

WIGGIN AND DANA

Counsellors at Law

If you have any questions about this Advisory, please contact:

MELINDA A. AGSTEN
203.498.4326
magsten@wiggin.com

ALYSSA B. CUNNINGHAM
860.297.3723
acunningham@wiggin.com

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

New Requirements for Tax Exempt Hospitals

The recently enacted health care reform legislation includes four new requirements for hospitals exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (the “Code”). Although some provisions of the legislation will not affect hospitals for several years, three of these four requirements are effective immediately and call for prompt attention.

FOUR NEW REQUIREMENTS

The Patient Protection and Affordable Care Act, as amended by the Health Care Reconciliation Act (“PPACA”), creates a new section 501(r) of the Code, which imposes four new requirements that tax exempt hospitals must meet to obtain or maintain section 501(c)(3) tax exempt status.

- **Community Health Needs Assessment.** First, each tax exempt hospital is required to conduct a community health needs assessment once every three years, and to adopt an “implementation strategy” for meeting the health needs identified in the assessment. The assessment process must take into account input from persons who represent the broad interests of the community served by the hospital, including those with special knowledge of or expertise in public health. The assessment also must be “widely available” to the public. Failure to perform the required assessment in any applicable three year period may result in the imposition of a \$50,000 excise tax and possible loss of exempt status.

In addition, each tax exempt hospital must report on its annual Form 990 how it is addressing the community health needs identified in each assessment it conducts and, if any identified needs are not being addressed, describe those needs and the reasons they are not being addressed.

- **Financial Assistance Policy.** Second, each tax exempt hospital is required to have a widely publicized, written financial assistance policy that specifies:
 - eligibility criteria for financial assistance, and whether such assistance includes free or discounted care,
 - the basis for calculating amounts that will be billed to patients who qualify for discounted care under the policy,
 - the method for applying for financial assistance, and
 - if the hospital does not have a separate policy on billing and collections, the actions the hospital may take in the event of non-payment, including collections action and reporting to credit agencies.

In addition, the hospital must have a widely publicized, written emergency care policy requiring the hospital to provide care, without discrimination, to patients with “emergency medical conditions” regardless of whether they are eligible for assistance under the hospital’s financial assistance policy. It is not clear whether and to what extent this new requirement expands hospitals’ existing obligations under EMTALA.

- **Limitation on Charges.** Third, new section 501(r) requires each exempt hospital to limit the amounts charged for emergency or other medically necessary care provided to patients who are eligible under the financial assistance policy to not more than the amounts generally billed to patients who have insurance covering such care. It further provides

continued next page

that hospitals may not use gross charges in determining amounts charged to patients who qualify for financial assistance.

- **Collection Practices.** Fourth, PPACA requires each tax exempt hospital to refrain from engaging in “extraordinary collection actions” before it has made “reasonable efforts” to determine whether a patient is eligible for financial assistance under the hospital’s policy. The Secretary of the U.S. Department of Treasury is required to issue guidance on what constitutes “reasonable efforts” to determine a patient’s eligibility for financial assistance.

In some cases, these new requirements add to obligations already imposed by state or federal law. For example, some hospitals are already required by their respective state laws to prepare community needs assessments and/or implementation plans. In those cases, this requirement may not create a significant new responsibility for hospitals. Some states also have existing laws regulating hospitals’ financial assistance policies, charges, and collection practices, and various other federal laws and regulatory schemes, such as Medicare and federal collection laws, are already in place. Each hospital will need to adjust its existing practices and policies to meet the new requirements while continuing to comply with other applicable laws.

COMMUNITY BENEFIT STANDARD

Other provisions of PPACA address the “community benefit” standard for section 501(c)(3) tax exempt hospitals.

- **Mandatory Review of Community Benefit Activities.** PPACA requires the Secretary of the Treasury to review, at least once every three years, information about each section 501(c)(3) hospital’s community benefit activities (currently reported on Form 990, Schedule H). It also requires each tax exempt hospital to file with Form 990 a copy of its audited financial statements.
- **Report to Congress.** The Secretary of the Treasury, in consultation with the Secretary of the U.S. Department of Health and Human Services (“HHS”), is required to:
 - report annually to Congress on (a) the levels of charity care provided, bad debt expenses, unreimbursed costs of means-tested government programs, and unreimbursed costs of non-means tested government programs incurred by private tax exempt, taxable and government-owned hospitals; and (b) the costs incurred by private tax exempt hospitals for community benefit activities; and
 - study trends in this information and report the results to Congress not later than March 23, 2015.

CONSEQUENCES OF NONCOMPLIANCE

Hospitals that fail to meet the new requirements can lose their tax exemptions. In addition, PPACA provides for the imposition of a \$50,000 excise tax on hospitals that fail to conduct the required community health needs assessment in any applicable three-year period.

EFFECTIVE DATE

With the exception of the community health needs assessment provisions, the new requirements are effective for taxable years beginning after March 23, 2010. This means, for example, that a section 501(c)(3) tax exempt hospital with a tax year beginning October 1 must have the required policies and procedures in place by that date. The community health needs assessment requirement is effective for the first taxable year beginning after March 23, 2012.

NEXT STEPS

To prepare to comply with the new requirements, tax exempt hospitals should:

- Review existing financial assistance and billing and collections policies and procedures, and update them or adopt new policies and procedures as necessary to ensure all of the new requirements are satisfied;
- Confirm that policies and procedures are “widely available” to the public and, if they are not, identify and implement methods for making them more accessible;
- Consider taking time now to review existing procedures for conducting community needs assessments, and begin planning for any necessary modifications; and
- Watch for regulations or other guidance from the IRS.