IRS and Treasury issue final section 501(r) nonprofit hospital regulations

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In brief

The Internal Revenue Service (IRS) and Treasury Department issued final regulations under Internal Revenue Code (IRC) Section 501(r) regarding exemption requirements for nonprofit hospitals (Final Regulations). The Final Regulations are applicable to taxable years beginning after December 29, 2015. Compliance with the Final Regulations is required in order to assure that IRC Section 501(c)(3) hospitals remain exempt from federal income tax. The IRS has also released final instructions to IRS Form 990, Schedule H, Hospitals, for 2014 taxable years. PwC will be hosting a webinar on February 4, 2015, from 12:00 to 1:30 PM EST, to discuss the Final Regulations and the 2014 Form 990 Schedule H and instructions. The following details are some of our initial observations of the Final Regulations. PwC plans to supplement this initial Insight with future and more detailed observations.

In detail

Overview

The Final Regulations generally adopt most of the provisions contained in IRC Section 501(r) proposed regulations previously released by the IRS and Treasury Department. Significant modifications to the proposed regulations, however, were made in the Final Regulations to address concerns expressed by commentators with respect to financial assistance policies (FAPs), billing and collection practices, community health needs assessments (CHNAs), and the consequences for failure to satisfy the various requirements. A sample of some of the provisions that generated significant comments in the proposed rulemaking process is included below.

Scope and definitions

The Final Regulations generally adopt the earlier proposed guidance with respect to the definition of hospital facility, hospital organization, and “operating” a hospital facility, including those provisions pertaining to hospitals operated through a partnership or disregarded entity of which the nonprofit hospital is an owner. Some of the key provisions of the Final Regulations include:

• A hospital organization with multiple hospital buildings is required to treat all such buildings as a single hospital facility if they are covered by the same license;
• Government hospitals that have dual status under IRC Section 501(c)(3) are subject to the Final Regulations, although they may take steps to avoid application of the new rules by terminating their exempt status; and
• Clarification that the Code Section 501(r) requirements do not apply to an activity that constitutes an unrelated trade or business activity of the hospital facility.

FAP

IRC Code Section 501(r) requires a hospital facility to have a written FAP that
describes eligibility criteria, benefits, and related matters concerning financial assistance made available by the facility. Commentators had expressed concerns regarding the limited information the facility could use to make a financial assistance determination, the detailed process required to notify patients and others about the FAP, and the ambiguity regarding a FAP’s coverage of services provided at the facility by other providers. The Final Regulations address these concerns by:

- Permitting a facility to use certain information beyond that contained in the financial assistance application to grant financial assistance to an individual;
- Streamlining the notice processes by permitting a facility to include a conspicuous notice regarding the availability of financial assistance (rather than a plain language summary) in each billing statement, and to offer a single plain language summary during the intake or discharge process;
- Expanding the requirements regarding the translation of the FAP, FAP application, and plain language summary into other languages to address concerns regarding limited English proficiencies in the community; and
- Adding a requirement that the FAP include a list of providers of emergency or other medically necessary care at the facility, and specify which of those providers are (or are not) covered by the FAP.

**Determining amounts generally billed**

A hospital facility may not charge a FAP-eligible individual more than (a) in the case of emergency and other medically necessary care, the amounts generally billed (AGB) to persons who have insurance for such care, and (b) in the case of other care covered by the FAP, the gross charges for such care. A significant number of commentators had expressed concerns that the two methods for determining AGB in the proposed guidance—the look-back method and the prospective method—were too restrictive because they did not adequately take into account private insurance amounts. In this regard, the Final Regulations:

- Permit the use of Medicaid in either AGB method, but do not adopt the recommendation to base the prospective method solely on private insurance amounts and
- Clarify that in determining whether an individual was charged more than AGB, the facility need only include the amounts which are the personal responsibility of the individual, including deductibles, co-payments and co-insurance, after all reimbursements from the insurer have been made.

**CHNA’s**

A hospital facility is required to conduct a CHNA at least once every three years, and adopt an implementation strategy with regard to the CHNA. The Final Regulations address a number of public comments pertaining to the definition of “community” served by a hospital facility, required public input, joint collaboration, and the differences between the CHNA report and the implementation strategy, including:

- Expanding an organization’s ability to jointly collaborate with others in conducting the CHNA and adopting an implementation strategy, and prescribing rules regarding how and when organizations and facilities that serve different communities may work together to satisfy the CHNA requirements and
- Extending the deadline by which an implementation strategy must be adopted to 4 ½ months after the end of the year in which the CHNA was conducted (generally the unextended due date of the Form 990).

**Extraordinary collection actions and third party agents**

The Final Regulations retain the provisions that hold a hospital facility accountable for the actions of third parties it contracts with to collect debt on its behalf or to which it sells debt. However, the Final Regulations provide some relief in the event of noncompliance if the facility acted reasonably and in good faith, and took steps to correct and disclose the violation.

**Consequences for failure to satisfy the rules**

The Final Regulations generally follow the framework of the proposed regulations regarding the consequences for failure to satisfy various portions of IRC Section 501(r). Key points include:

- Generally, errors or omissions that are minor and either inadvertent or due to reasonable cause will not be penalized if they are corrected;
- Other errors or omissions that are not willful may avoid the imposition of penalties if they are
corrected and properly disclosed; and

- Certain noncompliance will result in the imposition of facility-level taxes for hospital organizations that operate multiple hospital facilities, and willful or egregious failures may threaten a hospital facility’s exemption from federal income tax.

**Timing**

In order to provide a transition period, the Final Regulations apply to taxable years beginning after December 29, 2015. Hospital organizations may rely on any reasonable and good faith interpretation of IRC Section 501(r), including the proposed regulations previously issued or the Final Regulations.

**The takeaway**

The Final Regulations make significant adjustments to the proposed guidance to address commentators’ concerns regarding practicality and burden. Nonetheless, the comprehensive and detailed framework of the proposed guidance has been retained. Failure to satisfy the new rules could result in facility-level taxes and penalties, or even threaten an organization’s exemption from federal income tax. Although the IRS and Treasury Department delayed the applicability of the final regulations for one year to provide organizations time to implement these new rules, non-profit hospitals should immediately begin reviewing existing FAPs, billing and collection practices, and CHNA processes in order to be ready to comply with the Final Regulations beginning in 2016. The 2014 Form 990 Schedule H has also been modified to reflect the Final Regulations’ timing and content. Hospitals should begin reviewing changes to the 2014 Schedule H so that they may gather the information necessary to satisfy the new reporting requirements in time for the upcoming reporting deadline.

Click [here](#) for a link to the Final Regulations.

**Let’s talk**

For a deeper discussion of these new rules and how they might affect your organization, or to register for our webcast scheduled for February 4, 2015, please contact:

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