents are reasonably designed to facilitate overall compliance with IRC Section 501(r)

Next Steps for Hospitals continued

- Evaluate the hospital's community benefit initiatives – find out what works to improve health in its community
- Advance the understanding that community benefit promotes the hospital's health mission by contributing to improved community health

Section 501(r) and State Law

- In addition to federal requirements, some states have their own community benefit laws and regulations with which hospitals must comply
- Detailed analyses of state community benefit requirements can be found in Hilltop's *2015 Community Benefit State Law Profiles*:
http://www.hilltopinstitute.org/hcbp_cbl.cfm

About The Hilltop Institute

The Hilltop Institute at the University of Maryland, Baltimore County (UMBC) is a nationally recognized research center dedicated to improving the health and wellbeing of vulnerable populations. Hilltop conducts research, analysis, and evaluations on behalf of government agencies, foundations, and nonprofit organizations at the national, state, and local levels.

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