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IRS Finalizes Revenue Procedure on 501(r) Corrective Measures

On March 10, 2015, the Internal Revenue Service (IRS) released [Revenue Procedure 2015-21](#) (Revenue Procedure), which will be officially published on March 30, 2015, in Internal Revenue Bulletin 2015-13. The Revenue Procedure provides guidance for charitable hospital organizations to correct and disclose certain failures to comply with Section 501(r) of the Internal Revenue Code (Code). It also finalizes, with minor changes, the proposed revenue procedure issued in [Notice 2014-3](#) (Notice).

BACKGROUND

As described in a January 2015 edition of the [Health Law Pulse](#), Section 501(r) requires that a hospital organization organized under 501(c)(3) of the Code conduct a community health needs assessment (CHNA), adopt financial assistance and emergency medical care policies, and limit the charges for emergency or medically necessary care to patients eligible for financial assistance. Failure to comply with all of the Section 501(r) requirements may result in the revocation of a hospital organization's Section 501(c)(3) status, and failure to conduct a CHNA in accordance with Section 501(r)(3) will subject the hospital organization to an excise tax of \$50,000. Regulations under Section 501(r) (Section 501(r) Regulations) allow a hospital organization to maintain its tax-exempt status by correcting and disclosing certain failures to comply with Section 501(r) requirements. The Revenue Procedure outlines the procedures that a hospital organization must follow to correct and disclose its failure to comply in accordance with the Section 501(r) Regulations.

REVENUE PROCEDURE SUMMARY

The Revenue Procedure applies to a hospital organization's failure to satisfy Section 501(r) if such failure is not willful or egregious. Willful failures result from a hospital organization's gross negligence, reckless disregard, or willful neglect. Egregious failures are "very serious failures," determined by the severity and extent of the failure's effect. The Section 501(r) Regulations provide that minor and inadvertent errors and omissions generally do not constitute a failure to satisfy Section 501(r), and therefore, a hospital organization does not need to correct and disclose such errors and omissions in accordance with the Revenue Procedure.

A hospital organization can remedy its failure to satisfy a Section 501(r) requirement by taking the following steps:

- Correct for all affected individuals a failure to satisfy the financial assistance policy, the limitation on charges for emergency or medically necessary care, or the use of extraordinary collection procedure provisions of Section 501(r) and restore such individuals to the position in which they would have been had the hospital organization's failure not occurred.
- Correct the failure in a prompt, reasonable, and appropriate manner according to its type.

- Establish or revise its practices and procedures to reduce the likelihood of repeating the failure.

The Revenue Procedure provides several examples to illustrate the correction procedures. A hospital organization may correct its failure to adopt a proper CHNA by adopting one that contains all elements required by the Section 501(r) Regulations and making the revised CHNA widely available to the public. Additionally, if a hospital organization discovers during its month-end accounting that it failed to comply with the limitation on charges provisions of Section 501(r) due to processing errors, it may correct its failure, with respect to each affected individual, by explaining the error, issuing a corrected billing statement, and refunding excess payments.

In addition to correcting a failure to satisfy the requirements of Section 501(r), a hospital organization must disclose the following information about its failure on its Form 990 for the year in which the failure is discovered:

- a description of the failure, including, but not limited to, the following:
 - the type of failure
 - the cause of the failure
 - where the failure occurred
 - the date of the failure and the date the hospital organization discovered the failure
 - where applicable, an estimate of the number of individuals affected and the dollar amounts involved
- a description of the hospital organization's correction of the failure that includes the method and date of correction and, if applicable, how affected individuals were restored or why such restoration was not reasonably feasible
- a description of the practices or procedures that the hospital organization established or revised; if the hospital organization made no changes to its practices or procedures, an explanation of why changes were unnecessary

A hospital organization that is not required to file a Form 990 may report the above information on a Form 990 for the tax year in which the failure was discovered or on a widely available website by the date the hospital organization's Form 990 would be due if it were required to file a Form 990.

The Revenue Procedure also made minor changes to the Notice to conform to Section 501(r) Regulations.

CONCLUSION

The Revenue Procedure became effective on March 10, 2015, and beginning on that date, hospital organizations have been able to correct and disclose Section 501(r) failures by following the guidance set forth in the Revenue Procedure. The IRS will also accept corrections and disclosures made prior to March 10, 2015, provided that they were made in accordance with the Revenue Procedure or the Notice.

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