

in the news

## Nonprofit Organizations



February 2014

**IRS Issues Guidance for Tax-Exempt Hospitals Under Section 501(r)****In this Issue:**

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**O**n December 30, 2013, the Department of the Treasury and the Internal Revenue Service (“IRS”) issued Notice 2014-2 and Notice 2014-3, giving additional guidance to Section 501(c)(3) hospital organizations to comply with Section 501(r) of the Internal Revenue Code.

**What You Need To Know****Background**

Section 501(r) was created as part of the Patient Protection and Affordable Care Act of 2010 (“ACA”). On June 26, 2012, and April 5, 2013, the Department of Treasury and the IRS issued proposed regulations under Section 501(r). [For more information on the April 5, 2013 proposed regulations, see previous [alert](#), *IRS Provides Updated Guidance and Transition Rules on Community Health Needs Assessments*.]

Section 501(r)(1) requires hospital organizations to meet the following requirements in order to maintain, or receive recognition of, their Section 501(c)(3) status:

- Develop and adopt a periodic CHNA and implementation strategy;
- Adopt financial assistance and emergency medical care policies;



- Limit charges for emergency or medically necessary care; and
- Set procedures and policies related to billing and collection actions.

Section 4959, also enacted as part of the ACA, imposes a \$50,000 excise tax for each taxable year a hospital organization fails to satisfy the requirement to develop and adopt a CHNA and implementation strategy. Other Section 501(r) violations can result in severe penalties, including the revocation of a hospital organization's tax-exempt status.

### Notice 2014-2

The 2013 proposed regulations stated that, pending the publication of other guidance, hospital organizations could rely on proposed CHNA regulations but did not specify that they could rely on the other parts of the Section 501(r) proposed regulations. Notice 2014-2 confirms that hospital organizations can rely on all Section 501(r) proposed regulations pending the publication of other guidance. Notice 2014-2 provides that both sets of regulations remain in proposed form.

### Notice 2014-3

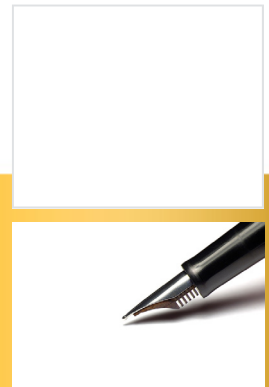
Notice 2014-3 offers correction and disclosure procedures for hospital organizations that have failed to meet the requirements of Section 501(r)(1) (discussed above) and Section 501(r)(2)(B) (requiring hospital organizations with more than one hospital facility to separately meet Section 501(r) requirements with respect to each facility), as long as the conduct is not willful or egregious. A non-willful, non-egregious failure will be excused, and a penalty will not be imposed, as long as the failure is properly and promptly corrected and disclosed as provided under the notice. To avoid penalty, the hospital organization must have begun to correct the failure, and, if the Form 990 for the year in which the failure was discovered is already due, must have properly disclosed the failure before being contacted by the IRS.

Under the notice, a willful failure includes a failure due to gross negligence, reckless disregard, or willful neglect (egregious failures are not defined). Willful and egregious failures are not protected by Notice 2014-3.

### Correction of a Failure

In accordance with Notice 2014-3, a failure must be corrected by taking the following steps:

- To the extent reasonably feasible, the correction should be made with respect to each affected person, and should restore the effected person to the position they would have been in had the failure not occurred. This rule applies irrespective of whether the harm suffered by the affected person occurred in a prior year and regardless of whether a prior year is a closed tax year.
- The correction should be reasonable and appropriate for the failure. Depending on the nature of the failure, there may be more than one reasonable and appropriate correction.
- The correction should be made as promptly after its discovery as is reasonable, given the nature of the failure.
- The hospital organization should revise or establish, as applicable, proper practices and procedures that are reasonably designed to achieve compliance with Section 501(r).





### Proper Disclosure of a Failure

A failure will be properly disclosed if the hospital organization reports the following information on its Form 990, Schedule H in the tax year that the failure is discovered:

- A description of the failure.
- A description of the discovery, including how it was made and when it happened.
- A description of the correction made.
- A description of the practices and procedures, if any, that were implemented in order to decrease the likelihood of re-occurring failure.

The notice also sets forth examples of compliance failures and how to correct them.

### What You Should Do Now

Hospital organizations can continue to rely on the proposed Section 501(r) regulations until further guidance is issued. Hospital organizations also should take immediate steps to disclose any non-willful, non-egregious failures of which it is aware or becomes aware, in accordance with Notice 2014-3.

**Organizations wishing to provide comments to the IRS regarding Notice 2014-2 or Notice 2014-3 must do so by [March 14, 2014](#).**

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### For More Information

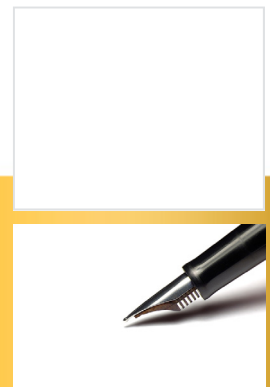
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