

## 501(R) COMPLIANCE - WHAT YOU NEED TO KNOW TODAY

As Hall Render previously reported, the IRS released the long awaited Code Section 501(r) **final regulations** on December 29, 2014. The significance of Code Section 501(r) and these final regulations for tax-exempt hospital organizations cannot be overstated as they represent the biggest change to the tax exemption criteria for hospitals since the IRS announced the community benefit standard in 1969. Compliance with the final regulations will be critical to maintaining tax-exempt status and avoiding costly penalties and taxes.

### IMPORTANT COMPLIANCE QUESTIONS

By now, hospital leadership is familiar with the core elements of Code Section 501(r): the community health needs assessment ("CHNA"); financial assistance policy ("FAP") and emergency care policy; limitations on charges; and restrictions on the timing of extraordinary collection actions. Hospital organizations should begin their review of the final regulations with several key questions in mind.

1. Why is compliance important? In short, failure to comply with Code Section 501(r) and the specific requirements contained in the final regulations could have significant detrimental consequences. The penalty for failing the requirements for the FAP, the limitation on charges and the billing and collection restrictions could range from a requirement to correct minor errors to the revocation of a hospital organization's tax-exempt status. For hospital organizations that operate multiple hospital facilities, the IRS may assess income tax on the income (less applicable deductions) from each noncompliant hospital facility (an intermediate measure short of revocation of tax exemption for the entire hospital organization). Meanwhile, with respect to the CHNA requirements, a hospital organization could be subject to a \$50,000 per year penalty for each hospital facility that fails to comply and/or one of the penalties identified above.
2. What has changed in the final regulations? The final regulations are generally consistent with, and follow the framework of, the two sets of previously issued proposed regulations pertaining to the four requirements of Code Section 501(r). However, the IRS and Treasury Department made numerous significant revisions in the final regulations, some of which will reduce the overall compliance burden for hospital organizations (such as the removal of the requirement to include a plain language summary of the FAP with each billing statement) and others that will increase the compliance burden (such as a lower threshold for when a hospital facility must translate its FAP into the primary language of any populations with limited English proficiency). Hall Render will provide additional analysis and guidance regarding the primary changes over the coming weeks.
3. When are the final regulations applicable? The final regulations apply to tax years that begin after December 29, 2015, which will give all tax-exempt hospital organizations at least one year to come into compliance. For example, calendar year organizations must comply beginning January 1, 2016, and June 30 year-end organizations must comply beginning July 1, 2016. Even before then, of course, hospital organizations already must comply with the statutory provisions of Code Section 501(r) itself. To do so, they may rely on a reasonable, good faith interpretation of the rules, including the previously issued proposed regulations or the final regulations. Consequently, hospital organizations who have not already come into compliance with the proposed regulations may want to consider early adoption of the final regulations.
4. What are the keys to compliance? Compliance will demand a multi-faceted approach because the final regulations affect numerous hospital departments and functions, including the emergency room, patient financial services, patient intake and discharge protocols, collections and community outreach. First, if not already accomplished, a hospital organization should assemble a team of internal stakeholders and trusted advisors to guide the compliance strategy. This team should include legal counsel familiar with Code Section 501(r) to help assess risks, develop solutions and provide potential confidentiality protections for sensitive issues under the attorney-client privilege. Second, hospital organizations should inventory and evaluate their past compliance activities and current policies and procedures. Third, hospital organizations must identify necessary changes to policies, procedures and operations within the hospital. Fourth, hospital organizations must properly adopt and fully implement the necessary changes. Finally, ongoing monitoring of compliance will need to be systematized within the hospital organization to identify potential weaknesses and ensure continued compliance.

## PRACTICAL TAKEAWAYS

Since the enactment of the Affordable Care Act in 2010, hospital organizations and their leaders have been working to comply with the requirements of Code Section 501(r) based on various pieces of interim, non-binding guidance. Now that regulations have been finalized, hospital organizations can operate with greater certainty. However, the final regulations still will pose significant compliance challenges requiring input from numerous hospital stakeholders involving issues such as the effect on the patient care experience, strategic planning implications, operationalizing the requirements and the financial impact of all aspects of compliance.

Hall Render will provide ongoing analysis and guidance regarding the final regulations. Over the coming weeks, Hall Render will publish additional articles, will make various resources available on our website and will host a complimentary one-hour webinar on January 29 at 1 PM EST to discuss the final regulations and the implications for hospital organizations. Registration information for the webinar will be distributed soon.

Your questions about the final regulations and the requirements of Code Section 501(r) can be directed to:

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