

Tax News & Views Health Care Edition

IRS clarifies “provider list” requirements for charitable hospital organizations

The Internal Revenue Service (“IRS”) recently issued Notice 2015-46 which provides clarifications to the requirement in the Treasury Regulations under Internal Revenue Code (“IRC”) Section 501(r)(4) that a hospital facility’s financial assistance policy (“FAP”) include a list of providers. The “provider list” must include any providers, other than the hospital facility itself, delivering emergency or other medically necessary care in the hospital facility and specify which providers are and are not covered by the hospital facility’s FAP.

Background

The Patient Protection and Affordable Care Act enacted IRC Section 501(r) on March 23, 2010. IRC Section 501(r) requires a charitable hospital organization to meet the requirements related to the community health needs assessment, financial assistance policy, limitations on charges, and billings and collections policies and practices. On December 29, 2014, final regulations were released to provide guidance regarding the requirements for charitable hospital organizations under Section 501(r) and the consequences for failing to meet any of the requirements.

Financial assistance policy (FAP)

IRC Section 501(r)(4) requires a charitable hospital organization to establish a written FAP that applies to all emergency and medically necessary care provided by the hospital facility. Commonly, patients, including emergency room patients, are seen by private physician groups or other third-party health care providers while in the hospital facility. In response to comments from the public, under the final regulations, Treasury clarified that a hospital facility’s FAP must apply to all emergency and medically necessary care provided in the hospital facility only to the extent the care is provided by the hospital facility itself or a substantially-related entity. Therefore, care provided in the hospital facility by non-employee providers in private physician groups or hospital-owned practices are not required to be subject to the FAP under the regulations.

However, to provide transparency to patients receiving care in the hospital, the Treasury Department and IRS felt it was important for a hospital facility’s FAP to clearly disclose which services provided in the hospital facility are covered by the FAP and which are not. Therefore, the final regulations require a hospital facility’s FAP to include the provider list described above.

Notice 2015-46

Recently, public concerns regarding the provider list requirement have been expressed to the IRS, particularly with respect to large hospital facilities where the number of providers delivering emergency or medically necessary care can be quite large. Additionally, the provider list may change frequently because physicians move or change aspects of their practice and providers’ relationships with a hospital facility may be complicated and subject to change. In response to these concerns, the IRS issued Notice 2015-46 to provide clarification regarding the provider list and the FAP.

The Notice states that for purposes of documenting the provider list, a hospital facility may list the names of individual doctors, practice groups, or any other entities that are providing emergency or medically necessary care in the hospital facility by the name used either to contract with the hospital or to bill patients for care provided. For example, if all of the doctors in a practice group that provides emergency or other medically necessary care in the hospital facility are covered by the hospital facility’s FAP, the hospital facility may include the name of the practice group, rather than the name of each individual doctor, in its provider list and indicate which services of the practice group are covered by the FAP.

If a provider is covered by a hospital facility’s FAP in some circumstances but not in others, the hospital must describe the circumstances in which the emergency or other medically necessary care delivered by the provider will and will not be covered by the FAP.



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A hospital facility's provider list must indicate whether the services of a particular provider are or are not covered by the hospital facility's FAP but is not required to indicate whether that provider's services are (or may be) covered by another entity's financial aid policy or program.

The Notice also clarifies that a hospital facility may maintain the list of providers in a document separate from the FAP, such as in an appendix, provided that the document includes the date on which it was created or last updated. If a hospital maintains its provider list in a document separate from the FAP, the hospital's FAP must state that the list of providers is maintained in a separate document and explain how members of the public may readily obtain it free of charge, both online and on paper.

In general, a hospital will only be considered to have "established" the FAP if an authorized body of the hospital facility has adopted the policy. The Notice clarifies that if the only change a hospital facility makes to its FAP is to update the provider list (whether the provider list is in the FAP or in a separate document), the FAP does not need to be adopted by an authorized body of the hospital facility again in order for the FAP to continue to be considered "established."

The Notice provides welcome relief for large hospitals concerned with the administrative burden of updating the FAP regularly to correct the provider list. The ability to maintain the provider list in a separate document or appendix should ease such burdens. For a full copy of Notice 2015-46, refer to the IRS website.

Supreme Court rules in favor of marriage equality

On June 26, 2015, the United States Supreme Court announced its ruling, in a 5-4 decision, in favor of marriage equality. The Supreme Court has legalized same-sex marriage nationwide by ruling that the U.S. Constitution bars states from denying marriage licenses to same-sex couples. Additionally, the ruling requires that states recognize a lawful same-sex marriage performed out-of-state. Since the 2013 Supreme Court's decision in Windsor, same-sex marriages have been recognized for Federal

purposes, including Federal taxes. However the Windsor ruling did not compel the States to do the same. The recent ruling in favor of marriage equality now means that both the State and Federal government will recognize the marital status of same-sex couples. For tax reporting purposes, this may simplify the filing process for couples who were previously allowed to file jointly for federal income tax purposes but who lived in states that required same-sex couples to file separate state income tax returns. We are awaiting guidance from the IRS on transitional rules, particularly for 2015.

Did you know?

House approves short-term highway patch with tax compliance offsets

On July 15, 2015, the House of Representatives approved legislation (The Highway and Transportation Funding Act of 2015, Part II (H.R. 3038)), that would extend spending authority for the Highway Trust Fund through mid-December 2015, offset primarily by tightening taxpayer compliance rules. Of interest to taxpayers are the tax-related offsets included in the bill which incorporates proposals to adjust tax filing deadlines for partnerships, S corporations and C corporations and to modify the extension for the returns of organizations exempt from income tax filing Form 990 series to be an automatic 6-month period. The bill is now being considered in the Senate.

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Tax Controversy

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International Tax

International tax and transfer pricing issues in digital commerce August 26 2:00 PM ET

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