

IRS ISSUES PROPOSED REGULATIONS CLARIFYING NEW REQUIREMENTS FOR CHARITABLE HOSPITALS

This Health Care Tax News article is Part I in a series discussing the Proposed Regulations under Code Section 501(r).

While the health care industry has been awaiting the Supreme Court's ruling on the constitutionality of the Patient Protection and Affordable Care Act ("ACA"), the Internal Revenue Service ("IRS") has been proceeding with its efforts to provide guidance for compliance with the ACA's tax-related requirements. On Friday, June 22, 2012, the IRS issued Proposed Regulations clarifying the new requirements for tax-exempt hospital organizations under Section 501(r) of the Internal Revenue Code (the "Code"). These Proposed Regulations will be published in the Federal Register on June 26, 2012.

Although these Proposed Regulations will not have the force of law until they are adopted in final form (which could be affected by the Supreme Court's ruling on the ACA), they offer significant guidance on the new requirements regarding financial assistance and emergency care policies, limitations on charges and billing and collection practices. Given the importance of these issues for tax-exempt hospital organizations, Hall Render plans to issue a series of articles this week about the various facets of the Proposed Regulations. Tax-exempt hospital organizations should familiarize themselves with the potential requirements, evaluate existing policies and practices and determine whether to comment formally on the Proposed Regulations.

WHO MUST COMPLY WITH CODE SECTION 501(R)?

The definitions section of the Proposed Regulations offers guidance regarding who must comply with the various requirements of Code Section 501(r). Specifically, the defined term "Hospital Facility" refers to a facility that is required by a state to be licensed, registered or similarly recognized as a hospital, and the defined term "Hospital Organization" refers to any Code Section 501(c)(3) organization that operates one or more Hospital Facilities. Under Code Section 501(r) and the Proposed Regulations, every Hospital Organization must satisfy the Code Section 501(r) requirements for every Hospital Facility it operates.

The Proposed Regulations give specific attention to two categories of Hospital Facilities. First, certain governmental Hospital Organizations have applied for and received recognition under Code Section 501(c)(3). As has been true for other guidance from the IRS regarding Code Section 501(r), the Proposed Regulations contain no exemption for these "dual status" Hospital Organizations, which therefore must comply with the requirements of Code Section 501(r) - although the IRS does request comments regarding "alternative methods" such organizations might follow to comply.

The Proposed Regulations also discuss Hospital Organizations that operate Hospital Facilities through limited liability companies, partnerships or other disregarded entities. Again, the Proposed Regulations do not offer any exception from the Code Section 501(r) requirements for such Hospital Facilities, which therefore must comply with Code Section 501(r) even if the Hospital Organization only holds a minority interest in the disregarded entity. In the Preamble to the Proposed Regulations, however, the IRS states that it still is considering previous comments relating to this issue and that it will address the issue in separate guidance.

COMMUNITY HEALTH NEEDS ASSESSMENTS

In Notice 2011-52, which was issued July 7, 2011, the IRS provided guidance regarding the requirement under Code Section 501(r)(3) that a Hospital Facility conduct a community health needs assessment ("CHNA") and adopt an implementation strategy. (Hall Render's previous articles on [Notice 2011-52](#) and the [CHNA Requirement](#) provide more information on these topics.) The Proposed Regulations offer no new guidance regarding these requirements. The IRS does note in the Preamble that it still is considering comments received in response to Notice 2011-52 and that Hospital Organizations may continue to rely upon Notice 2011-52 until six months after the date the IRS issues further guidance about the CHNA requirements.

PENALTIES FOR FAILURE TO COMPLY

The Preamble notes that commenters have requested guidance on the consequences of failing to meet one or more of the requirements of Code Section 501(r). The IRS is continuing to consider these comments and will address the issue in separate guidance.

CONCLUSION - AND COMING ATTRACTIONS

The deadline for submitting comments on the Proposed Regulations is September 24, 2012. Hospital Organizations may wish to coordinate with each other or with their state hospital associations in preparing and submitting comments.

To aid Hospital Organizations in evaluating the Proposed Regulations, Hall Render will publish separate articles (which ultimately will be linked to this one through our website) regarding financial assistance and emergency care policies, limitations on charges and billing and collection practices. These articles also will discuss how or whether these requirements continue to apply after the Supreme Court's ruling on the ACA.

Should your organization require assistance in evaluating the Proposed Regulations, please contact Jeffrey L. Carmichael at 317.977.1443 or jcarmichael@hallrender.com, Calvin R. Chambers at 317.977.1459 or cchambers@hallrender.com or your regular Hall Render attorney.