Tax-Exempt Hospitals Face New Requirements Under Health Reform

By: Linda Moroney and T.J. Sullivan

While much of the country continues to digest the implications of comprehensive health care reform, as adopted in the Patient Protection and Affordable Care Act (H.R. 3590) and the Health Care and Education Reconciliation Act of 2010 (H.R. 4872), tax-exempt hospitals are realizing that they now face a number of new requirements, violations of which could result in significant economic costs and/or loss of tax-exempt status. The new provisions address concerns voiced in recent years by a number of legislators (most prominently, Sen. Charles Grassley, R-Iowa), to the effect that most tax-exempt hospitals are not functioning in a sufficiently “charitable” manner to merit the benefits and privileges of exempt status. Suddenly, with little more than a whimper (compared to the bang of overall health care reform), our nation’s federal tax laws have been changed to materially heighten the standards to which tax-exempt hospitals will be held accountable.

The new requirements, appearing in new Internal Revenue Code Section 501(r), apply to any Section 501(c)(3) organization operating a state-licensed hospital or otherwise having hospital care as its principal purpose or function. The requirements fall under four general headings.

1. **Community Health Needs Assessment.** At least every three years, tax-exempt hospitals must conduct a community health needs assessment. The assessment must take into account input from persons who represent the broad interests of the community served by the hospital, including persons having specialized knowledge or expertise in public health, and must be made available to the public. The hospital must also adopt an implementation strategy to meet the needs identified via the assessment. Hospitals that fail to comply with the community needs assessment provisions will be subject to a tax of $50,000 per tax year. This requirement is effective for tax years beginning after March 23, 2012.

2. **Financial Assistance Policies.** Effective immediately (i.e., organization’s first tax year beginning after March 23, 2010), hospitals must have written financial assistance policies that include (a) eligibility criteria, and whether care will be provided free of charge or at a discount, (b) the basis for calculating patient charges, (c) the method of applying for financial assistance, (d) if the hospital does not have
a separate billing and collections policy, the actions the hospital may take in the event of non-payment, and (e) measures to widely publicize the policy within the community served by the hospital. Hospitals must also have a written policy requiring the provision of emergency care on a non-discriminatory basis, without regard to eligibility under the hospital’s financial assistance policy.

3. **Limitations on Patient Charges.** Effectively immediately, hospitals must limit the amounts charged to patients qualifying for financial assistance to not more than the amounts generally billed to insured patients, and may not use gross charges.

4. **Limits on Collection Practices.** Effective immediately, hospitals may not use extraordinary collection actions before making reasonable efforts to determine whether a patient is eligible for assistance under the hospital’s financial assistance policy (with “reasonable efforts” to be the subject of future regulations).

Organizations operating more than one hospital must meet the above requirements separately with respect to each hospital facility.

In addition to these operational changes, hospitals also face additional reporting and disclosure obligations. In particular, hospitals will need to include, as part of their Form 990 annual information returns, a description of how they are addressing the needs identified in their community health needs assessments and, as to those needs that are not being addressed, an explanation as to why. And, for the first time, tax-exempt hospitals also will need to include along with their Form 990 information returns their audited financial statements, whether prepared on a separate or consolidated basis, making these financial statements subject to the existing public disclosure requirements applicable to annual information returns.

Tax-exempt hospitals should act quickly to evaluate their current practices and policies in relation to the new requirements. For many organizations, this process will be most effectively undertaken by a working group including representatives of finance, accounting, community relations, patient billing, executive and legal departments. If you would like assistance in understanding the new requirements and identifying steps necessary for compliance, please contact T.J. Sullivan at (202) 230-5157 or TJ.Sullivan@dbr.com, Linda Moroney at (414) 221-6057 or Linda.Moroney@dbr.com, or any other member of Drinker Biddle’s Health Law Practice Group.
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