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501(r): Non-Profit Operating Considerations

ACA 501(r)

- 501 (c)(3) Section of the tax code which contains the requirements to obtain tax exempt status

- 501 (r) was passed under the ACA. It is a new section of the tax code, creating *additional requirements* for hospitals to maintain tax exempt status

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Additional Requirements

- The *additional requirements* to keep tax exemption apply to hospitals on a facility-by-facility basis

- Those *additional requirements*:
  - Community Health Needs Assessment
  - Financial Assistance Policy

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Community Health Needs Assessment

- Section 501(r)(3): hospitals must conduct a community health needs assessment (CHNA) every three years and adopt an implementation strategy to meet the community health needs identified through such assessment.

- The CHNA must (1) take into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health and (2) be made widely available to the public. Section 501(r)(3)(B).

- $50,000 excise tax on a hospital organization that fails to meet the CHNA requirements of section 501(r)(3).

Financial Assistance Policy

- Section 501(r)(4) requires a hospital organization to establish a Financial Assistance Policy ("FAP")
- A FAP must include the following:
  - eligibility criteria for financial assistance, and whether such assistance includes free or discounted care;
  - the basis for calculating amounts charged to patients ("AGB");
  - the method for applying for financial assistance (reasonable steps);
  - the actions the organization may take in the event of nonpayment, including collections action and reporting to credit agencies; and
  - measures to widely publicize the policy within the community to be served by the organization (120/240).

Financial Assistance Policy

AMOUNT GENERALLY BILLED

- Section 501(r)(5) requires a hospital organization to limit amounts charged to individuals eligible for assistance under the organization's financial assistance policy to not more than the amounts generally billed to individuals who have insurance covering such care.

Financial Assistance Policy

AMOUNT GENERALLY BILLED

- Two methods to determine AGB (mutually exclusive):
  - Look Back Method
    - Actual past claims paid by:
      - Medicare fee-for-service, only; or
      - Medicare fee-for-service and all private health insurers paying claims together
  - Prospective Method
    - Estimate amount facility would be paid by Medicare and Medicare beneficiary, based on Medicare fee-for-service rates.

Financial Assistance Policy

BILLING AND COLLECTION

- Section 501(r)(6) requires a hospital organization to forego extraordinary collection actions against an individual before the organization has made reasonable efforts to determine whether the individual is eligible for assistance under the hospital organization's financial assistance policy (120/240).
- IRS Technical Explanation states that "extraordinary collections include lawsuits, liens on residences, arrests, body attachments, ***or other similar collection processes***." Technical Explanation at 82. The Technical Explanation also states that "[i]t is intended that for this purpose, 'reasonable efforts' includes notification by the hospital of its financial assistance policy upon admission and in written and oral communications with the patient regarding the patient's bill, including invoices and telephone calls, before collection action or reporting to credit agencies is initiated." Technical Explanation at 82.

Timing

EFFECTIVE DATES

- Section 501(r) (except for section 501(r)(3)), section 6033(b)(10), and section 6033(b)(15) apply to taxable years beginning after **March 23, 2010**, the date of enactment of the Affordable Care Act. The CHNA requirements of section 501(r)(3) are effective for taxable years beginning after **March 23, 2012**. The section 4959 excise tax for failure to satisfy section 501(r)(3) is effective for failures occurring after the date of enactment.
- Regulations promulgated in June 2012

Failure to Comply

- The IRS will not treat a hospital organization's failure to meet a requirement of § 501(r) as a failure *as long as it is disclosed and corrected*, ***so long as the failure is not willful or egregious***.
- Even if the failure is corrected, a hospital organization may be subject to excise tax under § 4959 for failures to meet the requirements of § 501(r)(3).

Failure to Comply

- *Willful or egregious*. A failure that is willful includes a failure due to gross negligence, reckless disregard, or willful neglect. A hospital organization's correction and disclosure of a failure does not create a presumption that the failure was not willful or egregious. However, the fact that correction and disclosure were made will be considered as a factor and may tend to indicate that an error or omission may not have been willful or egregious.

Disclosure

- A failure is disclosed if the hospital organization reports the following information on Schedule H, *Hospitals*, of its Form 990, *Return of Organization Exempt From Income Tax*, for the tax year in which the failure is discovered:
  - (1) *A description of the failure*
  - (2) *A description of the discovery*
  - (3) *A description of the correction made*
  - (4) *A description of the practices and procedures*, if any, that were revised or newly established by the hospital organization for its hospital facility or facilities to minimize the likelihood of the type of failure recurring and to promptly identify and correct any such future failures that do occur; or, if no practices and procedures were revised or newly established by the hospital organization, an explanation of why no changes in practices and procedures were needed.

Correction

- (1) *Restoration of affected persons*. To the extent reasonably feasible, the correction should be made with respect to each affected person, if any, and should restore the affected person(s) to the position they would have been in had the failure not occurred, regardless of whether the harm suffered by the affected person(s) occurred in a prior year and regardless of whether such prior year is a closed taxable year.
- (2) *Reasonable and appropriate correction*. The correction should be reasonable and appropriate for the failure.
- (3) *Timing*. The correction should be made as promptly after discovery as is reasonable given the nature of the failure.

Correction

- (4) *Implementation/modification of safeguards*. If the hospital organization has not established practices and procedures, the hospital organization should establish such practices and procedures as part of its correction. If the hospital organization has established practices and procedures but those practices and procedures failed to anticipate the particular type of failure that occurred, the hospital organization should determine if changes to its practices and procedures are needed to reduce the likelihood of that type of failure recurring and to assure prompt identification and correction of any such failures that do occur. If it identifies any such changes to its practices and procedures, it should implement those changes.

Correction

Examples

- (1) A hospital facility that has failed to adopt a CHNA report that contains all of the elements required by § 1.501(r)–3 may correct the failure by preparing and adopting a CHNA report containing all of the required elements and making the corrected CHNA report widely available on a Web site within the meaning of § 1.501(r)–1(c)(4) of the 2013 proposed regulations.

- (2) A hospital facility that has failed to adopt a FAP that contains all of the elements required by § 1.501(r)–4 may correct the failure by establishing a FAP containing all of the required elements, including making the corrected FAP widely available on a Web site within the meaning of § 1.501(r)–1(c)(4) of the 2013 proposed regulations.

Correction

Examples

- (3) A hospital facility has failed to meet the requirements of § 1.501(r)–5 because, due to processing errors, it charged FAP-eligible individuals more than an amount permitted under that section. The errors were discovered during the month-end accounting period closing. The hospital facility may correct the failure by providing all of the affected FAP-eligible individuals with an explanation of the error, a corrected billing statement, and a refund of any payments the individuals made to the hospital facility (or any third party) in excess of the amount they are determined to owe as FAP-eligible individuals.

Correction

Examples

- (4) If a hospital facility fails to properly implement a policy required under § 1.501(r)–4 and that failure does not involve overcharging a FAP-eligible individual or engaging in an ECA (for example, a failure to widely publicize a FAP in the manner described in the FAP), the hospital facility may correct the failure by beginning to implement the policy correctly and taking reasonable actions to compensate for the failure (such as doing additional outreach or advertising of the FAP in local media in the case of a failure to widely publicize the FAP).

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Risks/Challenges

- Implementation
  - FAP
    - FAP Eligibility
    - AGB
    - No Gross Charges
    - ECA's
    - 120/240
  - CHNA

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Risks/Challenges

- Operating
  - Audit
    - Once every 3 years
  - Workflow
    - Financial Assistance Defined
    - Installment Payment Plans
    - Early Out Assignment
    - Selling Receivables
  - Financial Adjustment
    - Fee for Service vs. Fee for Outcome
  - CHNA
  - Excise Tax
  - Coordination with and among vendors

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Questions and Answers

Thank You!

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