New Developments in 501(r) Compliance

This roundtable discussion is brought to you by the Tax and Finance Practice Group.

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Section 501(r) and Community Health Needs Assessments

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Healthcare Reform - Patient Protection and Affordable Care Act (PPACA)

- Introduced by Sen. Grassley, then ranking minority member of Senate Finance, who then did not support the bill
- New requirements for hospitals to maintain exemption from federal income tax under IRC section 501(c)(3)
- If organization operates multiple hospitals, each hospital facility must separately meet these requirements
- Requirements generally effective for tax years beginning after March 23, 2010
- Requires IRS to review the community benefit activities of each hospital at least once every three years
Healthcare Reform - Patient Protection and Affordable Care Act (PPACA)

- Requires annual reporting by Sec’y of Treasury on information with respect to private tax-exempt, taxable, and government-owned hospitals (and trend reporting by 5 years)
- New exemption requirements for hospitals in Code Sec. 501(r)
  - Direct result of Congressional, regulatory, and public complaints that hospitals aren’t doing enough to “earn” exemption
PPACA – New IRC Sec. 501(r)(3)

- Community health needs assessment (CHNA)
  - Must be made widely available to the public
  - Must adopt implementation strategy to meet identified needs
  - Failure to comply means excise tax of $50,000/year
  - Applies to all state licensed hospitals (including hospitals in joint ventures and governmental hospitals recognized under 501(c)(3))
  - Required for tax years beginning after March 23, 2012
CHNAs

- Must conduct at least every 3 years
- Must include input from persons representing broad interests of the community
  - Include persons having specialized knowledge or expertise in public health

- IRS has begun guidance process—Notice 2011-52
  - Anticipate proposing regulations
  - Can rely on Notice until six months after further guidance
Notice 2011-52

- For tax years beginning after 3/23/12, must have performed CHNA and adopted implementation strategy in current year or one of two previous tax years
  - IRS says both must occur in same tax year
  - CHNA is “performed” when written report is made widely available
  - “Widely available” means published on facility website, organization website, or linked to another website
Notice 2011-52

CHNA report must document

- A description of the community served (geographic, target population)
- Process and methods used to conduct CHNA
- Identify collaborators if facility collaborates
- Identify public health experts (name/title/org)
- Describe health needs and prioritize
- Describe existing resources available to meet needs
Notice 2011-52

- Implementation strategy must
  - Be a written plan describing how facility will meet needs or explaining why it won’t attempt to meet certain needs
  - Be adopted by the Board or a committee by the end of the same tax year as the CHNA
  - Be developed facility by facility
  - Be attached to the Form 990
Notice 2011-52

- Penalties for non-compliance
  - $50,000 excise tax for each year of noncompliance (IRC 4959)
  - Must disclose imposition of excise tax on Form 990, Schedule H
  - Would income from noncompliant JV hospital be UBTI?

- New questions about CHNAs on Schedule H (optional for tax years beginning before Mar. 23, 2012)
Observations

- Sen. Grassley and staff did a good job crafting CHNA requirement
- IRS largely got it right so far in implementation (Notice 2011-52)
  - Most controversy is over facility by facility
  - Timeframe for implementation strategy seems a little restrictive
- Key complaint: IRS is holding new hospital 1023s pending guidance on 510(r)
501r Charity Care and Collections Requirements

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Brief History and Context

- Concerns about tax-exempt hospitals
- Redesigned form 990 and Schedule H
- PPACA: new “501(r)” requirements
- 501 (r) Implementing regulations
The Affordable Care Act (March 2010)

- Added a new “501r” to the Internal Revenue Code:
  - Charity care (financial assistance) policy requirements
  - Billing and collections requirements
  - Written policy prohibiting discrimination in emergency care
  - Community Health Needs Assessment (CHNA)
  - Implementation Strategy (to address needs)

- The requirements apply to each “hospital facility”
What is a “hospital facility”?

- Section 501(r)(2)(A) defines a hospital organization as (i) an organization that operates a facility required by a State to be licensed, registered, or similarly recognized as a hospital (State-licensed hospital facility), and (ii) any other organization that the Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its exemption under section 501(c)(3).

The Affordable Care Act (March 2010)

- Timing:
  - Financial assistance and collections standards apply to the tax year that began immediately after March 23, 2010, e.g.,
    - July 1, 2010
    - January 1, 2011
  - CHNA/Implementation Strategy standards must be met by the end of the third tax year that begins after March 23, 2010
Why such a focus on charity care and collections?

- Some policy makers believe that charity care is the most important community benefit.
- Concerns regarding patient experiences with the collections process:
  - Discouraging uninsured patients from seeking or obtaining care at tax-exempt hospitals?
  - Leaving patients with excessive medical debt?
- Lobbying by consumer advocates.
501r Standards: Financial Assistance and Collections Policies

- Beginning with the next tax (fiscal) year that begins after March 23, 2010, each hospital must have a written financial assistance policy that must:
  - Include eligibility criteria for financial assistance,
  - Describe the basis for calculating amounts charged to patients,
  - Describe the method for applying for financial assistance, …
501r Standards: Financial Assistance and Collections Policies

... the written financial assistance policy also must:

- Describe “the actions the organization may take in the event of non-payment,”
- Assure that patients are charged no more than the amounts “generally billed” to insured patients,
- Prohibit the use of gross charges, and
- Be “widely publicized” in the community.
501r Standards: Collections Policies

Beginning with the next tax year that begins after March 2010, each hospital:

- May not “engage in extraordinary collection actions before [making] reasonable efforts to determine whether the individual is eligible for … financial assistance …”

Key terms were not defined in PPACA:

- “extraordinary collection actions”
- “reasonable efforts”
- “widely publicized”
Legislative History

- Hospitals may bill patients at the “best” (meaning lowest) negotiated commercial rate, an average of the three “best” (lowest) negotiated commercial rates, or the applicable Medicare rate.

- Congress intended the term “reasonable efforts” to include "notification by the hospital of its financial assistance policy upon admission and in written and oral communications.”
IRS/Treasury Process

- Updated IRS Form 990 Schedule H
- Regulations being drafted

Key questions:

- Average or patient/service-specific pricing for “amounts generally billed”?
- What collections actions are “extraordinary”?
- What constitutes “reasonable efforts”?
- What it means to “widely publicize” the FAP?
- Overlap/conflict with Medicare billing requirements?
HFMA Example Policy

Please see:

- [www.veriteconsulting.com](http://www.veriteconsulting.com) and/or

Recommendations:

- Integrate ACA/501(r) language into FAP and Collections Policy
- Update when regulations are issued
- Reasonable attempts to assure policy compliance are advised, even though regulations are not available (see Tax Year 2011 Part V, Section B)
Questions?