

AN ALERT FROM THE BDO FEDERAL TAX PRACTICE

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FEDERAL TAX



► SUBJECT

NEW TAX EXEMPTION REQUIREMENTS FOR 501(C)(3) HOSPITALS

► DETAILS

The Patient Protection and Affordable Care Act, signed into law on March 23, 2010, Pub. L. No. 111-148 (the "Act"), provides additional requirements for hospitals to qualify as charitable organizations under section 501(c)(3). In order to qualify as a section 501(c)(3) hospital, a facility must meet the following requirements of new section 501(r):

1. The community health needs assessment requirement;
2. The financial assistance policy requirements;
3. The charges requirement; and
4. The billing and collection requirement.

► COMMUNITY HEALTH NEEDS ASSESSMENT

An organization will meet this requirement if, in the applicable year or in either of the two taxable years immediately preceding such taxable year, the hospital (1) conducts a community health needs assessment made widely available to the public which takes into account input from representatives of a broad cross section of the community, including those with public health expertise, and (2) adopts an implementation strategy to meet the community health needs identified through such assessment.

► Read more

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▶ FINANCIAL ASSISTANCE POLICY (INCLUDING EMERGENCY CARE POLICY)

An organization will meet this requirement if it establishes a written financial assistance policy which includes eligibility criteria for financial assistance and whether such assistance includes free or discounted care; the basis for calculating amounts charged to patients; the method for applying for financial assistance, and in the case of an organization which does not have a separate billing and collections policy, the actions the organization may take in the event of non-payment, including collections action and reporting to credit agencies; and measures to widely publicize the policy within the community to be served by the organization.

The policy must also provide that the organization will provide emergency medical care regardless of an individual's eligibility under the financial assistance policy.

▶ CHARGES POLICY

The organization must have a policy that limits amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under the financial assistance policy to not more than the lowest amounts charged to individuals who have insurance covering such care, and prohibits the use of gross charges.

▶ BILLING AND COLLECTION REQUIREMENTS

An organization will meet this requirement only if the organization does not engage in extraordinary collection actions before the organization has made reasonable efforts (to be defined by future regulation) to determine whether the individual is eligible for assistance under the financial assistance policy described above.

▶ PENALTIES AND REPORTING REQUIREMENTS

If an organization fails to meet the requirements of new section 501(r), then new section 4959 imposes a \$50,000 excise tax for any taxable year for which there is such failure.

The law imposes new reporting requirements (section 6033(b)(15)) so that a hospital will have to provide a description of how the organization is addressing the needs identified in the community health needs assessment and a description of any such needs that are not being addressed, together with the reasons why such needs are not being addressed. Hospitals will have to provide this report and their audited financial statements as attachments to Form 990, Return of Organization Exempt from Income Tax.

▶ EFFECTIVE DATES AND MANDATORY REVIEW

The new provisions are generally effective for taxable years beginning after the date of enactment of the Act. Thus, for example, if an organization uses a March 31 taxable year, most of the new requirements are currently effective as of April 1, 2010. The community health needs assessment requirement is effective for taxable years beginning two years after the date of the enactment of the Act, *i.e.*, March 23, 2012.

Finally, the new law provides that there will be mandatory review of tax exemption for hospitals at least once every three years regarding the community benefit activities of each hospital organization to which the new provisions apply.

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.