

HEALTH REFORM IMPACT

What you need to know NOW

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Focus on Nonprofit Hospitals

April 14, 2010

The nearly five-year long Congressional study of the nonprofit hospital sector culminated with sweeping reforms made by The Patient Protection and Affordable Care Act, enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, enacted on March 30, 2010 (the "Health Reform Legislation"). The Health Reform Legislation imposes new accountability and disclosure requirements that nonprofit hospitals must satisfy to maintain their federal tax-exempt status. These new requirements apply to (i) any tax-exempt organization that operates at least one facility required to have a state license as a hospital and (ii) any other tax-exempt organization that the IRS determines has as its principal function or purpose the provision of hospital care. For any tax-exempt organization that owns and operates more than one hospital facility, the new requirements apply separately to each hospital.

With the exception of the community health needs assessment, to be discussed below, the new requirements applicable to tax-exempt hospitals are effective for taxable years beginning after March 23, 2010. As a result, many tax-exempt organizations will need to begin compliance measures with their fiscal years that begin later in 2010.

Community Health Needs Assessment. In an effort to provide accountability and consistency to the community benefit standard that has served for decades as the underpinning to tax exemption for nonprofit hospitals, the Health Reform Legislation requires each tax-exempt hospital to: (i) conduct a community health needs assessment at least once every three years; (ii) adopt an implementation strategy to meet the community health needs identified in the assessment; and (iii) include additional disclosures in its annual IRS Form 990 regarding its progress in addressing the identified community health needs. The community health needs assessment must take into account input from a broad cross section of the community served by the hospital, including those with special knowledge of or expertise in public health, and must be made widely available to the public. An excise tax penalty of \$50,000 will be imposed on hospitals that fail to complete this assessment within the applicable three-year period.

This requirement is effective for taxable years beginning after March 23, 2012; however, because tax-exempt hospitals must complete the initial community health needs assessment by the end of their taxable year that begins after March 23, 2012, the initial three-year period effectively will start running in 2010 for many tax-exempt hospitals that have fiscal years beginning after March 23, 2010. For example, a tax-exempt hospital that has a fiscal year beginning on July 1 would have to complete its initial community health needs assessment for its fiscal year ending June 30, 2011, June 30, 2012 or June 30, 2013.

The new legislation also requires tax-exempt hospitals to include their audited financial statements with their annual IRS Form 990 and requires the IRS to conduct a review of the community benefit activities of each tax-exempt hospital at least once every three years.

Financial Assistance Policy. The Health Reform Legislation requires tax-exempt hospitals to adopt, implement, and make widely available a written financial assistance policy that 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) for hospitals that do not have a separate billing and collections policy, a statement of the collection-related actions the hospital may take in connection with non-payment; and (v) the method and means by which the hospital will widely publicize the policy within the community it serves.

Each tax-exempt hospital also must adopt a written policy that requires the hospital to provide non-discriminatory care for emergency medical conditions, regardless of whether the patient is eligible for financial assistance under the hospital's financial assistance policy. Note that it is unclear how this obligation intersects with the hospital's obligations under the Emergency Medical Treatment and Active Labor Act (EMTALA).

Limitations on Charges. The Health Reform Legislation requires tax-exempt hospitals to limit the charges for emergency or other medically necessary care provided to patients eligible for assistance under the financial assistance policy to not more than the amounts charged to patients who have insurance that covers such care. Tax-exempt hospitals also must prohibit the use of gross charges (i.e., "chargemaster" rates) when billing individuals who qualify for financial assistance. It is intended that amounts billed to those qualifying for financial assistance may be based on either the best, or an average of the three best, negotiated commercial rates, or on Medicare rates.

Billing and Collection Requirements. The Health Reform Legislation provides that a tax-exempt hospital may not carry out extraordinary collection actions before it has made reasonable efforts to determine whether a patient is eligible for assistance under the hospital's financial assistance policy. Extraordinary collection actions include lawsuits, liens on residences, arrests, body attachments or other similar collection processes. The definition of "reasonable efforts" is to be determined by future IRS guidance, but it is intended that such efforts would include notifying the patient upon admission of the financial assistance policy, in written and oral communications regarding the patient's bill (including invoices and telephone calls), and before beginning collection actions or reporting to credit agencies.

If you have questions regarding the information in this alert, please contact any of the attorneys listed below with specific experience in advising tax exempt hospitals.

Also, please [click here](#) to visit our special web page for Health Reform IMPACT.

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