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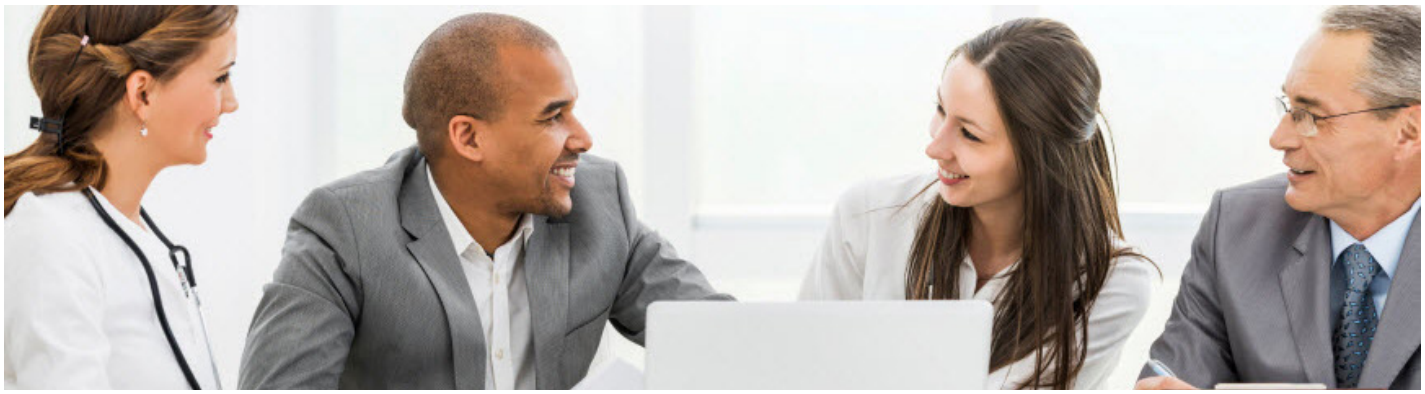
Tax News & Views Health Care Special Edition Executive Summary

Treasury releases final regulations for charitable hospital organizations



On December 31, 2014, the Department of Treasury (Treasury) released final regulations to provide guidance for charitable hospitals under Internal Revenue Code (IRC) § 501(r). IRC § 501(r) requires a charitable hospital to meet the requirements related to the community health needs assessment, financial assistance policy, limitations on charges, and billing and collections policies and practices under related legislation.

The final regulations amend and adopt several rounds of proposed regulations issued over the past two years and provide hospitals with specific guidance for complying with statutory requirements. Following are a few of the clarifications, additions, and points of emphasis that may warrant particular attention.

Effective and applicable dates.
The final regulations are effective as of December 31, 2014, and they apply to a hospital facility's taxable year beginning after December 29, 2015. This will give all hospital facilities at least a year to come into compliance with the final regulations.

Definitions. The final regulations clarify and adopt a number of critical definitions, including "hospital organization", "hospital facilities," and "operating a hospital facility." They also provide clarification regarding the "operation of a hospital facility" through a partnership or disregarded entity and the extent to which § 501(r) requirements apply to hospital-owned physician practices providing care in the hospital.

Financial assistance policy (FAP). IRC § 501(r)(4) requires a hospital organization to establish a written FAP for each hospital facility applicable, at a minimum, to all emergency and other medically necessary care provided by the hospital facility. The final regulations describe the specific information that a hospital facility must include in its FAP, including:

- Eligibility criteria for financial assistance
- The basis for calculating amounts charged to patients and the manner for determining the amounts generally billed (AGB)
- The method for applying financial assistance
- Actions that may be taken in the event of nonpayment

In addition, the final regulations added two new FAP requirements—one related to information obtained from sources other than an individual seeking financial assistance and use of prior FAP-eligibility determinations to establish FAP-eligibility; and the other related to specifying which providers are covered by the hospital facility's FAP and which are not.

Translation requirements. The guidance also includes requirements for publicizing the FAP and reaching members of the community. One notable change affects translation requirements. All FAP documents must be available in English. In addition, the hospital facility must provide a translation of the documents in the primary language of any populations with limited English proficiency that constitute the lesser of 1,000 individuals or five percent of the community served.

AGB calculation. As noted above, the FAP must describe the method used to determine the AGB. Consistent with the proposed regulations, the final regulations provide two methods for determining AGB:

- The "look-back" method requires a hospital facility to calculate an AGB percentage at least annually based on actual claims and begin applying the AGB percentage to gross charges for care provided to an FAP-eligible individual within 120 days of the end of the 12-month period used to make the calculation. The policy must either state the AGB percentages and describe how they were calculated or explain how the public may obtain this information free of charge.
- The "prospective" Medicare or Medicaid method—As an alternative, a hospital facility may use this method to calculate the AGB as if the FAP-eligible individual were a Medicare fee-for service or Medicaid beneficiary. It is based on the amount Medicare or Medicaid would allow for the care.

In general, a hospital organization must calculate AGB percentages separately for each hospital facility. A modification in the final regulations permits hospitals to change their chosen method at any time, as long as the FAP is updated first to identify the new method used.

Billings and collection practices and policy. The final regulations define "extraordinary collection actions" (ECAs) and identify various notification requirements. Notably, the final regulations added a clause to the definition of ECAs, involving deferring or denying medically necessary care due to nonpayment. The final regulations also define the 120-day notification period for informing an individual about its FAP and the 240-day application period for addressing a complete or incomplete FAP application.

Prepare now for the changes ahead

Although hospitals will have at least one year to comply with the final regulations, it is prudent to use this transition period to assess current compliance and begin implementing any policy or procedural changes. The consequences of failing to meet one or more of the requirements of §501(r) range from correction and disclosure of the error to the IRS and the public on Form 990 to loss of tax-exempt status—and the latter could have other, and even more, significant tax implications.

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Multistate Tax

Unitary Group Combined Filing Requirements and Options: A Tangled Web? *February 18, 2015, 2:00 PM ET*

Defining members of a unitary group can be complex. State interpretations of relevant unitary criterion are inconsistent, and state-specific provisions defining includable group members vary. Elections that provide certainty about the composition of the combined filing group have multiyear impacts that must be considered. Learn ways to address the uncertainty associated with unitary groups.

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