PUBLICATION

IRS Issues Proposed Regulations Addressing Community Health Needs Assessment

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Earlier this month, the Internal Revenue Service (IRS) released proposed regulations addressing various requirements imposed upon charitable hospitals qualifying under Section 501(c)(3) of the Internal Revenue Code (Code). In particular, the proposed regulations address the requirements under Section 501(r)(3) that a charitable hospital conduct a Community Health Needs Assessment (CHNA) at least once every three years and adopt an implementation strategy to meet the community health needs identified in the assessment.

Background

As part of the Patient Protection and Affordable Care Act passed in 2010, Section 501(r) became part of the Code. Section 501(r) imposes certain requirements on Section 501(c)(3) hospitals that must be satisfied in order to maintain tax exemption. In June, 2012, the IRS released proposed regulations on Section 501(r)(4)-(6) (the 2012 Proposed Regulations), addressing financial assistance and emergency medical care policies, limitations on charges and billing and collection requirements. We described the 2012 Proposed Regulations in our July 19, 2012 Alert available here. The IRS will receive comments until July 5, 2013 and intends to finalize both the 2012 Proposed Regulations and these CHNA proposed regulations simultaneously.

Community Health Needs Assessment

Section 501(r)(3) mandates that a Section 501(c)(3) hospital must conduct the CHNA at least once every three years for tax years beginning after March 23, 2012 and widely publicize the findings of the assessment in a written report. According to the newly-released proposed regulations, the report must prioritize the significant health needs of the community and must take into account the input from public health departments, low-income individuals, the medically underserved, minority populations and written comments received on the prior CHNA report and implementation strategy. The hospital must define the community it serves, describe the process and methods used to conduct the CHNA and specify potential resources within the community to address the community health needs identified.

The recently-released proposed regulations provide that "community" can mean target populations served by the hospital (e.g. cancer patients, children, women) or can refer to the community based on geographic location. Community may not exclude under-served, low income or minority populations who are part of the patient population. If a hospital fails to conduct a CHNA or fails to adopt the implementation strategy, the hospital will be liable for a $50,000 excise tax even if the failure to perform a CHNA is otherwise excused for other purposes.

Implementation Strategy

After addressing the health needs of the community, a hospital, under the newly-released proposed regulations, must adopt a written implementation strategy indicating how it will address the needs identified in the CHNA report or why the hospital will not address the identified needs. The hospital must adopt the implementation strategy within the same year the hospital conducts the CHNA. These proposed regulations require the implementation strategy and steps taken to address the community health needs to either be directly attached to the Form 990, or provided as a URL link on the 990 in order for the implementation strategy to be viewed online. Hospitals may rely on Notice 2011-52 for any CHNA and implementation strategy adopted on or before October 5, 2013.

Minor Failures of Compliance Will Not Jeopardize Tax-Exempt Status

Although Section 501(r) provides the IRS with the authority to revoke the tax exemption of a hospital for failure to meet the requirements of Section 501(r), the expectation from the IRS and the Treasury Department is that revocation of Section 501(c)(3) status will only result in the event that the facts and circumstances of the hospital's failure to meet the requirements of Section 501(r) are willful or egregious. The recently-released proposed regulations provide that so long as the error was minor or inadvertent and the hospital promptly corrects and discloses the errors, its tax-exempt status will not be jeopardized. These proposed regulations state that further guidance on disclosure of minor failures of compliance is forthcoming.

These proposed regulations also provide that one hospital in a hospital system losing its tax exemption does not in itself lead to the entire hospital system losing its exemption. Instead, the income generated by the non-compliant hospital would be recharacterized as taxable and would have to be calculated at the facility level. Additionally, a non-compliant hospital will not cause the interest on qualified Section 501(c)(3) bonds to automatically become taxable.

Summary

The proposed regulations provide Section 501(c)(3) hospitals with significant detail on the CHNA requirements. If you would like to discuss the IRS's proposed regulations under Section 501(r), please contact one of the attorneys within either the Firm's Health or Tax Departments.