



Nonprofit News & Notes

MAY 2010

Dear Readers,

We are pleased to present to you the inaugural issue of Robinson & Cole's *Nonprofit News & Notes*. These periodic updates continue our past efforts to highlight emerging and important issues for the tax-exempt community.

Our first issue leads with the timely matter of health reform. Although largely absent from all the news coverage, the recent health care bill imposes the most extensive new requirements in over 40 years on charitable hospitals to maintain their federal tax-exempt status.

We also comment and try to put in some perspective the recent New York Times headline "One-Fourth of Nonprofits to Lose Tax Breaks."

Our goal is to help you in your important work. If you have comments, or suggestions for future articles, we welcome hearing from you. To learn more about us, please visit www.rc.com.

David Hadden
Tax-Exempt Organizations Practice Group Chair

Health Reform Creates Additional Requirements for Charitable Hospitals

Among the provisions of the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (together, the "Act"), is the establishment of a new Section 501(r) of the Internal Revenue Code (the "Code"). That section provides that a hospital shall not be treated as an organization described under Code Section 501(c)(3) unless the hospital satisfies new requirements related to the following:

- Community health needs assessments
- Financial assistance and emergency medical care policies
- Limits on charges
- Billing and collection
- Reporting of financial statements

The reforms apply to any hospital organization that operates a facility that is, or is required to be, licensed, registered, or similarly recognized by a state as a hospital and any other facility or organization that the Internal Revenue Service determines has the provision of hospital care as its principal purpose. If an organization operates more than one covered hospital facility, the organization must separately meet these new requirements for each facility.

Community Benefit

Here is a little background information: Since 1969, the Internal Revenue Service has applied a "community benefit" standard for determining whether a hospital is charitable and thus entitled to be treated as an exempt organization under Code Section 501(c)(3). The test consists of several factors, including whether the hospital has a board of directors drawn from the community served and the extent to which the hospital provides free care to those unable to pay. Beginning in 2009, hospitals were generally required to submit information relating to the community benefit standard on their annual informational returns filed with the Internal Revenue Service.

The community benefit standard has long been criticized as vague. Whether any hospital meets the standard is based upon applicable facts and circumstances, and all hospitals are not required to meet each element of the test. Further, prior to the Act, the Code provided no penalty for failure to meet the standard other than complete revocation of exempt status.

New Requirements

The Act addresses some of these concerns by applying the same test to all hospital organizations. Each hospital organization must (1) conduct a "community health needs assessment" at least once every three years; (2) maintain in writing a financial assistance policy and a policy relating to emergency care, both meeting specified requirements; (3) limit amounts charged for emergency care or other medically necessary care provided to individuals eligible for assistance under its financial assistance policy to not more than the lowest amounts charged to individuals who have insurance covering such care; (4) make reasonable efforts to determine whether an individual is eligible for assistance under its financial assistance policy before engaging in "extraordinary" collection actions; and (5) file, with its annual informational return, a copy of its audited financial statements, or applicable consolidated financial statements, as well as a description of how the organization is addressing the needs identified in its community health needs assessment, and a description of any such needs not being addressed and the reasons why.

A community health needs assessment must take "into account input from persons who represent broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health." The assessment must be made widely available to the public. The organization must also adopt an implementation strategy to meet the community health needs identified through its assessment. An excise tax of \$50,000 is imposed on any charitable hospital that fails to meet the community health needs assessment requirement for any taxable year.

An organization's financial assistance policy must include (1) eligibility criteria for financial assistance; (2) whether such assistance includes free or discounted care; (3) the basis for calculating amounts charged to patients; (4) the method for applying for financial assistance; (5) in the case of an organization that does not have a separate billing and collections policy, the actions the organization may take in the event of nonpayment; and (6) measures to widely publicize the policy within the community.

The policy relating to emergency medical care must require the organization to provide nondiscriminatory care for emergency medical conditions as required under the Emergency Medical Treatment and Active Labor Act (EMTALA), regardless of an individual's eligibility under the hospital's financial assistance policy.

The Act requires the secretary of the Treasury, at least once every three years, to review the community benefit activities of each hospital organization to which the new Code Section 501(r) requirements apply.

The Act provides for annual reports to Congress by the Internal Revenue Service with respect to the information provided by covered hospitals on their annual informational returns, including the levels of charity care, bad debt expenses, certain unreimbursed costs, and costs for other community benefit activities. Further, the Internal Revenue Service is tasked with conducting a study of the trends in these amounts and submitting a report to Congress within five years of the Act's adoption. These reporting and study requirements will provide more information on how nonprofit hospitals differ from taxable ones.

Issuance of Regulations

The Act requires the issuance of "such regulations and guidance as may be necessary to carry out the provisions" relating to the new requirements for hospital organizations. Hospitals and their counsel will be looking for guidance on many aspects of the new requirements, including clarification of the limits to be charged to uninsured individuals for emergency care or other medically necessary care and the procedures required relating to collection actions.

Effective Date

Generally, hospitals are required to meet these new requirements for taxable years beginning after March 23, 2010, the date of the Act's enactment. The requirements relating to the community health needs assessments are not effective until tax years beginning after March 23, 2012.

Failure to File Annual Informational Returns Jeopardizes Tax-Exempt Status

Prior to the Pension Protection Act of 2006 (the "PPA"), certain tax-exempt organizations whose annual gross receipts were below \$25,000 were not required to file an annual informational return with the Internal Revenue Service. The PPA, however, established new Sections 6033(i) and 6033(j) of the Internal Revenue Code of 1986, as amended.

Those sections require many of the organizations previously not required to file an annual informational return now to file annually, in electronic form, basic information that includes the organization's name, mailing address, and taxpayer identification number. The PPA directs the Internal Revenue Service to revoke the tax-exempt status of any organization that fails to file the required information for three consecutive years. Organizations that have not previously filed an informational return must do so by May 15, 2010, in order to retain tax-exempt status.

Though we do not expect this situation to apply to our readers, please be aware that tens of thousands of small, tax-exempt organizations, including charities, trade associations, and membership groups, may lose their tax-exempt status. Donors to such organizations, who may have relied on a determination letter or listing of the organization as exempt by the Internal Revenue Service, will generally be able to take a charitable deduction for donations until the affected organization receives formal notice of the revocation of its tax-exempt status. The deduction may not be available, however, if the contributor had knowledge of the revocation, was aware it was imminent, or was in part responsible for the loss of exemption. Internal Revenue Service officials have stated that they do not expect to send notices of revocation prior to January 2011.

An organization whose tax-exempt status is revoked must apply to have its tax-exempt status reinstated, regardless of whether the organization was originally required to make an application for recognition of exemption. Upon application for reinstatement, the Internal Revenue Service may retroactively reinstate tax-exempt status if the organization shows reasonable cause for failure to file.

If you have questions, please contact a member of Robinson & Cole's [Tax-Exempt Organizations Group](#).

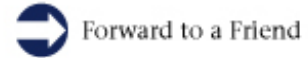
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