

Client Advisory | March 2010**New Requirements for Nonprofit Hospitals under the Patient Protection and Affordable Care Act of 2010**

The Patient Protection and Affordable Care Act (the “Act”) was signed into law by the President on March 23, 2010. The Act establishes a number of new requirements applicable to nonprofit hospitals and imposes an excise tax on hospitals that fail to comply. This Client Advisory outlines the new requirements applicable to nonprofit hospitals under the Act. The new requirements are in addition to, and not in lieu of, the requirements otherwise applicable to organizations described in Section 501(c)(3) of the Code. (All section references are to the Internal Revenue Code (the “Code”) unless otherwise indicated.)



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Community health needs assessment.

Under the Act, every nonprofit hospital facility is required to conduct a community health needs assessment at least once every three years and adopt an implementation strategy to meet the community health needs identified through such assessment. For purposes of this provision, a hospital facility generally includes: (1) an organization which operates a facility which is required by a State to be licensed, registered, or similarly recognized as a hospital, and (2) any other organization which the Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its exemption under Code Section 501(c)(3). Where a hospital organization operates more than one hospital facility, the organization must conduct a community health needs assessment with respect to each facility. The assessment must take into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health, and must be made widely available to the general public (e.g., posted on the hospital’s website or otherwise published). The hospital must disclose in its annual information return filed with the IRS (i.e., Form 990)

how the organization is addressing the needs identified in each community health needs assessment and a description of any needs that are not being addressed, as well as the reasons why such needs are not being addressed (e.g., lack of funding). A hospital facility that fails to complete a community health needs assessment in any applicable three-year period is subject to an excise tax equal to \$50,000.

Financial assistance policy. Under the Act, every nonprofit hospital facility is required to adopt a written financial assistance policy which includes: (i) eligibility criteria for financial assistance and whether such assistance includes free or discounted care; (ii) the basis for calculating amounts charged to patients; (iii) the method for applying for financial assistance; (iv) in the case of an organization that 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 (v) measures to widely publicize the policy within the community to be served by the organization. Each nonprofit hospital facility is also required to adopt a written policy requiring the organization to provide care for emergency conditions to individuals regardless of their eligibility under the financial assistance policy described above.

Limitation on charges. Under the Act, a hospital facility is not allowed to bill more for emergency or other medically necessary care provided to individuals who qualify for financial assistance under the facility's financial assistance policy than the amounts generally billed to individuals who have insurance covering such care. In addition, a hospital facility may not use gross charges when billing individuals who qualify for financial assistance.

Collection processes. Under the Act, a nonprofit hospital facility may not undertake extraordinary collection actions (e.g., lawsuits, arrests, liens on residences, etc.) against an individual without first undertaking reasonable efforts to determine whether the individual is eligible for assistance under the hospital's financial assistance policy. "Reasonable efforts" include notification by the hospital of its financial

assistance policy upon admission and in written and oral communications with a patient regarding the patient's bill, including invoices and telephone calls, before collection action or reporting to credit rating agencies is initiated.

Reporting and disclosure requirements. The Act requires each nonprofit hospital to file a copy of its audited financial statements with its annual information return (i.e., Form 990).

Effective Date. The community health needs assessment requirement is effective for taxable years beginning after March 23, 2012. The excise tax on failures to satisfy the community health needs assessment requirement is effective for failures occurring after March 23, 2010. All other provisions outlined above are effective for taxable years beginning after March 23, 2010.

Note that this Client Advisory highlights only a few of the changes that may affect your organization. If you have any questions regarding the tax law changes summarized in this Advisory or other provisions of the Act, and how these changes and provisions may affect your organization, please contact one of the members of our Tax Department listed below.

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