Reinhart

Are You Ready? Section 501(r) Final Regulation Deadline Coming December 29, 2015

Nearly five years after the passage of the Patient Protection and Affordable Care Act of 2010 ("PPACA"), charitable hospitals covered by Internal Revenue Code ("IRC") section 501(c)(3) will need to comply with the final regulations for financial assistance policies ("FAPs") and billing and collection policies ("BACs"), among other requirements under IRC section 501(r). Specifically, the final regulations apply to taxable years beginning after December 29, 2015—meaning many charitable hospitals will need fully compliant policies and procedures beginning January 1.

POSTED:

Dec 4, 2015

RELATED PRACTICES:

Health Care

https://www.reinhartlaw.com/practices/health-care

Background

IRC section 501(r) was added to the IRC by the PPACA, enacted March 23, 2010 and imposes additional requirements on charitable hospitals. IRC section 501(r) provides that a hospital described in IRC section 501(r)(2) will not be treated as a tax-exempt organization described in IRC section 501(c)(3) unless the organization meets the requirements of IRC sections 501(r)(3-6).

- Section 501(r)(3) requires a charitable hospital to conduct a community health needs assessment ("CHNA") at least once every three years and to adopt an implementation strategy to meet the community health needs identified through the CHNA.
- Section 501(r)(4) requires a charitable hospital to establish a written FAP and a written policy relating to emergency medical care.
- Section 501(r)(5) requires a charitable hospital to charge eligible individuals less than gross charges for any medical care covered by the FAP, and to limit amounts charged for emergency or other medically necessary care provided to eligible individuals to not more than the amounts generally billed ("AGB") to individuals who have insurance covering such care.
- Section 501(r)(6) requires a charitable hospital to make reasonable efforts to determine whether an individual is FAP-eligible before engaging in extraordinary collection actions ("ECAs").

Since the initial passage of IRC section 501(r), the Treasury Department and the Internal Revenue Service ("IRS") have struggled to craft companion regulation. Proposed regulations were released in 2012 regarding FAPs and BACs, with

All materials copyright © 2025 Reinhart Boerner Van Deuren S.C. All rights reserved.

subsequent regulations relating to CHNAs being released in 2013. Due to the long delay of the final regulations, the IRS published a formal notice in January 2014 stating that charitable hospitals could rely on both the 2012 and 2013 proposed regulations, pending the publication of final regulations or other applicable guidance. Finally, on December 31, 2014, the IRS released the final regulations regarding FAPs, BACs and CHNAs (the "Final Regulations").

Clarity on the "Effective Date"

One common misconception that many charitable hospitals have had over the past five years has been the belief that IRC section 501(r) is not effective until the Final Regulations' deadline. In reality, however, charitable hospitals have been required to be in compliance with the statutory IRC section 501(r) requirements beginning as early as 2010. The statutory requirements of IRC section 501(r), with the exception of IRC section 501(r)(3), applied to taxable years beginning after March 23, 2010. IRC section 501(r)(3) applied to taxable years beginning after March 23, 2012.

Charitable hospitals, however, have until the taxable year beginning after December 29, 2015 to fully implement the specific provisions of the Final Regulations. Prior to such deadline, the Final Regulations state that hospitals may rely on a "reasonable, good faith interpretation" of IRC section 501(r) to meets its statutory requirements. The Final Regulations go on to state that hospitals that comply with the 2012 and 2013 proposed regulations "will be deemed" to be in full compliance with the statutory requirements of IRC section 501(r) until the Final Regulation's compliance deadline. Therefore, even if your hospital's next tax year does not begin until July 1, immediate action may still be necessary to demonstrate reasonable, good faith compliance.

Penalties for Noncompliance

Revocation of Tax-Exempt Status. A charitable hospital failing to meet one or more of the requirements of section 501(r) may have its section 501(c)(3) status revoked as of the first day of the taxable year in which the failure occurs. In determining whether to take such an action, the IRS will consider, among other relevant facts and circumstances: the hospital's history of noncompliance; the size, scope, nature and significance of the hospital's failure(s); the reason for the failure(s); whether the hospital had policies and safeguards in place reasonably designed to facilitate compliance; whether the failure(s) was promptly corrected;

All materials copyright © 2025 Reinhart Boerner Van Deuren S.C. All rights reserved.

and whether correction came before IRS intervention.

Taxation of Noncompliant Hospitals. In the event that a hospital organization (as described in IRC section 501(c)(3)) with multiple charitable hospitals has one or more—but not all—of its hospitals separately fail to comply with IRC section 501(r), the income derived from the noncompliant hospital facility may be subject to taxation if the noncompliant hospital would have had its status revoked as outlined above, if it were the only hospital in the organization. Despite the potential taxation, noncompliance will not, by itself, affect the tax-exempt status of bonds issued by the noncompliant hospital.

Minor Errors and Omissions. The Final Regulations recognize that even if a hospital has policies and safeguards reasonably aimed at complying with IRC section 501(r), minor errors and omissions may still occur. As such, the Final Regulations explain that a hospital's omission of required information from a policy or report described in section 1.501(r)–3 (CHNA) or section 1.501(r)–4 (FAP) of the Final Regulations, or an error with respect to the implementation or operational requirements described in sections 1.501(r)–3 through 1.501(r)–6 of the Final Regulations, will not be considered a failure to meet a requirement of IRC section 501(r) if certain conditions are satisfied. These conditions include that:

- such omission or error was minor and either inadvertent or due to reasonable cause;
- the hospital promptly corrects the error or omission; and
- such correction includes the establishment (or review and, if necessary, revision) of practices or procedures that are reasonably designed to promote and facilitate overall compliance with IRC section 501(r).

Errors or omissions rising above the level of "minor" will require disclosure in accordance with rules set forth by revenue procedure, notice or other guidance published in the Internal Revenue Bulletin. The IRS will, however, excuse certain failures if the hospital corrects the error or omission, and such error or omission was neither "willful" nor "egregious" as defined by the Final Regulations.

CHNA Excise Tax. If a hospital organization fails to meet the requirements of IRC section 501(r)(3) separately with respect to a charitable hospital it operates in any taxable year, a $50,000 tax on the hospital organization will be imposed. If a hospital organization operates multiple hospitals and fails to meet the requirements of IRC section 501(r)(3) with respect to more than one hospital, the $50,000 tax will be imposed on the hospital organization separately for each hospital's failure.

All materials copyright © 2025 Reinhart Boerner Van Deuren S.C. All rights reserved.

Compliance with State Laws

The Final Regulations do not contain any provisions equating compliance with one or more requirements in applicable state law to compliance with one or more of the requirements in the Final Regulations. Furthermore, the Final Regulations are not intended to preempt any state laws or regulations, and any additional or stricter requirements under a state's laws or regulations will continue to apply to hospitals licensed in that state. As some hospitals have already begun to discover, this can mean substantial analysis to determine how state and federal requirements fit together including, among other issues, notice and collection timing, minimum levels of assistance and billing statement contents.

Are You Compliant?

- As you begin to finalize your IRC section 501(r)-compliant policies and procedures, please use the following questions to begin your final compliance review. Although these questions do not represent a comprehensive compliance checklist, they should help you gain a clearer sense of whether your organization has taken steps to meet its IRC section 501(r) obligations. Have you conducted your CHNA?
- What AGB calculation method have you used and what payment sources are included? Does your FAP convey this information?
- Are you using one AGB percentage, or separate percentages for different categories of care or departments?
- Have you compared your AGB percentage to discounts currently offered to determine if any current discounts fall below the AGB minimum (this may be an issue even for current state mandated discounts)?
- Does a gross charge limit apply (i.e., does your FAP include non-medically necessary care)?
- Is your provider list up to date and how is it incorporated into the FAP?
- Is your FAP "widely publicized" including, but not limited to, posting the FAP, FAP application form and a plain language summary of the FAP on your website?
- Are your billing and collection notice and ECA deadlines compliant with both state and federal requirements?
- Do you provide required refunds for care ultimately decided to be covered by the FAP?
- Have you reviewed your contracts with third-party debt collectors for the required elements?

All materials copyright © 2025 Reinhart Boerner Van Deuren S.C. All rights reserved.

Helpful Links

- IRC section 501(r) (26 U.S.C. § 501)
- June 26, 2012 Proposed Regulations (77 FR 38148)
- April 5, 2013 Proposed Regulations (78 FR 20523)
- August 15, 2013 Final and Temporary Regulations (78 FR 49681)
- January 13, 2014 Notice (Notice 2014-2)
- January 13, 2014 Notice (Notice 2014-3)
- December 31, 2014 Final Regulations (79 FR 78954)
- June 26, 2015 Notice (Notice 2015-46)

This *Headlines in Health Care Law E-Alert* provides general information and should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them.

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.

All materials copyright © 2025 Reinhart Boerner Van Deuren S.C. All rights reserved.